

RAJAH & TANN ASIA

LAWYERS  
WHO  
KNOW  
ASIA

MANAGING  
GREENWASHING  
RISKS:  
A SOUTHEAST  
ASIAN LENS



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# OVERVIEW



As governments, corporates and individuals double down on efforts on their sustainability and environmental, social and governance ("ESG") agenda, there are emerging concerns of "greenwashing" and whether products and services labelled as "green" or "sustainable" are indeed so. What exactly is "greenwashing" and are there legal and regulatory frameworks in place to deal with this?

In this Guide, we aim to provide you with the state of play in the greenwashing legal landscape from a Southeast Asian perspective. Each Country Chapter provides a summary of the existing laws and regulations in each of the nine Southeast Asia jurisdictions that are available for enforcing against greenwashing, as well as some of their

key regulators' approaches and initiatives to set clear and enforceable standards on green claims, green credentials, green products or green investments.<sup>1</sup>

## What is "Greenwashing"?

Generally, "greenwashing" refers to the conduct of making untrue or misleading statements or representations about how certain products or investments are environmentally friendly, or green, which turn out to fall short of what the statements or representations claim. Greenwashing may take various forms. A few common examples are set out below.

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<sup>1</sup> The summary of laws and legal recourse set out in this Guide is non-exhaustive and is set out in general terms. Please contact us if you require further details or clarifications.

Form	Common Examples
Marketing communications that do not accurately reflect the level and/or extent of the organisation's or business' considerations of sustainability-related risks and opportunities in its processes or overstating a product's green character	<ul style="list-style-type: none"> <li>• A contractor describes its design, materials and/or processes as being sustainable, net-zero and eco-friendly without further details or verification.</li> <li>• A product which is described as "100% biodegradable" but in fact contains materials which may be harmful to the environment if broken down.</li> <li>• An asset manager that does not take into account ESG criteria in its funds' investment processes but discusses its sustainability-related initiatives and views on sustainability on its website and in its marketing materials, without making clear that its funds do not engage in ESG investment strategies or take climate-related risks into account.</li> <li>• An asset manager describes its sustainability-related commitments without clarifying the scope of these commitments, the potential limitations and their actual impact on the asset manager's overall business and strategy.</li> </ul>
Failure to meet its public sustainability-related commitments	<ul style="list-style-type: none"> <li>• A business which uses public sustainability-related commitments for positive media coverage or public relations purposes but fails to meet those commitments or demonstrate its progress towards meeting those commitments.</li> <li>• A property developer overstates its sustainability efforts in a bid to obtain the relevant green building certification (e.g., Green Mark by the Building and Construction Authority (BCA) in Singapore or Leadership in Energy and Environmental Design (LEED) by US Green Buildings Council).</li> </ul>

## How is Southeast Asia Addressing Greenwashing?

The recent development and issuance of the ASEAN Taxonomy is a sign of the Southeast Asian nations' recognition of the need to have clear standards on what may be classified as green economic activities with a view to mitigating greenwashing risks. Broadly, a taxonomy refers to a classification system to explain the relationship between things. In the area of sustainable finance, a taxonomy is developed to classify sustainable and non-sustainable investment and economic activities. Such a benchmarking system helps the stakeholders classify sustainable products and identify greenwashing claims more easily as there is a common standard on what constitutes green activities.

The ASEAN Taxonomy Board ("**ATB**") was established in March 2021 to develop an ASEAN Taxonomy for Sustainable Finance. In November 2021, Version 1 of the ASEAN Taxonomy, which sets out the broad framework, was published. It was further refined and on 27 March 2023, ATB released the ASEAN Taxonomy for

Sustainable Finance Version 2. Version 2 consists of detailed methodologies for assessing economic activities and technical screening criteria for the first focus sector, Energy focus sector (covering Electricity, Gas, Steam and Air Conditioning Supply) under the Plus Standard. A detailed review of the ASEAN Taxonomy would be beyond the scope of this Guide. For more information on the ASEAN Taxonomy for Sustainable Finance Version 2, please refer to our Legal Update, available [here](#).

With Indonesia, Malaysia, the Philippines, Singapore and Vietnam developing or having developed national and/or sectoral taxonomies to identify activities or projects that may be characterised as green, the ASEAN Taxonomy serves as a reference point and overarching guide for the classification of sustainable activities. The ASEAN Taxonomy, which focuses on environmental objectives, aims to create a common language for sustainable finance in the region.

This Guide shows that existing laws and regulations may be relied on to enforce a claim made against a greenwashing act. There is currently no law in the region

that deals with greenwashing as a specific offence. Due to the dearth of reported or publicised enforcement actions against greenwashing activities in the region, it is hard to assess the effectiveness of the existing laws and regulations in tackling greenwashing.

Various efforts have been or are being implemented by the Southeast Asia nations to provide adequate guidance, classifications or benchmarks on green claims, green credentials, green products or green investments to prevent greenwashing or mitigate the risk of

greenwashing. However, there are then the concerns of commonality and interoperability across the classifications and benchmarking.

The road to eliminating greenwashing altogether is complex and the state of play in Southeast Asia's greenwashing legal landscape is still developing. We expect rapidly evolving changes in this regard in the coming years.

*This publication is up to date as of **15 March 2023***

# CAMBODIA



Relevant Laws	Summary of Legal Recourse
Civil Code of Cambodia (" <b>Civil Code</b> ")	<p>The act of greenwashing may be considered as misrepresentation under the Civil Code. In a contract, the party to which the representation was made may rescind the contract on the ground of misrepresentation (Article 348 of the Civil Code). If such a party suffers loss and damage that resulted from such misrepresentation, it may claim for damages it suffered.</p> <p>The Civil Code does not set out the elements to establish misrepresentation. It only provides that "misrepresentation" is a statement made by one party that is not in accordance with facts, and the other party relies on such a statement to enter into the contract.</p>
Article 377 of Cambodian Criminal Code (" <b>Criminal Code</b> ")	<p>As an alternative to a claim under the Civil Code, a victim may commence a criminal action against a greenwashing scheme based on fraud under the Criminal Code. Fraud is defined as an act committed in order to gain benefits by deceiving the victim through the use of fake names, status or fraudulent schemes. In a civil law country, the victim needs to establish the elements of fraud as set out in the definition in order to file for such a claim.</p> <p>A victim of a greenwashing scheme must produce evidence relating to how he or she was deceived by the fraudulent schemes used by the fraudster and the benefit gained by the fraudster from the fraudulent act.</p>

Relevant Laws	Summary of Legal Recourse
<p>Law on Consumer Protection ("LCP")</p>	<p>The LCP dated 2 November 2019 and its enforcing authority, the National Commission for Consumer Protection, provides for consumer protection in relation to business-to-consumer transactions. Chapter 4 of the LCP which strictly prohibits the act of unfair conduct in a business may apply to greenwashing.</p> <p><b>Unfair conduct</b></p> <p>Article 9 of the LCP defines unfair conduct as any conduct of a person in a business which may mislead or deceive consumers (whether intentionally or unintentionally) and such conduct includes:</p> <ul style="list-style-type: none"> <li>(a) Acts or statements relating to advertisement, promotions and any other statements;</li> <li>(b) Action taken to mislead consumers regarding the value, price, or quality of goods or services;</li> <li>(c) Failure to meet promises, expectations or other information made to consumers;</li> <li>(d) Act of taking advantage of a consumer when the supplier is aware that the consumer is not in a position to protect his or her own interests or to understand the nature, language or matter related to the operation; or</li> <li>(e) Other unfair conduct as determined by the regulation issued by the Ministry of Commerce.</li> </ul> <p>Additionally, under Articles 10 and 11 of the LCP, any person who conducts a business must not engage in any unfair conduct that misleads or deceives the public in relation to the type, method of product, characteristic, purpose, quantity, measurement, metric, standard or quality of goods or services.</p> <p><b>Misleading representations</b></p> <p>Article 12 of the LCP stipulates that any person who conducts a business must not supply, promote the supply or promote the use of any goods or services through any misleading representations which suggest that:</p> <ul style="list-style-type: none"> <li>(a) Such goods are of a particular kind, standard, quality, classification, quantity, composition, design, model, or such goods have historical value or have been uniquely used;</li> <li>(b) Such services are of a particular kind, standard, quality, scope, or such services are delivered by a special person or by a person with special expertise or qualification in the business;</li> <li>(c) Such goods or services are sponsored, recognised, certified, effective for use, widely used, contain accessories or have many benefits;</li> <li>(d) A certain person has sponsored, recognised, certified, or is affiliated with, such goods or services;</li> <li>(e) Such goods originated from a particular place;</li> <li>(f) Other misleading representation as determined by the regulation issued by Ministry of Commerce.</li> </ul>

Relevant Laws	Summary of Legal Recourse
	The National Commission for Consumer Protection is the authority to receive complaints which may be lodged by consumers, consumer association and other regulators, and to investigate the company which is the subject of the complaint. The National Commission for Consumer Protection may also initiate such investigations.

### Regulators' Approaches and Initiatives to Address Greenwashing

The Securities and Exchange Regulator of Cambodia ("SERC") has been participating in the discussion and providing input on the ASEAN Taxonomy for Sustainable Finance Version 2. As an ASEAN member state, Cambodia will follow the basic elements of the ASEAN Taxonomy, which will serve as ASEAN's common language for sustainable finance. Currently, Cambodia is working to develop its own taxonomy based on the principles in the ASEAN Taxonomy.

Currently and specifically in relation to green bonds, the SERC has issued detailed guidance for issuing green bonds in Cambodia, which adopts the guidance for issuing green bonds in developing countries prepared by the Asian Development Bank (ADB). Under the SERC guidance, bond issuers are generally expected to provide a report and an update report regarding the allocation of the bond proceeds on the green projects and assets, performance of the green projects and assets and the impact of the implementation of the green projects and assets.

The format and frequency of the update report will depend on the specific circumstances of the issuer and the relevant bond, loan, or other debt instrument, as well as the program of bond issuances.

Update reports typically contain the following sections:

- **Allocation reporting.** This confirms the allocation of the bond proceeds to green projects and assets.
- **Eligibility reporting.** This confirms the characteristics or performance of green projects

and assets that support their eligibility to be associated with the green bond.

- **Impact reporting.** This discloses the metrics or indicators that reflect the expected or actual impact of green projects and assets.

Also, the SERC guidance provides the following:

- Green bond issuers should provide information in a wide variety of formats. The information can be included in a broader sustainability report of the organisation. Green bond update reports are often provided by the issuer as a separate document. Most green bond issuers make available their green bond documents, including update reports, on a sustainability or green bonds page on their websites. This enables investors and market analysts to easily access the information on a regular basis.
- The timing of providing the update report can be aligned with the issuer's periodic reporting schedule and does not have to follow the anniversary of the issuance of the green bond.
- Issuers are encouraged to make available the update reports through the existing capital market reporting channels such as the issuers' websites, stock exchange's information dissemination portal, or local green bond platform. This streamlines the information gathering process for investors and analysts, strengthens the value of the green label and reduces transaction costs.

# INDONESIA



Relevant Laws	Summary of Legal Recourse
<p>Indonesian Criminal Code</p>	<p>Greenwashing can be deemed as fraud under the Indonesian Criminal Code. Article 378 of the Indonesian Criminal Code states that anyone who, with the intent to unlawfully benefit him/her/itself or another (either by assuming a false name or a false capacity, or by crafty artifices, or by a series of lies), induces someone to deliver to him/her/it any goods or to provide him/her/it with a loan or to write-off his/her/its debt, will be charged of fraud with criminal sanction in the form of imprisonment for a maximum four years.</p> <p>Based on Article 378 of the Indonesian Criminal Code, the following elements must be met for a greenwashing act/practice to be deemed as fraud: (a) the intention to benefit oneself unlawfully; (b) upon the persuasion of the perpetrator, the delivery of a thing or the provision of a loan to the perpetrator, or the write-off of a debt of the perpetrator; and (c) use of fraudulent means/efforts.</p> <p>Greenwashing can be seen as a fraudulent misrepresentation that results in financial or reputational harm to others for the benefit of the perpetrator.</p>
<p>Indonesian Civil Code</p>	<p><b>Breach of contract</b></p> <p>An innocent party may enter into a contract with another party based on untrue or misleading representations made by that other party on how their goods and/or services are sustainable, environmentally friendly or "green". A contract entered into by the innocent party based on such misleading information provides a basis for a breach of contract claim under Articles 1238, 1243 and 1328 of the Indonesian Civil Code.</p>

Relevant Laws	Summary of Legal Recourse
	<p>Greenwashing information and representation that induce a party to enter into an agreement may be grounds to nullify such an agreement if the party has entered into the agreement relying on such fraudulent information and representation. If the innocent party had known the truth, he/she/it would not have concluded such an agreement. However, the greenwashing activity must be proven based on the relevant laws and regulations (as described further below).</p> <p><b>Unlawful act (Tort)</b></p> <p>Alternatively, the party who suffered a loss from greenwashing acts may also file civil claim against the party engaged in greenwashing acts on the basis that it is an unlawful act (tort). Article 1365 of the Indonesian Civil Code states that every unlawful act that causes damage to another person obliges the wrongdoer to compensate for such damage.</p> <p>For an event to constitute an unlawful act, all of the following elements must be fulfilled:</p> <ul style="list-style-type: none"> <li>(a) <b>There is an action.</b> Greenwashing is an act of making untrue or misleading statements or representations about how certain products or investments are environmentally friendly or green, which turn out to fall short of what the statements or representations claim.</li> <li>(b) <b>The act is against the law.</b> The claimant has to specify the provision of law that is violated by the greenwashing act.</li> <li>(c) <b>There is an error (fault or negligence) on the part of the perpetrator.</b> The claimant has to prove that the unlawful act was due to the fault or negligence of the perpetrator.</li> <li>(d) <b>There is a loss suffered by the claimant.</b> The claimant has to prove that he/she/it suffered a loss or is a victim of the unlawful act of the perpetrator.</li> <li>(e) <b>There is a causal relationship between the act and the loss.</b> The claimant has to show that there is a correlation between the act described in point (b) and the loss described in point (d).</li> </ul> <p>If the claimant is able to prove that the greenwashing act satisfies all of the above elements, the act of greenwashing constitutes as an unlawful act. Article 1365 of Indonesian Civil Code can then be used as a basis to file a civil claim against the perpetrator on the ground of an unlawful act (tort).</p>
<p>Law No. 8 of 1999 on Consumer Protection ("<b>Consumer Protection Law</b>")</p>	<p>The Consumer Protection Law is an umbrella act for consumer protection in Indonesia. The provisions of the Consumer Protection Law are worded broadly to ensure legal certainty in protecting the interest of users/consumers of goods and services, including in their transactions influenced by greenwashing practices.</p> <p>Under Article 4, consumers have the rights to correct, clear and honest information on the conditions and warranties of the goods and/or services. This means untrue or misleading</p>

statements on how certain products or investments are "green" may constitute a violation of consumer rights protected under the Consumer Protection Law.

#### **Unfair practices and misleading advertisements**

The Consumer Protection Law sets out a list of practices which are prohibited. The relevant prohibitions to "capture" greenwashing practices include, among other things, the following:

- (a) Producing and/or trading goods or services which:
  - (i) do not meet or are not in accordance with the standards required and the provisions of laws and regulations;
  - (ii) are not in accordance with the conditions, guarantee, specialty or efficacy as stated in the label, tag or information;
  - (iii) are not in accordance with a certain quality, level, composition, processing process, style, model, or usage as stated on the label or information; or
  - (iv) are not in accordance with the promise stated in the label, tag, information, advertisement or sales promotion.
- (b) Offering, promoting, advertising goods or services falsely as if, among other things, the:
  - (i) goods fulfil and/or have discount, special price, certain quality standard, certain style or mode, certain characteristic, certain history or use; or
  - (ii) goods and/or services have obtained and/or have sponsors, approvals, certain equipment, certain benefits, work characteristics or certain accessories.

A business actor<sup>2</sup> who conducted any of the abovementioned acts may be subject to a maximum of five years' imprisonment (for individuals and, for a corporation, this penalty will apply to the management of the business actor) or a maximum of IDR2 billion fine. Moreover, the following additional penalties may apply:

- (a) confiscation of goods;
- (b) announcement of the court's decision;
- (c) payment of indemnity;
- (d) suspension of all activities that caused damages to the consumer;
- (e) obligation to recall goods from circulation; or
- (f) revocation of business licence.

A business actor is also responsible to indemnify the consumers for any damages, contamination, and/or loss due to the consumption of the goods and/or services produced, provided or traded by it. The indemnification can be in the form of refund or replacement of goods and/or services or that are the same or equal in value, or healthcare and/or compensation in accordance with the provisions of the laws and regulations.

#### **Dispute settlement**

Consumers who suffered losses have the right to sue the relevant business actors under the Consumer Protection Law. Consumer dispute settlement can be carried out through court (pursuant to the provisions on general judiciary) or outside of court through a consumer dispute settlement agency ("**agency**"). The agency is responsible for examining the dispute, determine whether the consumer suffered losses, notify the decision to the relevant parties, and impose administrative sanctions on the business actor who was proven to have violated the provisions of the Consumer Protection Law.

Relevant Laws	Summary of Legal Recourse
	<p>A business actor must implement the agency's decision within a period of seven business days after receiving the decision. A business actor that does not submit any objection to the District Court within 14 days of its receipt of the decision will be deemed as having accepted the decision. Failure to implement the said decision will result in the agency submitting it to an investigator to investigate the non-compliance.</p>
<p>Law No. 32 of 2009 on Environmental Protection and Management as amended by Government Regulation in lieu of Law No. 2 of 2022 on Job Creation ("<b>Environmental Law</b>")</p>	<p><b>Obligations on the provision of environmental related information</b></p> <p>The Environmental Law may be used to address greenwashing claims. The Environmental Law sets out the obligations and guidance for a party (either individuals or corporations) in providing environmental related information.</p> <p>Under Article 68(a) of the Environmental Law, a party who undertakes business and/or activity is required to provide information related to environmental protection and management truthfully, transparently, and punctually.</p> <p><b>Prohibitions relating to environmental related information</b></p> <p>Article 69(1)(j) of the Environmental Law stipulates that any party is prohibited from:</p> <ul style="list-style-type: none"> <li>(a) providing false information;</li> <li>(b) providing misleading information;</li> <li>(c) eliminating information;</li> <li>(d) destroying information; or</li> <li>(e) providing incorrect information.</li> </ul> <p>A party that fails to comply with the foregoing prohibition may be subject to criminal sanctions in the form of one year's maximum imprisonment and an IDR1 billion maximum fine.</p>
<p>Law No. 40 of 2007 on Limited Liability Companies as amended by Government Regulation in lieu of Law No. 2 of 2022 on Job Creation ("<b>Companies Law</b>")</p>	<p><b>Social and environmental responsibilities of a company</b></p> <p>Article 74 of the Companies Law provides that a company that conducts business activities in the field of and/or related to natural resources must implement Corporate Social and Environmental Responsibility ("<b>CSR</b>") activities.</p> <p>A company that conducts business activities "<u>in the field of natural resources</u>" is a company which whose businesses activities involve managing and utilising natural resources. A company that conducts business activities "<u>related to natural resources</u>" is a company which does not manage or utilise natural resources but conducts business activities which may have an impact on the function of potential natural resources.</p> <p>The company's chosen CSR activities must be budgeted and calculated as costs to the company, and the implementation of which must be carried out with due regard for</p>

<sup>2</sup> This refers generally to a person carrying on a business.

Relevant Laws	Summary of Legal Recourse
	<p>appropriateness and reasonableness. The aim of the obligation on CSR activities is to establish a harmonious, balanced and appropriate corporate relationship between the company and the environment, the values, norms and culture of the local communities.</p> <p>The Companies Law does not specifically set out the relevant sanctions for the violations of the obligation on CSR activities. The Companies Law only states that companies that do not implement the obligation on CSR activities will be subject to sanctions based on the relevant laws and regulations. The Companies Law states that a company is subject to further provisions regarding CSR which are set out under the relevant laws and regulations. Such relevant regulation is the Government Regulation No. 47 of 2012 on Social and Environmental Responsibilities of Limited Liabilities Companies ("<b>GR No. 47/2012</b>"). However, GR No. 47 of 2012 currently does not set out the sanctions and/or consequences for a company that does not implement CSR activities.</p> <p><b>Liabilities related to disclosure of CSR under GR No. 47/2012</b></p> <p>Notwithstanding the above, it is mandatory under the GR No. 47/2012 that the CSR activities are carried out by the board of directors ("<b>BOD</b>") based on the annual work plan of the relevant company after obtaining the approval of the board of commissioners, or the general meeting of shareholders ("<b>GMS</b>") in accordance with its articles of association. Such annual work plan of the company must include the activities and budget plan for the implementation of the CSR obligation. The implementation of the CSR activities must then be reported under the annual report of the relevant company and held accountable at the GMS.</p> <p><b>Breach of fiduciary duties by the BOD</b></p> <p>The Companies Law recognises the concept of fiduciary duties, where the BOD is responsible for the management of the company to carry out the interest of the company in accordance with its purposes and objectives, and the BOD must carry out the management of the company in good faith and with full responsibility.</p> <p>Therefore, the BOD can be held accountable if the company suffered loss which is caused by the BOD's fault and/or negligence in providing misleading or "greenwashed" CSR information. If such a loss occurred, shareholders who own at least 10% of the total shares with voting rights in that company can file a claim to the District Court on behalf of the company against the relevant directors whose fault or negligence has caused losses for the company.</p>

Relevant Laws	Summary of Legal Recourse
<p>Financial Services Authority (<i>Otoritas Jasa Keuangan</i> or "<b>OJK</b>") Regulation No. 51/POJK.03/2017 of 2017 on the Implementation of Sustainable Finance for Financial Services Institutions, Issuers, and Public Companies ("<b>OJK Regulation No. 51/2017</b>")</p>	<p>A financial services institution ("<b>FSIs</b>"), issuer and public company (referred here as "<b>party</b>") are subject to the sustainability reporting requirements under OJK Regulation No. 51/2017. This sustainability report must be submitted to OJK annually, which can be done together with the annual report or separately.</p> <p>The sustainability report must at least contain the following information:</p> <ul style="list-style-type: none"> <li>(a) an explanation of the party's sustainable strategy;</li> <li>(b) an overview of the party's sustainability aspects (economic, social, and environmental);</li> <li>(c) a brief profile of the party;</li> <li>(d) an explanation of its board of directors;</li> <li>(e) the party's sustainable governance;</li> <li>(f) the party's sustainable performance;</li> <li>(g) a written verification from an independent party, if any;</li> <li>(h) a feedback sheet for buyers, if any; and</li> <li>(i) the responses to feedback from the party on the previous year's report.</li> </ul> <p>The sustainability report must be published on the party's website or any printed media by 30 April of the following year. Failure to do so may subject the party to administrative sanctions in the form of reprimands or written warnings.</p>

## Regulators' Approaches and Initiatives to Address Greenwashing

### (a) Financial, Corporate Governance and Capital Market Sector

#### *Indonesia Green Taxonomy 1.0*

In January 2022, OJK launched the first edition of the Indonesian Green Taxonomy ("**Indonesian Taxonomy**"). It serves as a primary guideline for the Financial Services Sector in conducting a more measurable categorisation of their financial product and/or services portfolios, and provides a foundation for regulators in analysing environmental and climate-related risk exposures. The Indonesian Taxonomy is structured based on the Indonesia Standard Industrial Classification (KBLI) and covers 919 sectors and sub-sectors classified into three categories, namely: green, yellow and red.

The green category includes business activities that make a positive impact on the environment, comply with governance standards set by the government and implement best practices in the national and international levels. The yellow category includes business activities that only meet some of the green criteria. The red category covers business activities that do not meet the green or the yellow criteria. By clearly classifying the green sectors and sub-sectors, OJK aims to reduce the occurrence of greenwashing.

The principles of the Indonesian Taxonomy are:

- **Responsible investment principles:** an approach that considers economic, social, environmental and governance factors in economic activities.
- **Sustainable business strategy and practice principles:** obligations to set and implement sustainable business strategies and practices in every decision-making.
- **Social and environmental risk management principles:** includes precautionary prudential principles in assessing social and environmental

risks through identification, measurement, mitigation, supervision and monitoring processes.

- **Governance principles:** enforcement of financial services' governance through business management and operations which include, among other things, transparency, accountability, responsibility, independence, professionalism and fairness.

#### ***OJK Regulation No. 51/ 2017 - Implementation of sustainable finance for FSIs, issuers and public companies***

Under OJK Regulation No. 51/2017, FSIs, issuers and public companies are required to implement sustainable finance in their business activities. The regulation sets out obligations to prepare sustainable finance action plans (*Rencana Aksi Keuangan Berkelanjutan – "RAKB"*) and sustainability reports. An RAKB contains a FSI's short-term (one year) and long-term (five years) business plans and work programmes that are relevant to the sustainable finance principles. The RAKB must be submitted to OJK annually. Further, FSIs, issuers and public companies are required to submit Sustainability Reports containing the financial, social and environmental performance of such entities in running a sustainable business.

#### **(b) Environmental Sector**

##### ***Regulation of the Minister of Environment No. 8 of 2010 on the Criteria's and Certification of Environmental Friendly Buildings in conjunction with Regulation of the Minister of Environment No. 2 of 2014 on the Embedding of the Ecolabel Logo and Regulation of the Minister of Environment and Forestry No. P.5/MENLHK/SETJEN/KUM.1/2/2019 ("Ecolabel Regulation")***

In the environmental sector, through the issuance of the Ecolabel Regulation, the Ministry of Environment provides a labelling scheme which allows business entities to affix "ecolabels" to products. An ecolabel affirms that such products have met certain environmental law aspects with respect to how the product's raw materials were acquired, the manufacturing processes, distribution, use and product waste treatment. Ecolabels consist of two categories: (1) Indonesian Ecolabel Logo; and (2) Indonesian Self-declaration Ecolabel Logo. Both ecolabels require prior approval from the Minister of Environment and must be

verified by a verification institution registered with the Ministry of Environment, before use. Members of the public can submit complaints to the Minister of Environment regarding possible misuse of the ecolabels. The relevant business entity will be subject to sanctions if such complaints are proven to be true.

#### **(c) Construction Sector**

##### ***Regulation of the Minister of Public Works and Housing Republic of Indonesia No. 21 of 2021 on Green Building Performance Assessment ("MOPW Regulation No. 21/2021")***

In the construction sector, the Minister of Public Works and Housing sets out the various criteria for the performance assessment of new or existing green building, community green residential building and green area in the MOPW Regulation No. 21/2021. The MOPW Regulation No. 21/2021 also stipulates rating and certification of green buildings.

#### **(d) Platforms / Database**

The Indonesian Stock Exchange ("**IDX**") has issued four environmental, social and governance ("**ESG**") based Indices, which are publicly accessible through the IDX website. The indices are reviewed and updated twice every year ensuring the reliability of the data provided. A brief description of each index is as follows:

- **IDX ESG Leaders:** An index that measures the price performance of 15-30 stocks that have good ESG scores and do not have significant controversies, selected from stocks with high trading liquidity which also have good financial performance.
- **SRI-KEHATI:** The Sustainable and Responsible Investment (SRI) – KEHATI Stock Index is a green index consisting of 25 listed companies selected for good performance in encouraging sustainable businesses, as well as having an awareness of the environment, social and good corporate governance.
- **ESG QUALITY 45 IDX KEHATI:** An index of 45 listed companies that measures the stock price performance of 45 stocks that consider the quality of financial and ESG aspects with relatively large market capitalisation and high liquidity.
- **ESG Sector Leaders IDX KEHATI:** An index that chooses a representative in each industry with the

best ESG score. Stocks with above average ESG score are selected to represent the industry and grouped by IDX Industry Classification.

# LAO PDR



Relevant Laws	Summary of Legal Recourse
<p>Civil Code No. 55/NA dated 6 December 2018 ("<b>Civil Code</b>")</p>	<p>The Civil Code defines principles, regulations and measures related to the establishment, variation and termination of rights and obligations of individuals and entities in order to ensure equality, justice, legality, peacefulness and social order by aiming at the protection of rights and the legitimate interests of individuals, entities and State and collectives.</p> <p>When entering into an agreement, the parties to the agreement must comply with the following fundamental principles stipulated in Article 8 (Fundamental Principles of Civil Relationship):</p> <ul style="list-style-type: none"><li>(a) Respect contractual freedom;</li><li>(b) Equality before the law;</li><li>(c) Good faith and honesty;</li><li>(d) Respect the implementation of laws;</li><li>(e) Respect fine customary rules and practices; and</li><li>(f) Civil responsibility.</li></ul> <p>Article 11 (Act in Good Faith and Honesty) provides that: "<i>Parties to the civil relationship must act in good faith and honestly in their creation, variation or cessation of rights and obligations.</i>"</p> <p>A party who wants to bring a claim against greenwashing may bring a claim for breach of Article 8 (particularly, claim for breach of the principle of good faith and honesty).</p>

Relevant Laws	Summary of Legal Recourse
<p>Penal Code No. 26/NA dated 17 May 2017 ("<b>Penal Code</b>")</p>	<p>An act of greenwashing may be regarded as giving misleading information about the quality or conditions of products or services provided under Article 289 of the Penal Code ("<b>Offence</b>") which imposes the following penalties:</p> <ul style="list-style-type: none"> <li>(a) <b>The Offence poses danger to others:</b> Imprisonment for a term ranging from three months to two years and a fine ranging from 3 million kip to 10 million kip.</li> <li>(b) <b>The Offence causes serious injury, invalidity, disability, handicap or death:</b> Imprisonment for a term ranging from three years to 10 years and a fine ranging from 50 million kip to 150 million kip.</li> <li>(c) <b>The Offence results in the death of more than one individual:</b> Imprisonment for a term ranging from five years to 20 years or life imprisonment and a fine ranging from 100 million kip to 1,000 million kip.</li> </ul> <p>A person may also bring a claim if a representation made with misleading information has induced him/her to enter into an agreement. To do so, the claimant must show that the representation was made with the knowledge that the information was false.</p>
<p>Law on Consumer Protection No. 02/NA dated 30 June 2010 ("<b>Consumer Protection Law</b>")</p>	<p>The Ministry of Industry and Commerce regulates the Consumer Protection Law. The Consumer Protection Law stipulates the principles of consumer protection, including the transparency of representation of products/services information.</p> <p>Article 14 (Principles and Forms of Advertisement) stipulates that advertisement or presentation of goods and services must be precise, and truthful about the category, type, characteristic, quality of goods, trademark and services. An act of greenwashing can be regarded as a breach of the requirement to "provide precise and truthful information concerning the production, the importation and the distribution of goods and services to the consumers" under Article 35 of the Consumer Protection Law. The consumer may bring his/her claim for breach of the requirement to the competent court for resolution.</p>
<p>Disclosure Regulation No. 008\LSX dated 27 September 2018 ("<b>Disclosure Regulation</b>")</p>	<p>Corporations with stocks and bonds listed on Laos Stock Exchange ("<b>LSX</b>") (respectively, "<b>stock-listed corporations</b>" and "<b>bond-listed corporations</b>") and listed-government bond on LSX are subject to the Disclosure Regulation that sets out, among other things, the following requirements:</p> <ul style="list-style-type: none"> <li>(a) <b>Article 2 (Disclosure):</b> Notification of significant information of the stock-listed corporates, bond-listed corporates and listed-government bond which influences or may influence decisions of investors via LSX disclosure system or other means, for ensuring public awareness and access to the information.</li> <li>(b) <b>Article 8 (Disclosure Obligations):</b> When making disclosure, a stock-listed corporation and a bond-listed corporation must comply with the following: <ul style="list-style-type: none"> <li>(i) To disclose information correctly, completely, clearly and in a timely manner;</li> <li>(ii) To conduct due diligence in order to avoid any change or reversal of information already disclosed;</li> </ul> </li> </ul>

Relevant Laws	Summary of Legal Recourse
	<p>(iii) Not to publicly leak or disseminate corporate information in the form of rumours or news before official disclosure of such information via LSX disclosure system;</p> <p>(iv) To be liable for all consequences resulting from the violation of paragraphs (i) and (ii) above.</p> <p>Further, a stock-listed corporation and a bond-listed corporation is required under Article 10 (Periodic Disclosure) to provide periodic disclosure which consists of the disclosure of semi-annual and annual business report and financial statements. Article 10 also prescribes the information that must be disclosed.</p> <p>If a stock-listed corporation or a bond-listed corporation discloses any information to the public about its "sustainable" or "green" practices that are not correct or complete pursuant to the Disclosure Regulation, it will be liable for the consequence resulting from the disclosure. This is further elaborated by Article 33 which prohibits a stock-listed corporation and a bond-listed corporation from performing the following acts:</p> <p>(a) Disclosing information that is incorrect, incomplete, unclear and not in a timely manner;</p> <p>(b) Intentionally concealing some information and distorting the truth resulting in misunderstanding of the user of the information;</p> <p>(c) Disclosing confidential information or forbidden information;</p> <p>(d) Disclosing information via other means prior to disclosure through LSX disclosure portal.</p> <p>Violating the above requirements may lead to suspension of securities trading of such a corporation.</p>

### Regulators' Approaches and Initiatives to Address Greenwashing

As mentioned in the table above, a party to an agreement has an obligation to make a representation that is based on correct information and to perform its obligation under the agreement in good faith and honestly. Any representation of misleading information may attract criminal liability and civil liability for the violating party.

Corporations listed on the LSX also have an obligation to disclose correct and complete information to the public. Failure to do so will lead to the suspension of securities trading on the LSX.

However, the difficulty lies in the determination of what is considered to be correct or complete information for the purpose of greenwashing, given that Laos has not, to

date, established clear standards on what products and services are "green".

# MALAYSIA



Relevant Laws	Summary of Legal Recourse
Contracts Act 1950	<p><b>Misrepresentation</b></p> <p>Section 18 of the Contracts Act 1950 provides that misrepresentation includes:</p> <ul style="list-style-type: none"><li>(a) Positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;</li><li>(b) Any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to this prejudice, or to the prejudice of anyone claiming under him; and</li><li>(c) Causing, however innocently, a party to an agreement to make a mistake as to the substance.</li></ul> <p>Case law is instructive in deducing the elements of misrepresentation under section 18, which are:</p> <ul style="list-style-type: none"><li>(a) There must be a false statement of fact;</li><li>(b) The said statement must be material in nature that a reasonable man would be influenced by it;</li><li>(c) The said statement induces the representee to enter into the contract;</li><li>(d) To trigger an inducement, two essential elements are necessary:<ul style="list-style-type: none"><li>(i) The representee must in fact rely on the representor's statement in the contract concerned; and</li></ul></li></ul>

Relevant Laws	Summary of Legal Recourse
	<p>(ii) The representor, at the time of entering into the contract, must have the intention, or at least realise, that the statement will, or probably will, be relied on by the representee.</p> <p>A claimant who wants to make a claim against greenwashing on the basis of section 18 of the Contracts Act 1950, will only be able to do so if there is a contractual relationship and the claimant has relied on such greenwashing statements / representations when entering into the contract. Without this prerequisite, along with non-fulfilment of any of the abovementioned elements, a claim under section 18 of the Contracts Act 1950 will not succeed.</p>
<p>Consumer Protection Act 1999 ("<b>CPA 1999</b>")</p>	<p><b>Section 10 – False or misleading representation</b></p> <p>Section 10(1) of the CPA 1999 provides that no person shall make a false or misleading representation that, among other things:</p> <ul style="list-style-type: none"> <li>(a) The goods are of a particular kind, standard, quality, grade, quantity, composition, style or model;</li> <li>(b) The services are of a particular kind, standard, quality or quantity.</li> </ul> <p>Where the false or misleading representations were made or published in advertisements, section 18 of the CPA 1999 will deem the advertisement to have been made by the person who directly or indirectly claims to supply the goods or services, or the person on whose behalf the advertisement is made, or both – as the case may require. This is, however, a rebuttable presumption.</p> <p>This means that if the act of greenwashing was done in an advertisement, the collective reading of section 10 and section 18 of the CPA 1999 will confer a rebuttable presumption that the supplier and/or the publisher are liable for the act of false or misleading representation.</p> <p><b>Section 25 – False or misleading representation is a statutory offence</b></p> <p>If a person or a body corporate is found to have made a false or misleading representation under section 10, section 25 of the CPA 1999 holds such a person or body corporate to be liable for an offence punishable as follows:</p> <ul style="list-style-type: none"> <li>(a) <b>Body corporate:</b> Fine not exceeding RM250,000 (for a second or subsequent offence, a fine not exceeding RM500,000).</li> <li>(b) <b>Not a body corporate:</b> Fine not exceeding RM100,000 or imprisonment for a term not exceeding three years or both (for a second or subsequent offence, a fine not exceeding RM250,000 or imprisonment for a term not exceeding six years or both).</li> </ul> <p>For continuing offences, there is an additional penalty of RM1,000 for each day or part of a day during which the offence continues post-conviction.</p>

Relevant Laws	Summary of Legal Recourse
	<p>To rely on the <b>defence of innocent publication of advertisement</b> that is provided under section 28, the defendant must prove the following elements:</p> <ul style="list-style-type: none"> <li>(a) the defendant's business is that of publishing or arranging for the publication of advertisements;</li> <li>(b) the defendant received the advertisement or information contained in the advertisement for publication in the ordinary course of business; and</li> <li>(c) the defendant had no knowledge and reason to suspect that the publication of an advertisement would constitute an offence under section 25.</li> </ul> <p><b>Section 34 – Implied guarantee that goods comply with the description</b></p> <p>If certain goods have been described as environmentally friendly, the CPA 1999 implies a guarantee that the goods must comply with such description. This includes cases where the goods are supplied with reference to a sample or demonstration model.</p> <p>Hence, a consumer may claim against the seller if the goods do not comply with the description, whether by verbal or written description, or by reference to a sample or demonstration model. This is also the case under section 35 (implied guarantee that goods comply with sample).</p> <p><b>Relevant authorities who administer the CPA 1999</b></p> <ul style="list-style-type: none"> <li>(a) <b>Committee on Advertisement</b> may be established by the Minister pursuant to section 84A, whose functions include examining complaints related to advertisements.</li> <li>(b) <b>Tribunal for Consumer Claims ("Tribunal")</b> is established under section 85 of CPA 1999. A consumer may make his claim to the Tribunal by lodging the prescribed form together with the prescribed fee, setting out his/her claim and matters concerning his/her interests as a consumer – this is provided under section 97 of the CPA 1999. The Tribunal's jurisdiction is provided by section 98 of the CPA 1999, which states that the Tribunal has the jurisdiction to hear consumer claims within the ambit of the CPA 1999 including claims in respect of all goods and services for which no redress mechanism is provided under any other law and where the total amount sought for is not more than RM50,000.</li> <li>(c) <b>Assistant Controller</b> is conferred by section 123 of the CPA 1999 with the power to investigate the commission of any offence under the CPA 1999. Section 123A allows any person to make a complaint to the Assistant Controller against any person who has committed or is committing an offence under the CPA 1999. The complaint must specify the person alleged to be making or have committed the offence, and the details of the alleged offence.</li> </ul>

Relevant Laws	Summary of Legal Recourse
<p>The Malaysian Code of Advertising Practice</p>	<p><b>Part 11 – Environmental claims</b></p> <p>The Malaysian Code of Advertising Practice ("<b>Code</b>") is not a binding legal instrument. The Code was drafted by the Advertising Standards Malaysia to provide self-regulating guidelines for advertising bodies' reference.</p> <p>Section 3, part 11 of the Code states that any claim made by the advertising body should be explained clearly and qualified where necessary. The Code makes it clear that:</p> <p><i>"Claims such as 'environmentally friendly' or 'wholly biodegradable' should not be used without qualification unless advertisers can provide convincing evidence that their product will cause no environmental damage. Qualified claims and comparisons such as 'greener' or 'friendlier' may be acceptable if advertisers can substantiate that their product provides an overall improvement in environmental terms either against their competitors' or their own previous products."</i></p>
<p>Companies Act 2016 ("<b>CA 2016</b>")</p>	<p><b>Breach of fiduciary duties</b></p> <p>If a director has not exercised reasonable care, skill and diligence in the course of making business decisions and judgments to prevent greenwashing the company's products and/or services, the director is likely to contravene section 213(2) of the CA 2016. The provision obliges directors to exercise reasonable care, skill and diligence with the knowledge, skill and experience which may be reasonably expected of a director having the same responsibilities, and any additional knowledge which the director in fact has.</p> <p><b>Instituting a derivative action</b></p> <p>The shareholders of a company may institute a derivative action under section 347 of the CA 2016 to hold a director liable under section 213(3) of the CA 2016. To do so, a complainant (being a shareholder of the company), may obtain leave from the court to initiate the proceedings on behalf of the company.</p> <p><b>Criminal liability</b></p> <p>The CA 2016 also provides for criminal liability for a breach of a director's duties under section 213(3) of the CA 2016. A director may be liable to imprisonment for a term not more than five years or a fine not more than RM3 million or both.</p>
<p>Bursa Malaysia Main Market Listing Requirements ("<b>Listing Requirements</b>")</p>	<p><b>Enforcement actions for breach of Listing Requirements</b></p> <p>Bursa Malaysia requires a listed issuer to set out separately in its annual report, various items including a Sustainability Statement. A Sustainability Statement is a narrative statement of the listed issuer's management of material economic, environmental and social risks and opportunities. In doing so, if a listed issuer provides false or misleading</p>

Relevant Laws	Summary of Legal Recourse
	<p>information in order to "greenwash" the information, the directors would be exposed to a number of enforcement actions by Bursa Malaysia.</p> <p><b>Misleading statements</b></p> <p>Enforcement actions against misleading statements are based on paragraph 9.16 of the Listing Requirements, which requires a listed issuer or corporation to ensure that the announcements made is, among other things, factual, unambiguous and accurate.</p> <p><b>Inaccurate disclosures</b></p> <p>Paragraph 9.12(1) of the Listing Requirements states that a listed issuer or corporation must refrain from promotional disclosure activity which may mislead investors. Such an activity includes statements made in news releases, reports or advertisements which are exaggerated, flamboyant or overstated.</p> <p>Paragraph 2.18(1) of the Listing Requirements obliges listed issuers or corporations to ensure that, among other things, any statement, information or document presented, submitted or disclosed pursuant to the Listing Requirements is clear, unambiguous and accurate, and does not contain any material omission and is not false or misleading.</p>
<p>Capital Markets Services Act 2007</p>	<p><b>Section 92A – Information to be given to a person who invests in capital market products</b></p> <p>Section 92A(1) of the Capital Markets and Services Act 2007 empowers the Securities Commission Malaysia ("<b>Securities Commission</b>") to specify the nature and extent of information to be given to investors.</p> <p>Section 92A(2) states that any person who:</p> <ul style="list-style-type: none"> <li>(a) issues or provides false or misleading information;</li> <li>(b) makes any false or misleading statement; or</li> <li>(c) willfully omits to state any matter or thing without which the statement or information is misleading in a material aspect,</li> </ul> <p>to a person who invests in a capital market product, commits an offence and is liable (upon conviction) to a fine not exceeding RM3 million or imprisonment for a term not exceeding 10 years or both.</p> <p>Therefore, it can be argued that greenwashing constitutes providing false or misleading information or statement under section 92A(2). The liability of the offender under this section is criminal in nature, rather than civil. If such false or misleading information or statement is submitted to the Securities Commission, it may attract the criminal liabilities under section 139ZK described below.</p>

Relevant Laws	Summary of Legal Recourse
	<p><b>Section 139ZK – False or misleading statement to the Securities Commission</b></p> <p>Section 139ZK(1) is a general provision providing for the offence of providing a false or misleading statement to the Securities Commission. It states that any person who makes or submits to the Securities Commission any statement or information that is false or misleading or willfully omits to state any matter or thing without which the statement or information is misleading in a material aspect commits an offence.</p> <p>The punishment prescribed under this section is imprisonment for a term not exceeding 10 years and a fine not exceeding RM3 million.</p>

## Regulators' Approaches and Initiatives to Address Greenwashing

### (a) Financial Sector – Bank Negara Malaysia

#### *Climate Change and Principle-based Taxonomy*

The Climate Change and Principle-based Taxonomy was issued on 30 April 2021 ("**CCPT**"). It is applicable to licensed banks, licensed investment banks, licensed international Islamic banks, licensed Islamic banks, licensed insurers, licensed reinsurers, licensed takaful operators, licensed retakaful operators and prescribed development financial institutions.

#### *Guiding Principle 1 – Climate Change Mitigation*

Paragraph 7.3 of the CCPT states that climate change mitigation has the objective of reducing or preventing emission of greenhouse gas ("**GHG**") into the atmosphere. In this regard, an economic activity can be deemed to meet climate change mitigation if the activity makes a substantial contribution to avoid GHG emissions, reduce GHG emissions or enable others to avoid or reduce GHG emissions.

The CCPT further clarifies that the positive impact from the "substantial contribution" should not be negligible and must be material enough to avoid potential greenwashing.

#### *Classification of Economic Activities*

At paragraph 9.1, the CCPT propounds that a consistent and systematic classification of economic activities has

the ability to facilitate and promote the channeling of financial flows to activities that support climate change and environmental objectives. The CCPT then proceeds to classify economic activities into three categories, Climate Supporting, Transitioning and Watchlist, based on Guiding Principles 1 to 4.

The considerations in classifying economic activities are set out in paragraph 9.2 – which includes Guiding Principle 1. At this juncture, the CCPT reiterates that when classifying economic activities, the positive impact and remediation measures must not be negligible and must be material enough to avoid potential greenwashing.

#### *Climate Risk Management and Scenario Analysis*

The Climate Risk Management and Scenario Analysis Policy Document ("**Policy Document**") issued on 30 November 2022 is applicable to financial institutions listed in paragraph 5.2 of the Policy Document, namely licensed banks, licensed investment banks, licensed Islamic banks (including international Islamic banks), prescribed development financial institutions, licensed insurers (including professional insurers), licensed takaful operators (including professional takaful operators) and financial holding companies.

The Policy Document sets out the principles and specific requirements on the management of climate-related risks – with the aim to enhancing the financial institutions' resilience in responding to climate-related risks. The principles are summarised in Appendix 1 of the Policy Document.

### *Risk Management – Principle 10*

Principle 10 states that *"financial institutions shall put in place appropriate risk controls when managing current and potential material climate-related risks. Financial institutions shall implement controls in a timely manner to mitigate adverse effects from transition risk, and the potential build-up in concentration to climate-related risks, in line with the risk appetite and business strategy"*.

Paragraph 11.14 of the Policy Document provides that financial institutions may mitigate the risks associated with greenwashing of its portfolio by referring to established standards and taxonomies and leveraging certifications and third-party assurance to verify the disclosures made by customers.

Further, financial institutions may conduct appropriate oversight and periodic reviews to ensure the applicable standards, taxonomies and certifications are relevant, current and valid.

### *Disclosure – Principle 14*

Principle 14 states that *"financial institutions shall produce reliable, meaningful and comparable climate-related disclosures, to support informed decisions by stakeholders and reinforce the effective management of material climate-related risks in the financial sector"*.

Paragraph 13.1 of the Policy Document requires financial institutions to establish a policy approved by their board of directors on climate-related disclosures that promotes "credible as well as high-quality disclosures and mitigate the risks of greenwashing". The mandatory board-approved internal policy has to address internal controls and governance arrangements over the disclosure process. The internal controls include verification and review of the accuracy of information.

### **(b) Corporate Governance / Capital Markets Sector – Bursa Malaysia**

#### ***Bursa Malaysia Sustainability Reporting Guide***

Listed issuers on the Main Market and ACE Market of Bursa Malaysia are obliged to include a Sustainability Statement in their annual reports. The Sustainability Statement contains the listed corporation's management

of essential economic, environmental and social risks and opportunities.

The Bursa Malaysia's Sustainability Reporting Guide provides the business case for embedding sustainability among listed issuers and provides specific guidance on the information to be disclosed in the Sustainability Statement in accordance with Bursa Malaysia's Listing Requirements.

To safeguard against greenwashing, Bursa Malaysia is empowered to take enforcement actions against listed issuers and directors for contraventions of the Listing Requirements.

### **(c) Corporate Governance / Capital Markets Sector – Securities Commission**

#### ***Securities Commission's Malaysian Code on Corporate Governance***

The Securities Commission's Malaysian Code on Corporate Governance was published by the Securities Commission on 28 April 2021. It sets out the roles and responsibilities of boards and senior management in advancing sustainability and environmental, social and governance ("ESG") values.

Failure to advance ESG values in a company may attract personal liability on the part of the directors / officers of the company on the basis of breach of directors and/or fiduciary duties under the CA 2016.

#### ***Disclosure and Reporting of SRI Fund's Investments***

On 18 December 2017, the Securities Commission issued the Guidelines on Sustainable and Responsible Investment ("SRI") Funds ("**Guidelines**") pursuant to section 377 of the Capital Markets and Services Act 2007. The Guidelines are applicable to any new or existing funds seeking to qualify as an SRI fund and a fund manager seeking for certification in respect of tax exemption for managing an SRI fund. The Guidelines were last revised on 9 July 2021.

Paragraph 3.05 of the Guidelines stipulates that an SRI fund's policy and investment strategies, including the selection, retention and realisation of its investments, must adopt one or more sustainability considerations such as the UN Global Compact (UNGC) Principles, one or more of the Sustainable Development Goals (SDGs)

or any other ESG factors. In determining whether a fund satisfies the requirement of paragraph 3.05, the Securities Commission will compare the information submitted with the SRI strategies currently in practice globally, including but not limited to the following:

- **Negative screening:** the exclusion of companies that undertake business activities or practices from a portfolio based on specific ESG criteria.
- **Positive screening:** prioritising investment in companies and/or projects that demonstrate positive ESG performance relative to the industry peers.
- **ESG integration:** systematic assessment of both quantitative and qualitative data on ESG factors in investment analysis.
- **Thematic investments:** selection of investments which align with sustainability-related themes.
- **Impact or social investing:** targeted investments with the intent to solve social or environmental issues, or investments businesses and projects with a clear social or environmental purpose.

Paragraph 3.06 further states that the SRI fund must disclose its policies and processes to deal with events where the fund's investments become inconsistent with its investment strategies and policies adopted under paragraph 3.05.

The Securities Commission may return any application which is unsatisfactory or does not comply with the requirements.

### **Capital Market Masterplan 3 – Chapter 3**

The Securities Commission will continue to focus on promoting responsible business practices that will drive long term value creation for stakeholders and respond to stakeholder expectations on sustainability commitments. This would include reliable and timely sustainability disclosures that are able to keep up with the needs of the market. Transparency through disclosures and investor education will also be prioritised on governance over ESG integration in investments and management of material climate related risks, such as greenwashing risks.

Malaysia needs to have an approach towards a more inclusive transition finance for the broader economy with the objective of achieving a net-zero emission, and at the same time, minimise greenwashing risks. This requires

greater clarity in issuer-level disclosures, for instance by requiring markets and financial institutions to use transition taxonomies.

### ***Principles-based Sustainable and Responsible Investment Taxonomy ("SRI Taxonomy") for the Malaysia Capital Market***

On 12 December 2022, the Securities Commission Malaysia released the SRI Taxonomy. It provides common guiding principles to various capital market constituents, including capital market intermediaries, issuers, corporates, asset owners, and investors, as well as users such as analysts, rating agencies, and the public sector, on the classification of economic activities to support sustainable investments. As it is principles-based, the SRI Taxonomy may be applied at the project, asset, entity or portfolio level.

#### *Environmental Component - Component 1*

Under the Environmental Component, similar to the CCPT discussed above, the SRI Taxonomy assesses the sustainability of an economic activity by its compliance with four environmental objectives, namely:

- **Climate change mitigation:** economic activity which avoids, reduces or enables others to avoid or reduce GHG emissions. Renewable energy generation and retrofitting are examples of economic activity which mitigate climate change.
- **Climate change adaptation:** economic activity which reduces the negative effects caused by climate change and increase resilience to withstand the adverse physical impact of climate change. The economic activity must contribute to a reduction in material physical climate risk, such as flooding, or less immediately noticeable effects, such as the potential impact on health due to rising temperatures.
- **Protection of healthy ecosystems and biodiversity:** economic activity which meets the goals set by the Convention on Biological Diversity 1992, enables ecosystem restoration and/or facilitates the protection of ecosystems, among others.
- **Promotion of resource resilience and transition to circular economy:** economic activity which adheres to the three important principles of circularity, namely minimising resource use by conserving raw materials, energy, water, and other

natural resources, optimising resource yield, and closing resource loops through effective waste management. This can be achieved via using adapted products, production methods, technologies and processes. The economic activity should also do no significant harm, whether direct or indirect, to its immediate environment and the broader environment.

### *Social Component - Component 2*

The Social Component of the SRI Taxonomy provides for three social objectives, namely:

- **Enhanced conduct towards workers:** reducing the social impact of an activity on workers involved in that activity, for example, through implementing policies and procedures that eliminate discrimination in respect of employment, or abolishing child labour.
- **Enhanced conduct towards consumers and end-Users:** reducing the social impact of an activity on consumers and end-users. For example, economic activity which engages in responsible marketing practices and ensuring safety of products and services.
- **Enhanced conduct towards affected communities and wider society:** reducing the social impact of an activity on communities directly affected by an activity and the wider society. For example, by providing or improving access to products and services that meet basic human needs such as food and education, and providing or improving access to basic economic infrastructure such as transport, affordable energy, digital infrastructure, and financial services.

### *Sustainability Component - Component 3*

The objective of this component is to promote the integration of ESG factors into business practices and investment processes in a more comprehensive and holistic manner that addresses the needs of the wider economy. This is crucial to establish the interconnectivity between the environmental and social objectives of economic activities. In order to qualify as sustainable, economic activities must align with both the environmental and social objectives of the SRI Taxonomy. Additionally, entities conducting these economic activities must adhere to the appropriate national governance guidelines and frameworks.

### *Relationship between the SRI Taxonomy and the CPPT*

The principles-based SRI Taxonomy provides overarching principles and guidelines for sustainable economic activities, whereas the CPPT focuses specifically on economic activities that contribute to climate change mitigation and adaptation efforts.

The two taxonomies share similar objectives. For example, climate change mitigation is also seen as part of the environmental component of the SRI Taxonomy. As such, the two taxonomies can work together to promote sustainable economic development. For instance, an economic activity that is classified as sustainable according to the SRI Taxonomy may also align with the objectives of the CPPT. In this way, the taxonomies can complement each other and provide a more comprehensive approach to promoting sustainable economic activities.

### *Relationship between the SRI Taxonomy and Other Initiatives to Tackle Greenwashing*

The combination of these frameworks can help foster sustainable economic development by encouraging companies to adopt responsible business practices. For example, a company that is classified as having sustainable economic activities according to the SRI Taxonomy can also incorporate the reporting guidelines outlined in the Bursa Malaysia Sustainability Reporting Guide and adhere to the principles of good corporate governance outlined in the Securities Commission's Malaysian Code on Corporate Governance. Such efforts can enhance the company's overall ESG performance and contribute to sustainable economic development in Malaysia.

# MYANMAR

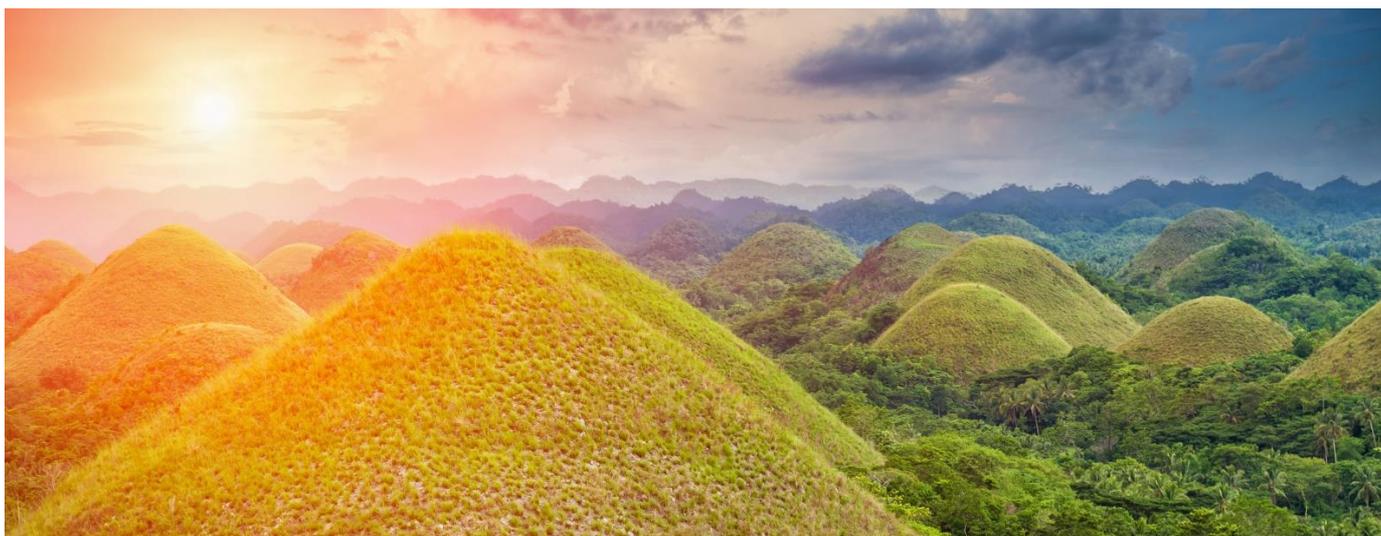


Relevant Laws	Summary of Legal Recourse
<p>Myanmar's policies and general contract law</p>	<p>The Environmental Conservation Law 2012 ("<b>ECL</b>") and Environmental Conservation Rules 2013 ("<b>ECR</b>") issued by the Ministry of Environmental Conservation and Forestry have implications for domestic and foreign investors in Myanmar. However, there are no express prohibition on greenwashing under the ECL and ECR. Reference may instead be made to Clause 18(b) of the Contract Act (1872) ("<b>TCA</b>") where the term misrepresentation is stated as "<i>to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him</i>". This can potentially be interpreted as a fraudulent action of the person or a company that carries out greenwashing.</p> <p>In this regard, in 2016, Myanmar passed a set of Environmental Quality Standards, Environmental Impact Assessment and Social Impact Assessment procedures. These assessment criteria seek to ensure that existing businesses and investors are complying with the prescribed standards and must not carry out misleading activities that can affect the environment and the economy.</p> <p>The Ministry of Planning and Finance has also established the Myanmar Sustainable Development Plan (2018-2030) ("<b>MSDP</b>") in August 2018 under the National League of Democracy Government. However, it is unclear if the MSDP is still effective due to the declaration of state of emergency on 1 February 2021.</p>

### **Regulators' Approaches and Initiatives to Address Greenwashing**

Currently under the ECL and ECR, greenwashing is not actively pursued by the Myanmar Government. There are also no known or reported initiatives in place by the current administration to regulate greenwashing in Myanmar.

# PHILIPPINES



Relevant Laws	Summary of Legal Recourse
<p>Civil Code of the Philippines (Republic Act No. 386, as amended) ("<b>Civil Code</b>")</p>	<p>The Civil Code is the primary collection of laws in the Philippines which regulates the relations of private parties, determining their respective rights and obligations, with reference to persons, things and civil acts.</p> <p><b>Article 1546 – Express warranty</b></p> <p>Greenwashing may give rise to a cause of action under Article 1546, which provides: "<b>Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer.</b>"</p> <p>According to the Supreme Court of the Philippines ("<b>Supreme Court</b>"): "<i>A warranty is a statement or representation made by the seller of goods – contemporaneously and as part of the contract of sale – that has reference to the character, quality or title of the goods; and is issued to promise or undertake to ensure that certain facts are or shall be as the seller represents them. A warranty is not necessarily written. It may be oral as long as it is not given as a mere opinion or judgment. Rather, it is a positive affirmation of a fact that buyers rely upon, and that influences or induces them to purchase the product.</i>"</p> <p>Hence, a statement or representation, whether oral or written, that certain products or investments are "environmentally friendly" or "green" may be considered an express warranty under Article 1546 if the following requirements are present:</p>

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	<p>(a) The express warranty must be an affirmation of facts or any promise by the seller relating to the subject matter of the sale;</p> <p>(b) The natural tendency of the affirmation or promise is to induce the buyer to purchase the thing; and</p> <p>(c) The buyer purchases the thing relying on that affirmation or promise.</p> <p><b>Article 1599 – Breach of warranty</b></p> <p>In case of a breach of a warranty, Article 1599 grants the buyer the following remedies at his election:</p> <p>(a) To accept or keep the goods, and make a claim against the seller for breach of warranty to recoup the diminution or extinction of the price;</p> <p>(b) To accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;</p> <p>(c) To refuse to accept the goods and maintain an action against the seller for damages for the breach of warranty;</p> <p>(d) To rescind the contract of sale and refuse to receive the goods or, if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.</p> <p>Article 1599 further provides that, when the buyer claimed and had been granted any of these remedies, no other remedy can thereafter be granted to him, without prejudice to the provisions of the second paragraph of Article 1191 (which provides for the power of rescission for a party).</p> <p>However, Article 1599 also provides that the buyer cannot rescind the sale if he knew of the breach of warranty and he accepted the goods without protest, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good a condition as they were in at the time the ownership was transferred to the buyer (but if the deterioration or injury of the goods is due to a breach of warranty, this will not prevent the buyer from returning or offering to return the goods and rescinding the sale).</p>
<p>Consumer Act of the Philippines (Republic Act No. 7394, as amended) ("Consumer Act")</p>	<p>The Consumer Act was enacted with the objective of, among other things, protecting consumers against deceptive, unfair, and unconscionable sales acts and practices. It may, therefore, also give rise to a cause of action against greenwashing.</p> <p>Article 4(s) of the Consumer Act defines a <b>consumer transaction</b> as "(1) (i) a sale, lease, assignment, award by chance, or other disposition of consumer products, including chattels that are intended to be affixed to land, or of services, or of any right, title, or interest therein, except securities as defined in the Securities Act and contracts of insurance under the Insurance Code, or (ii) grant of provision of credit to a consumer for purposes that are primarily personal, family, household or agricultural, or (2) a solicitation or promotion by a supplier with respect to a transaction referred to in clause (1)."</p> <p>Article 4(q) of the Consumer Act defines <b>consumer products and services</b> as "goods, services and credits, debts or obligations which are primarily for personal, family,</p>

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	<p><i>household or agricultural purposes, which shall include but not limited to food, drugs, cosmetics, and devices."</i></p> <p><b>Protection against deceptive acts or practices</b></p> <p>Article 50 of the Consumer Act sets out the prohibition against deceptive sales acts or practices. It provides that "<i>an act or practice is deemed deceptive whenever the producer, manufacturer, supplier or seller, through concealment, false representation of fraudulent manipulation, induces a consumer to enter into a sales or lease transaction of any consumer product or service.</i>" It also provides that, without limiting the scope of this sentence, the act or practice of a seller or supplier is deceptive when it represents that:</p> <ul style="list-style-type: none"> <li>(a) a consumer product or service <b>has the</b> sponsorship, <b>approval</b>, performance, <b>characteristics, ingredients</b>, accessories, uses or <b>benefits it does not have</b>;</li> <li>(b) a consumer product or service is <b>of a particular standard, quality</b>, grade, style, or model <b>when in fact it is not</b>;</li> <li>(c) a consumer product is new, original or unused, when in fact, it is in a deteriorated, altered, reconditioned, reclaimed or second-hand state;</li> <li>(d) a consumer product or service is available to the consumer for a reason that is different from the fact;</li> <li>(e) a consumer product or service has been supplied <b>in accordance with the previous representation</b> when in fact it is not;</li> <li>(f) a consumer product or service can be supplied in a quantity greater than the supplier intends;</li> <li>(g) a service, or repair of a consumer product is needed when in fact it is not;</li> <li>(h) a specific price advantage of a consumer product exists when in fact it does not;</li> <li>(i) <b>the sales act or practice involves or does not involve a warranty</b>, a disclaimer of warranties, particular warranty terms or other rights, remedies or obligations if the indication is false; and</li> <li>(j) <b>the seller or supplier has a sponsorship, approval, or affiliation he does not have.</b></li> </ul> <p>The Supreme Court held that: (i) a representation is not confined to words or positive assertions, (ii) the representation of a seller may consist of deeds, acts, or artifacts of a nature calculated to mislead the consumer and allow the seller to obtain an undue advantage, (iii) the failure to reveal a fact which the seller is, in good faith, bound to disclose may generally be classified as a deceptive act due to its inherent capacity to deceive, and (iv) suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation.</p> <p>The Consumer Act also grants the Department of Trade and Industry ("<b>DTI</b>"), as its implementing agency, the authority to, after due notice and hearing, promulgate regulations declaring as deceptive any sales act, practice or technique, which is a misrepresentation of facts other than those enumerated in Article 50.</p> <p>Under Article 60 of the Consumer Act, any person convicted for violating the prohibition against deceptive sales acts or practices is subject to a fine of not less than 500 Pesos but not more than 10,000 Pesos or imprisonment of not less than five months but not more</p>

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	<p>than one year or both, upon the discretion of the court. It also provides that the court may grant an injunction restraining such an act or practice and/or award actual damages and such other orders as it thinks fit to redress injury to the person caused by such conduct.</p> <p><b>Liability for product and service</b></p> <p>Article 100 of the Consumer Act imposes liability on suppliers of durable or nondurable consumer products for imperfections in product quality that render the products unfit or inadequate for consumption for which they are designed or decrease their value, and for those <i>"resulting from inconsistency with the information provided on the container, packaging, labels or publicity messages/advertisement, with due regard to the variations resulting from their nature..."</i>.</p> <p>Article 100 also grants the consumer the following remedies:</p> <ul style="list-style-type: none"> <li>(a) To demand replacement of the imperfect parts;</li> <li>(b) If the imperfection is not corrected within 30 days, the consumer may alternatively demand at his option: <ul style="list-style-type: none"> <li>(i) The replacement of the product by another of the same kind, in a perfect state of use;</li> <li>(ii) The immediate reimbursement of the amount paid, with monetary updating, without prejudice to any losses and damages; or</li> <li>(iii) A proportionate price reduction.</li> </ul> </li> </ul> <p><b>Advertising and sales promotion</b></p> <p>Article 110 of the Consumer Act deals with false, deceptive and misleading advertisements. It provides that it is unlawful for any person to disseminate any <b>false, deceptive, or misleading advertisement</b> by Philippine mail or in commerce by print, radio, television, outdoor advertisement or other medium for the purpose of inducing or which is likely to induce directly or indirectly the purchase of consumer products or services. It further provides that:</p> <p><i>"An advertisement shall be false, deceptive or misleading if it is not in conformity with the provisions of this Act or if it is misleading in a material respect. In determining whether any advertisement is false, deceptive or misleading, there shall be taken into account, among other things, not only representations made or any combination thereof, but also the extent to which the advertisement fails to reveal material facts in the light of such representations, or materials with respect to consequences which may result from the use or application of consumer products or services to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual."</i></p> <p>Article 112 of the Consumer Act imposes special advertising requirements for food, drug, cosmetic, device, or hazardous substances, including in particular that: <i>"b) No person shall advertise any food, drug, cosmetics, device, or hazardous substance in manner that is <b>false, misleading or deceptive</b> or is <b>likely to create an erroneous impression regarding its character, value, quantity, composition, merit, or safety.</b>"</i></p>

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	<p>A violation of Articles 110 and 112 gives rise to the following legal consequences:</p> <p>(a) <b>Injunctive relief</b></p> <p>(i) When DTI has a reason to believe that: (a) any person, partnership or corporation is engaged in or is about to engage in the dissemination or the causing of dissemination of any advertisement in violation of Articles 110 to 115, and (b) the enjoining thereof would be to the interest of the public, DTI shall direct the filing of a complaint in the court of competent jurisdiction, to enjoin the dissemination or the causing of the dissemination of such advertisement. Upon proper showing, a temporary injunction or restraining order shall be granted without bond. Any such complaint shall be filed in the locality in which the person, partnership or corporation resides or transacts business.</p> <p>(ii) Any person who has suffered loss, damage or injury due to a false, misleading or deceptive advertisement as defined in Article 4 may file a complaint with injunction in his own name with any court of competent jurisdiction to recover damages, cost of suit and reasonable attorney's fees.</p> <p>(b) <b>Fine and/or imprisonment</b></p> <p>(i) Any person, association, partnership or corporation who has violated any of the provisions of Articles 110 to 115 will, upon conviction, be subject to a fine of not less than 500 Pesos but not more than 5,000 Pesos or an imprisonment of not less than one month but not more than six months or both at the discretion of the court.</p>
<p>Revised Corporation Code (Republic No. 11232) ("<b>Revised Corporation Code</b>")</p>	<p><b>Liability of directors for breach of fiduciary duty</b></p> <p>Section 30 of the Revised Corporation Code may provide legal basis for holding the directors or trustees of a corporation liable for any greenwashing on the part of the corporation.</p> <p>Section 30 provides that directors or trustees who: (a) <b>wilfully and knowingly vote for or assent to patently unlawful acts of the corporation</b>; or (b) are <b>guilty of gross negligence or bad faith in directing the affairs of the corporation</b>, are liable for all damages resulting therefrom suffered by the corporation, its stockholders or members, and other persons.</p>

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<p>Revised Penal Code (Act No. 3815, as amended by Republic Act No. 10951) ("RPC")</p>	<p><b>Other Deceits</b></p> <p>Article 318 of the RPC may provide legal basis for penalising greenwashing.</p> <p>Article 318 punishes the crime of "Other Deceits". The first paragraph sets out the penalty for the crime of Other Deceits. Article 318 is broad in application and is intended as a catch-all provision to cover all other kinds of conceivable deceit not falling under Articles 315, 316 and 317 of the RPC. The elements of the crime of Other Deceits are:</p> <ul style="list-style-type: none"> <li>(a) The accused makes a false pretence, fraudulent act, or pretence other than those in Articles 315, 316 and 317 of the Revised Penal Code;</li> <li>(b) Such false pretence, fraudulent act, or pretence must be made or executed prior to or simultaneously with the commission of the fraud; and</li> <li>(c) As a result, the offended party suffered damage or prejudice.</li> </ul> <p>For an accused to be held liable under Article 318, it is essential that the very cause or the only motive for the offended party to part with his property is the false statement or fraudulent representation of the accused.</p>

## Regulators' Approaches and Initiatives to Address Greenwashing

### (a) Financial Sector

#### *The Philippine Green Jobs Act*

Republic Act No. 10771 or the "Philippine Green Jobs Act" may help address greenwashing by providing incentives to business enterprises that offer "green jobs". Instead of engaging in greenwashing (*i.e.*, deceiving consumers into believing that their products are environmentally friendly if these are not), business enterprises are hopefully motivated to produce goods that are actually beneficial to the environment in order to avail themselves to the incentives granted under the Philippine Green Jobs Act.

The Philippine Green Jobs Act was passed to promote sustainable development and identify needed skills and workers for jobs in a range of industries that produce goods and render services for the benefit of the environment.

Under the Philippine Green Jobs Act, **business enterprises** mean "*establishments engaged in the*

*production, manufacturing, processing, repacking, assembly, or sale of goods and/or services, including service-oriented enterprises. It includes self-employed or own-account workers, micro, small, and medium enterprises (MSMEs) and community-based business enterprises.*" On the other hand, **green jobs** refer to "*employment that contributes to preserving or restoring the quality of the environment, be it in the agriculture, industry [,] or services sector. Specifically, but not exclusively, this include[s] jobs that help to protect ecosystems and biodiversity, reduce energy, materials and water consumption through high efficiency strategies, decarbonise the economy, and minimise or altogether avoid generation of all forms of waste and pollution.*"

To encourage business enterprises to generate and sustain green jobs as certified by the Climate Change Commission, the following incentives are granted under the Philippine Green Jobs Act:

- **Tax deduction:** Special deduction from the taxable income equivalent to 50% of the total expenses for skills training and research development expenses which is over and above the allowable ordinary and necessary business deductions for said expenses

under the National Internal Revenue Code of 1997, as amended; and

- **Tax and duty free importation of capital equipment:** This applies if the capital equipment is actually, directly and exclusively used in the promotion of green jobs of the business enterprise.

The fiscal and non-fiscal incentives provided under the Philippine Green Jobs Act are in addition to other incentives already granted or provided under existing laws, orders, issuances and regulation.

### ***The Philippines' Guidelines for Issuance of Green Bonds***

In 2018, the Philippines adopted the ASEAN Green Bonds Standards ("**AGB Standards**") that govern the issuance of ASEAN Green Bonds ("**AGB**") where proceeds are exclusively applied to finance or refinance eligible Green Projects ("**GP**"). It provides the eligibility requirements of the issuer, process for project selection and evaluation, management of proceeds, reporting requirements, and external review requirements. The proceeds of the AGB are ultimately to be used for GPs which must have clear environmental benefits and, if feasible, must also be quantifiable.

The AGB Standards may help address greenwashing by assuring investors that AGBs in the market are actually offering "green" bonds (i.e., that the proceeds of AGBs will be utilised to further environmental projects and initiatives). This may be achieved by the extensive and stringent reporting and external review requirements under the AGB Standards which make it more costly for an issuer to make false or exaggerated claims that the bonds it issues are actually "green". By having the AGB Standards, unscrupulous issuers who use AGBs to entice investors to invest in their bonds by marketing them as "green", will hopefully be discouraged from engaging in greenwashing because (a) they will have to prove that the AGB proceeds will be used for environmental activities under the AGB Standards and (b) comply with reporting and external review requirements of the AGBs that they offer.

### ***Sustainable Central Banking Framework***

The Bangko Sentral ng Pilipinas ("**BSP**") has adopted a three-phased approach to introducing sustainability-related guidelines for banks.

### ***First Phase – Sustainable Finance Framework (Circular No. 1085, Series of 2020)***

Cognisant that climate change and other environmental and social risks could pose financial stability concerns to banks and their stakeholders, the BSP's Sustainable Finance Framework requires banks and their executive and high-ranking officers to pursue environmentally and socially responsible business decisions in their corporate governance framework, risk management systems and strategic objectives within three years from the effectivity of this circular. Within this period, banks are required to adopt an Environmental and Social Risk Management System that would provide clear guidance in assessing the Environmental and Social ("**E&S**") risks in the bank's operations and ensure that sustainability-related standards, laws, and regulations are observed. Banks are also required to incorporate the assessment of adherence to policies related to management of E&S risks in their internal audit and compliance functions. Lastly, banks must observe several mandatory disclosure requirements including the progress of implementation of their initiatives to integrate sustainability principles in their strategy and operations.

All these could help mitigate greenwashing activities as banks are compelled to assess environmental concerns in their business decisions, corporate governance framework, risk management systems and strategic objectives.

### ***Second Phase – Environment and Social Risk Management Framework (Circular No. 1128, Series of 2021)***

The second phase of the BSP's Sustainable Central Banking Framework provides stricter guidelines that govern the integration of E&S risks in the management frameworks of banks. Circular No. 1128 amends Circular No. 1085 and further requires banks to consider E&S risks in defining their credit risks appetite, review the composition of their loan portfolios that have exposure in areas vulnerable to E&S risks, adopt a Credit Risk Management System ("**CRMS**") that will enable a bank to effectively identify and manage E&S risks, and integrate E&S risk events in an Operational Risk Management System ("**ORMS**"). BSP has also set out clear and extensive duties of the board of directors and the senior management of the banks in ensuring compliance with these requirements.

Requiring the banks to adopt a CRMS and a ORMS (and to comply with them) could discourage greenwashing on the part of the banks' borrowers as the banks would also be monitoring the activities of these borrowers for consistency with the banks' E&S risks policies.

*Third Phase – Guidelines on the Integration of Sustainability Principles in Investment Activities of Banks (Circular No. 1149, Series of 2022)*

The third phase of the BSP's Sustainable Central Banking Framework deals with the integration of sustainability principles in the investment activities of banks. Circular No. 1149 amends Circular No. 1128 and further requires banks to have a Risk Management Framework designed to manage E&S risks arising from their investment activities. The board of directors and the senior management of a bank have oversight functions to oversee the integration of sustainability principles and objectives in the bank's investment activities and to monitor the progress in attaining such objectives, among other things. Banks are also required to: (a) institute policies, procedures, and limits that provide a framework for managing their investment activities under the Risk Management Framework; (b) ensure that they possess the capability to measure and monitor E&S risks associated with their investments in the form of the Risk Measurement, Monitoring, and Management Information Systems; and (c) ensure the integrity of their risk measurement and methodologies in their internal controls and audit.

In line with a bank's duty to consider the impact of environmental risks in the banking industry, a bank must ensure that its assets are invested in businesses and activities that do not engage in greenwashing.

### **Improving Sustainable Finance Definition and Creation of Principles-based Taxonomy**

In February 2022, BSP issued a circular for the release of the Philippine Sustainable Finance Roadmap ("**Roadmap**") and Sustainable Finance Guiding Principles ("**Guiding Principles**"). The Roadmap and Guiding Principles outline the strategies, priorities and principles that are intended for all banks to consider and explore in developing their approaches or actions towards adopting sustainable finance.

Moreover, BSP has recognised the call for more uniformity and guidance in identifying sustainable

investment assets and eligible economic activities. While BSP acknowledges that other ASEAN countries have developed a prescriptive type of taxonomy, i.e., a list of categories of projects eligible for green financing, it explained that the Philippines plans to take a principles-based approach to its taxonomy. This is because the Inter-Agency Technical Working Group for Sustainable Finance ("**ITSF**") intends to ensure that the taxonomy to be created can easily be adapted to reflect future development in definitions as to what is considered sustainable.

Moving forward, this principles-based taxonomy will cover not only green projects, but also sustainable economic activities to remove ambiguity and avoid fragmentation and facilitate capital flows. It likewise aims to protect investors against the risk of greenwashing and assist them in making investment decisions that are in line with their sustainability preferences.

As regards the creation of the principles-based taxonomy, the ITSF will explore the "*development of a Guiding Principles document that will serve as a common language as to what projects will be considered as sustainable. The Guiding Principles document will be aligned with the SEC Guidelines on the Issuances of Green, Social, and Sustainability Bonds. This will also include an assessment of its advantages and disadvantages, as well as how it aligns with the EU and other taxonomies being developed in other jurisdictions. The ITSF will ensure alignment with the recommendations in the ACMF's Roadmap for ASEAN Sustainable Capital Markets, WC-CMD's Report on Promoting Sustainable Finance in ASEAN, to develop a common taxonomy, and the work of the ASEAN Taxonomy Board.*"

### **(b) Corporate Governance / Capital Market Sector**

#### **Sustainability Report**

The Securities and Exchange Commission ("**SEC**") requires Publicly Listed Companies ("**PLCs**") to submit a Sustainability Report in their Annual Reports that would allow PLCs to assess and manage non-financial performance across Economic, Environmental, and Social ("**EES**") aspects of their organisations.

PLCs are required to observe the "comply or explain" approach, which means that companies must attach the reporting template to their Annual Reports. However,

they can provide explanations for items where they still have no available data on.

The objectives of the Sustainability Report are to:

- Make sustainability reporting relevant to and value add to Philippine PLCs;
- Help PLCs to identify, evaluate, and manage their material EES risks and opportunities;
- Help PLCs to assess and improve their non-financial performance across the EES aspects of their organisations to optimise business operations, improve competitiveness and long-term success;
- Provide a mechanism that would allow PLCs to communicate with their stakeholders, including investors or potential investors; and
- Enable PLCs to measure and monitor their contributions towards achieving universal targets of sustainability, such as the United Nations Sustainable Development Goals, as well as national policies and programs, such as *AmBisyon Natin 2040*.

One of the key impacts assessed by the SEC in determining whether a company is a sustainable business is its environmental risks and opportunities. In relation to this, the company's Sustainability Performance is also measured in the way the company conducts its business and how it manages its key economic, environmental and social impacts.

As for unlisted companies, the SEC previously noted that it will introduce a sustainability reporting for unlisted companies with the same "comply or explain" approach.

With the requirement to submit a Sustainability Report, companies should be deterred to participate in greenwashing activities because they must conduct their business in compliance with environmental laws and anti-false, deceptive and misleading advertisements or practices.

### (c) Other Sectors

#### ***DTI's Memorandum of Understanding with the Ads Standards Council***

To strengthen the enforcement of and compliance with the Consumer Act, DTI signed a Memorandum of Understanding ("**MOU**") with the Ads Standard Council

("ASC") in 2013. ASC is a non-profit organisation whose mission is to champion truth and fairness in advertising. The MOU was meant to "*institutionalise the partnership between the two agencies to address the issue on misleading advertisements and fraudulent sales promotion practices.*"

In furtherance of its mandate, DTI renewed its partnership with ASC through the signing of another MOU last December 2022. Pursuant to this MOU, ASC is empowered to continue pre- and post-screening advertising material content to ensure its compliance with the Consumer Act and the ASC Code of Standards and Ethics. ASC also provides information on any advertising content that is false, deceptive, misleading, unfair, poses a danger to consumer welfare and safety, or violates advertising standards. Moreover, ASC members can also appear as witnesses, upon DTI's request, in cases involving false, deceptive, or misleading advertisements.

#### ***The "Green Choice Seal"***

One effective way to combat greenwashing may be through greater environmental awareness. In this regard, DTI has urged consumers to look for the Green Choice Philippines ("**GCP**") seal of approval when buying products.

The National Ecolabeling Program ("**NELP**")-GCP is a voluntary, ecolabelling program that provides criteria for environmentally sound and preferable products and services throughout their life-cycle.

It is a tool to determine more environmentally preferable manufacturing and packaging options through a set of quality and environmental requirements, including verification methods. Moreover, it aims to guide consumers in choosing which products and services being produced and distributed in the country pose minimum risks to environmental health and welfare.

Currently, the NELP-GCP has granted its seal of approval for 79 products in various categories, including laundry detergent, cement, natural infill material, engine oil, ceramic tile, water-based paint, LED light, paper hand towel, tissue paper, induction lamp, electronic ballast, organic liquid disinfectant, fiber cement board and photocopier. Applications for the certification to bear the GCP seal are processed by the Philippine Center for

Environmental Protection and Sustainable Development,  
Inc, which administers the NELP-GCP.

# SINGAPORE



Relevant Laws	Summary of Legal Recourse
<p>Consumer Protection (Fair Trading) Act 2003 ("CPFTA")</p>	<p>The CPFTA is administered by the Competition and Consumer Commission of Singapore ("<b>CCCS</b>"). Its provisions, which are worded widely, can be invoked to address greenwashing in respect of consumer transactions.</p> <p><b>Sections 4 and 5 – Unfair practices</b></p> <p>Section 4 sets out a general prohibition against "unfair practices" and is relevant for capturing "greenwashed" consumer transactions. Under section 4, it is an unfair practice for a supplier, in relation to a consumer transaction to:</p> <ul style="list-style-type: none"> <li>(a) do or say anything, or omit to do or say anything, if as a result a consumer might reasonably be <b>deceived or misled</b>;</li> <li>(b) make a <b>false</b> claim;</li> <li>(c) take advantage of a consumer if the supplier knows or ought reasonably to know that the consumer: <ul style="list-style-type: none"> <li>(i) is not in a position to protect his or her own interests; or</li> <li>(ii) is not reasonably able to understand the character, nature, language or effect of the transaction or any matter related to the transaction; or</li> </ul> </li> <li>(d) without limiting paragraphs (a), (b) and (c), <b>do anything specified in the Second Schedule of the CPFTA.</b></li> </ul>

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	<p>Part 1 of the Second Schedule, entitled "Specific Unfair Practices", specifies some practices that would constitute an unfair practice under section 4 of the CPFTA. In this regard, examples that are relevant in the context of greenwashing include:</p> <ul style="list-style-type: none"> <li>(a) Representing that goods or services have sponsorship, approval, performance characteristics, accessories, ingredients, components, qualities, uses or benefits that they do not have.</li> <li>(b) Making a false or misleading representation concerning the need for any goods or services.</li> <li>(c) Making a representation that appears in an objective form such as an editorial, documentary or scientific report when the representation is primarily made to sell goods or services, unless the representation states that it is an advertisement or a promotion.</li> <li>(d) Omitting to provide a material fact to a consumer, using small print to conceal a material fact from the consumer or misleading a consumer as to a material fact, in connection with the supply of goods or services.</li> </ul> <p>Section 5 goes on to state that an unfair practice "may occur before, during, or after a consumer transaction". This means that greenwashing can occur not only at the consumer's point of purchase, but can include acts before or after that. Notwithstanding this, an unfair practice may consist of just a single act or omission. In determining whether a person has engaged in an unfair practice, section 5 also requires that the reasonableness of the supplier be taken into consideration.</p> <p>While the CPFTA was first enacted in 2004, it was amended in 2009 to extend its ambit to capture "financial products" and "financial services" regulated by the Monetary Authority of Singapore ("<b>MAS</b>"), including, among other things, commodity trading under the Commodity Trading Act 1992. Concurrently, the Consumer Protection (Fair Trading) (Regulated Financial Products and Services) Regulations 2009 ("<b>CP(RFPS)R</b>") were introduced. These have the effect of broadening the applicability of the CPFTA to various "greenwashed" forms of equity funds, bonds and products branded as purporting to meet various Environmental, Social and Governance ("<b>ESG</b>") related objectives. Offerings, goods or services which are found to not actually contribute to their described environmental benefits pursuant to a supplier's deceptive or misleading acts or false claims, may constitute an unfair practice and hence violate section 4 of the CPFTA. Under the CPFTA read with the CP(RFPS)R, the court, in considering the reasonableness of the supplier alleged to have engaged in an unfair practice relating to MAS-regulated financial products or services, may take into account "the inherent risks of the financial products or services supplied, if all relevant information concerning such risks has been provided to the consumer in good faith".</p> <p>CCCS is the administrative body responsible for meting out sanctions for acts in contravention of the CPFTA. CCCS may deal with alleged breaches of section 4 in a broad number of ways, including:</p> <ul style="list-style-type: none"> <li>(a) upon reasonable grounds for suspicion, conducting an investigation into a supplier who has engaged, is engaging or is likely to engage in an unfair practice;</li> <li>(b) requiring documents, articles or information to be produced to CCCS;</li> </ul>

Relevant Laws	Summary of Legal Recourse
	<p>(c) entering premises with or without a warrant;</p> <p>(d) examining orally any person who appears to be acquainted with any facts or circumstances relevant to the investigation or issuing a written notice requiring such persons to attend before the investigation officer.</p> <p><b>Sections 6 and 7 – Claim against supplier in court</b></p> <p>A consumer's right to sue a supplier for unfair practice is enshrined under section 6(1) of the CPFTA. Generally, a consumer who has entered into a consumer transaction involving an unfair practice may commence an action in a court of competent jurisdiction against the supplier, to claim up to the prescribed limit of S\$30,000, or such other amount as the Minister may prescribe. In this regard, section 7 of the CPFTA gives the Small Claims Tribunal jurisdiction to hear a claim under section 6(1).</p> <p>Where the products or services involve MAS-regulated financial products or services, the Small Claims Tribunal will first consider whether the consumer had sought to resolve the dispute under any available "specified dispute resolution scheme". Under the CP(RFPS)R, this includes any prescribed dispute resolution scheme approved by MAS.</p> <p><b>Section 8 – Voluntary Compliance Agreement</b></p> <p>The Consumers Association of Singapore ("<b>CASE</b>") and Singapore Tourism Board ("<b>STB</b>") are specified bodies serving as the first ports of call when local consumers and tourists respectively have complaints relating to consumer transactions. They assist aggrieved consumers to obtain redress and/or compensation by way of negotiation and mediation with suppliers. Where the products or services do not involve MAS-regulated financial products or services, these agencies may invite errant suppliers to enter into Voluntary Compliance Agreements ("<b>VCAs</b>"), which require the latter to undertake to cease unfair practices, compensate consumers who suffer losses due to unfair practices and/or publicise the VCA, etc. Non-compliance with a signed VCA may see consumers recover compensation as a civil debt or see the matter escalated to CCCS for investigation.</p> <p><b>Section 9 – Declaration or injunction</b></p> <p>Where the products or services do not involve MAS-regulated financial products or services, CCCS may apply to the District Court or the General Division of the High Court for a declaration or injunction where a supplier has engaged, is engaging or is likely to engage in an unfair practice. Under section 9(1), the court may, subject to its discretion, then:</p> <p>(a) make a declaration that the practice engaged in or about to be engaged in by the supplier is an unfair practice;</p> <p>(b) grant an injunction restraining the supplier from engaging in the unfair practice; and</p> <p>(c) if the District Court or General Division of the High Court grants relief under paragraph (a) or (b), make in addition one or more of the accompanying orders mentioned in section 9(4) (see below).</p>

Relevant Laws	Summary of Legal Recourse
	<p>In deciding whether to exercise its discretion under section 9(1), the court will consider whether the supplier has engaged in the unfair practice and/or intends to continue engaging in the unfair practice, as well as whether there is any likelihood of irreparable harm to consumers if the unfair practice persists. Non-compliance with such orders may see CCCS taking the supplier to court for contempt of court – a criminal offence which could result in a fine and/or imprisonment.</p> <p>Where relief is granted under either paragraph (a) or (b) of section 9(1), various accompanying orders which remain in force for a stipulated period may be made under section 9(4), including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) <b>Publicity obligations</b>, which involve the supplier periodically publishing, at its own expense, the fact that it is currently being subject to a declaration or injunction;</li> <li>(b) <b>Notification obligations</b>, which involve the supplier notifying a consumer of the declaration or injunction made against the supplier, and obtaining the consumer's written acknowledgment of the notice before he/she enters into a consumer transaction with the supplier;</li> <li>(c) <b>Reporting obligations</b>, which involve the supplier notifying CCCS within 14 days after the occurrence of a notifiable event, such as when the supplier changes its premises or Internet address, amongst others.</li> </ul> <p>Failure to comply with any of the obligations under section 9(4) may result in the extension of the specified period for which the declaration or injunction subsists.</p> <p><b>Sections 40 and 41 – Presumption against supplier</b></p> <p>Sections 40 and 41 of the CPFTA set out presumptions against the supplier rather than the consumer in certain circumstances, the effect of which may encourage consumers to bring an action for greenwashing (or unfair practice more generally) against the supplier. The provisions set out specific rules relating to contractual interpretation and the evidential burden of proof:</p> <ul style="list-style-type: none"> <li>(a) Section 40 provides that where a consumer and supplier enter into a consumer transaction, and all or any part of the transaction or contract is evidenced by a document provided by the supplier, a provision of the document that is ambiguous <b>must be interpreted against the supplier</b>.</li> <li>(b) Section 41 provides that in any court proceedings between a consumer and supplier in relation to a consumer transaction, should any dispute arise as to whether the supplier has complied with any specified requirement of the CPFTA or the regulations thereunder, <b>the burden of proving that the supplier has so complied rests with the supplier</b>.</li> </ul>
<p>Singapore Code of Advertising Practice (3<sup>rd</sup> Ed.) ("<b>SCAP</b>")</p>	<p>The SCAP is an industry guideline implemented by the Advertising Standards Authority of Singapore ("<b>ASAS</b>"). It operates to regulate and encourage ethical advertising, with the basic premise of the SCAP being that all advertisements should be legal, decent, honest and truthful, and "prepared with a sense of responsibility to the consumer and society".</p>

Relevant Laws	Summary of Legal Recourse
	<p>In this regard, Clause 5 under the header entitled "II. General Principles" of the SCAP stipulates that advertisements should not "<i>mislead in any way by inaccuracy, ambiguity, exaggeration, omission or otherwise</i>", and should not "<i>misrepresent any matter likely to influence consumers' attitude to any product...</i>" or "<i>misrepresent any information to mislead consumers into believing any matter that is not true, such as the source of the product, quality of the product... and others</i>". These broad principles may apply to regulate advertisements involving greenwashing.</p> <p>Clause 1 under the header entitled "III. Guidelines" further states that "<i>all descriptions, claims and comparisons that relate to matters of objectively ascertainable facts should be capable of substantiation. Advertisers... are required to hold such substantiation ready for immediate production without delay to ASAS upon request</i>". Hence, under the SCAP, it is important for suppliers publishing advertisements to not only be able to substantiate their green claims but to ensure proper record-keeping as well.</p> <p>Appendix L on "Environmental Claims" further sets out detailed standards relating to environmental claims in advertisements. Among other things, Appendix L requires that the basis of any claim should be explained clearly and qualified where necessary, as they can mislead if significant information is omitted. Also, the use of "extravagant language", "bogus" and "confusing scientific" terms are to be avoided, unless their meaning is clear. These provide helpful guidance against acts of greenwashing, and suppliers publishing advertisements must ensure that their choice of wording must be intentional and well-chosen.</p> <p>While the SCAP operates through self-regulation and has no force of law <i>per se</i>, ASAS may nevertheless impose sanctions on advertisers that fail to comply with the SCAP. This includes asking media owners to withdraw facilities, rights or services from advertisers who breach the SCAP, or requesting advertisers to amend, withhold or withdraw their advertisements until they have been suitably modified. ASAS also expressly warns advertisers about adverse publicity, adding that it will publish details of investigation outcomes including the offenders' names. All these powers can constrain and/or impact suppliers' advertising activities considerably and more.</p>
<p>Doctrine of Misrepresentation under Common Law</p> <p>Misrepresentation Act 1967 ("Misrepresentation Act")</p>	<p>An action for greenwashing may be brought under the legal doctrine of misrepresentation. A transaction that was entered into based on greenwashing claims may give rise to a claim in misrepresentation at common law or in statute under the Misrepresentation Act. To obtain successful recovery under such a claim, a claimant must be able to establish the elements for an actionable misrepresentation, as well as to prove the loss that has been suffered – it may be challenging to demonstrate the latter in the special context of greenwashing.</p>

Relevant Laws	Summary of Legal Recourse
	<p><b>Common law - Doctrine of misrepresentation</b></p> <p>At common law, a false statement of fact made by one contracting party to another, which induces the latter to enter into the transaction, and causes the latter to suffer some form of loss, gives rise to certain rights and remedies under the doctrine of misrepresentation. This may also include omissions of information that distort the truth of the representation.</p> <p>A fraudulent misrepresentation claim may be brought when greenwashing claims are made fraudulently. In such situations, it is key for the claimant to show that the representation was made with knowledge that it was false or in the absence of any genuine belief that it was true.</p> <p>On the other hand, a negligent misrepresentation claim may be brought when greenwashing claims are made negligently. It would be necessary to show, in such situations, that the counterparty owed a duty to take reasonable care in making the representation, and that the duty was breached when the false representation was made.</p> <p>Damages may be awarded to victims of greenwashing claims if loss can be proven. All losses that flowed directly from the transaction are recoverable if fraudulent misrepresentation is established, regardless of whether the loss was foreseeable, including all consequential loss. On the other hand, only losses that are reasonably foreseeable are recoverable if negligent misrepresentation is established.</p> <p>This has important consequences on the amount potentially recoverable by claimants in the context of greenwashing, as the measure of damages in fraudulent misrepresentation claims is generally higher than damages in negligent misrepresentation claims.</p> <p><b>Section 2 of Misrepresentation Act</b></p> <p>Alternatively, a customer may also commence a claim for misrepresentation under section 2(1) of the Misrepresentation Act.</p> <p>In order for a claim under section 2(1) of the Misrepresentation Act to succeed, a false statement of fact made by one contracting party to another, which induces the latter to enter into the transaction, must be shown. Once this is established, the burden shifts to the representor to prove that, at that time of the representation up to the time of the contract, he had reasonable grounds to believe, and did believe, that his statement was true. The representor need not pay damages if he can prove that he had reasonable grounds to believe in his statement.</p> <p>Where greenwashing claims are made innocently (i.e. not negligently), the usual remedy is a rescission of the contract under common law. However, section 2(2) of the Misrepresentation Act permits a claimant to invoke the court's discretion to award damages in lieu of rescission in appropriate situations. This remedy is useful, especially where greenwashing claims were not made fraudulently or negligently, or where it is difficult to prove fraud or negligence.</p>

Relevant Laws	Summary of Legal Recourse
<p>Companies Act 1967 ("Companies Act")</p>	<p><b>Shareholders' derivative action - Breach of fiduciary duties of directors</b></p> <p>It is trite that a director appointed to the board of a company is a fiduciary of that company, owing duties and responsibilities to the company flowing from the assumption of their office. Section 157 of the CA imposes a duty on directors to act honestly and use reasonable diligence in the discharge of their duties. The section encapsulates the common law duties of a director to act <i>bona fide</i> in the best interests of the company, and to exercise due care, skill and diligence.</p> <p>All directors, whether engaged in an executive or non-executive capacity, are subject to a minimum objective standard of care which entails the obligation to take reasonable steps to place oneself in a position to guide and monitor the management of the company.</p> <p>Shareholders who are concerned about greenwashing by companies may obtain recovery against errant directors by commencing a derivative action in the name of the company against such directors.</p> <p>In terms of the process, shareholders will first need to obtain permission from the court to commence actions in the name of the company under section 216A of the Companies Act. If permission is granted, shareholders may then commence claims in the name of the company against errant directors for breach of fiduciary duties.</p> <p>Where a breach of fiduciary duties has been established, the company may obtain damages against the director for losses to the company caused by his/her breach of fiduciary duties.</p> <p><b>Shareholders' derivative action - Dishonest assistance by officers</b></p> <p>Besides an action against errant directors, it is also possible for shareholders to obtain recovery from the officers of the company who dishonestly assisted the errant directors in greenwashing. In such circumstances, permission of the court is also required under section 216A of the Companies Act to commence actions in the name of the company.</p> <p>Thereafter, it is possible for a claim to be made by the company against the relevant officers for dishonestly assisting the errant directors in a breach of their fiduciary duties. Dishonest assistance is established if it can be shown that there was: (a) an existence of a trust or fiduciary duty; (b) a breach of that trust or fiduciary duty; (c) assistance rendered by the officer towards the breach; and (d) assistance rendered by the officer was dishonest.</p>
<p>SGX Mainboard Rules of the Listing Manual and Section B: Rules of Catalist of the Listing Manual</p>	<p><b>Disclosure requirements</b></p> <p>Issuers that are publicly listed on the Singapore Exchange ("<b>SGX</b>") are required to comply with the Listing Rules.</p>

Relevant Laws	Summary of Legal Recourse
(collectively, " <b>Listing Rules</b> ")	<p>Since 2016, Listing Rules 711A and 711B require issuers to publish a Sustainability Report for each financial year. Such Sustainability Report shall be issued no later than four months after the end of the financial year, or where the issuer has conducted external assurance on the sustainability report, no later than five months after the end of the financial year. The Sustainability Report must describe the sustainability practices with reference to specified primary components, namely:</p> <ul style="list-style-type: none"> <li>(a) material ESG factors;</li> <li>(b) climate-related disclosures consistent with the recommendations of the Task Force on Climate-related Financial Disclosures;</li> <li>(c) policies, practices and performance;</li> <li>(d) targets;</li> <li>(e) sustainability reporting framework; and</li> <li>(f) Board statement and associated governance structure for sustainability practices.</li> </ul> <p>Save for climate-related disclosures which are mandatory for issuers in specific industries, exclusion of any of the other foregoing primary components must be disclosed, and the issuer must describe what it does instead and its reasons for doing so.</p> <p>Generally, pursuant to Listing Rule 114 of the SGX Mainboard Rules, an issuer's directors and executive officers are responsible for ensuring that the information submitted to SGX (which would include information contained in the Sustainability Report) is complete and accurate in all material respects, and not misleading. In relation to Catalist-listed issuers, under the Rules of Catalist, the directors of the issuer are responsible for the accuracy of the information submitted to SGX.</p> <p>Compliance with the Listing Rules is enforced by the Singapore Exchange Regulation ("<b>SGX RegCo</b>"), which is empowered to carry out various actions and/or sanctions where a breach of the Listing Rules has been established. Greenwashing resulting in inaccuracy of disclosure in violation of the Listing Rules or non-compliance with the specific disclosure requirements in relation to the Sustainability Reporting may therefore be subject to enforcement actions taken by SGX RegCo.</p> <p>The abovementioned continuous disclosure requirements are given statutory backing under section 203 of the Securities and Futures Act 2001 ("<b>SFA</b>"), which provides that a person must not intentionally, recklessly or negligently fail to notify the SGX of such information required to be disclosed under the Listing Rules. A breach thereof may hence be considered an offence under the SFA and have serious legal consequences for the issuer and its officers.</p>
Securities and Futures Act 2001 (" <b>SFA</b> ")	<p><b>False or misleading statements</b></p> <p>A provision with general applicability to the offering of "greenwashed" securities is section 199 of the SFA, which provides that a person must not make a false or misleading statement which is likely to induce the subscription of securities, induce the sale or purchase of securities, or affect the market price of securities. Otherwise, the person will be liable if he or she does not care whether the statement is true or false, or if the person</p>

Relevant Laws	Summary of Legal Recourse
	<p>knows or ought reasonably to have known that the statement or information is false or misleading. Under section 232 and/or section 236B of the SFA, MAS may bring a civil action against the person and/or company, which may attract severe financial penalties.</p> <p>In addition, under section 330 of the SFA, any person who, with intent to deceive, makes or furnishes, or knowingly and wilfully authorises or permits the making or furnishing of, any false or misleading statement or report to SGX or any officers thereof relating to, among other things, dealing in capital markets products (including securities, collective investment schemes, etc.), the enforcement of the Listing Rules, or the affairs of an entity, is guilty of an offence.</p>

## Regulators' Approaches and Initiatives to Address Greenwashing

### (a) Financial Sector

MAS set out its approach to mitigate greenwashing in the financial system in the [MAS Sustainability Report 2021/2022](#). Broadly speaking, MAS' approach is as follows:

- Having taxonomies that will serve as a common reference point to allow financial institutions to determine whether an economic activity is green or transition against specific criteria;
- Consistent disclosures of activities and extent of "greenness" by financial institutions and corporates; and
- Using technology to obtain real-time data so that stakeholders can evaluate the greenness of companies and activities, and verify compliance with international standards.

We briefly highlight below certain key MAS' initiatives and developments to mitigate greenwashing in the financial sector.

#### **Singapore Taxonomy**

The Green Finance Industry Taskforce ("GFIT") has been developing a taxonomy for Singapore-based financial institutions (FIs) ("**Singapore Taxonomy**") to identify and classify green and transition activities. GFIT had issued three consultation papers to obtain feedback on various aspects of the Singapore Taxonomy in 2021,

2022 and 2023, respectively. The key features of the proposed Singapore Taxonomy include:

- **Environmental objectives.** It is proposed that the Singapore Taxonomy covers green and transition activities with regard to five environmental objectives:
  - (i) Climate change mitigation;
  - (ii) Climate change adaptation;
  - (iii) Protection of biodiversity;
  - (iv) Promotion of resource resilience and circular economy; and
  - (v) Pollution prevention and control.

For now, GFIT is focused on developing criteria and thresholds in relation to the first objective, climate change mitigation.
- **Traffic light classification system.** Broadly speaking, activities are classified under the traffic light system as follows:
  - (i) Green category, for activities that contribute substantially to climate change mitigation by operating at net zero, or are on a pathway to net zero by 2050.
  - (ii) Amber category, for activities that are not currently on a net zero pathway but are either transitioning towards a green transition pathway within a defined time frame, or facilitating significant emissions reductions in the short term with a prescribed sunset date.
  - (iii) Red category, for activities that are not currently compatible with a net zero trajectory.
- **Focus sectors.** GFIT has selected eight sectors to be included in the Singapore Taxonomy, and proposed thresholds and technical screening criteria to classify economic activities in the focus

sectors. The sectors are selected based on two criteria: (i) contribution to climate change; and (ii) contribution to economic activity in Singapore and ASEAN. These eight sectors are:

- (i) Energy;
  - (ii) Transport;
  - (iii) Building;
  - (iv) Industry;
  - (v) Information and Communications Technology;
  - (vi) Waste and Water;
  - (vii) Agriculture and Forestry; and
  - (viii) Carbon Capture and Storage/Sequestration.
- **Interoperability.** For now, GFIT is developing the Singapore Taxonomy with a focus on Singapore-based activities, metrics and thresholds, while at the same time considering international interoperability and regional usability.
  - **Do No Significant Harm ("DNSH").** GFIT also proposed a DNSH assessment based on a set of DNSH criteria to ensure that when an activity makes a substantial contribution to climate change mitigation, the activity does not cause significant harm to all the other environmental objectives of the Singapore Taxonomy.

### **MAS Enhanced Disclosure and Reporting Guidelines for ESG Retail Funds**

To combat greenwashing of retail ESG funds and boost investor confidence, MAS issued [MAS Circular No. CFC 02/2022](#) ("**Circular**") setting out enhanced disclosure and reporting requirements/guidelines, and shared its expectations on how existing requirements under the Code on Collective Investment Scheme and the Securities and Futures (Offers of Investment) (Collective Investment Schemes) Regulations 2005 apply to retail ESG funds. The Circular took effect on 1 January 2023.

### **Technology-Driven Platforms for Consistent, Reliable and Quality Data**

A key strategy to combat greenwashing is to provide stakeholders and the market with access to consistent, reliable and quality sustainability data. Under MAS Project Greenprint, MAS collaborates with industry partners to develop four interoperable data platforms. These data platforms make it possible to consolidate new and existing sustainability data across multiple sectoral platforms and industry players and allow sharing of data across different stakeholders.

- An ESG registry that will record and maintain the provenance of verified data and ESG certifications;
- A common disclosure portal for financial institutions and corporates to make reliable ESG disclosures;
- A data orchestrator which aggregates sustainability data from multiple data sources; and
- Greenprint Marketplace which connects green technology providers with investors, financial institutions and companies.

### **(b) Capital Markets Sector - Listed Issuers on SGX**

To deal with greenwashing, in the [Keynote Speech for the "Climate Reporting in ASEAN – State of Corporate Practices" Launch Event](#) on 19 July 2022, Mr Tan Boon Gin, Chief Executive Officer (CEO) of SGX RegCo stated that regulators must focus on three key aspects regarding information on greenwashing, namely, ensuring that information is available, comparable and reliable. Various initiatives have been implemented in Singapore to achieve this.

### **Availability of Information – Sustainability Reporting and Online Disclosure Platform**

This involves ensuring that relevant information is reported and disclosed and that such information is easily accessible.

In relation to disclosures, issuers listed on the SGX are required to issue a sustainability report each financial year, describing the sustainability practices with reference to primary components as stipulated in the Listing Rules. The SGX also introduced phased mandatory climate-related disclosures, based on recommendations of the Task Force on Climate-Related Financial Disclosures.

As for accessibility, the market has provided strong feedback that it wants all the companies' climate disclosures available on a single platform that users can easily access. In September 2022, SGX and MAS also jointly launched an online disclosure portal, ESGenome, for companies to report ESG data, allowing issuers listed on SGX to easily perform their ESG reporting in a structured format by using a core set of metrics that is mapped across global standards and frameworks. Investors and financial institutions will also benefit from the access provided by ESGenome to relevant and comparable ESG data.

### ***Comparability of Information – Common Global Standard***

There is a need for consistency and comparability in terms of climate disclosures, which could be met by reporting to a common global standard. The International Sustainability Standards Board ("**ISSB**") was set up to develop a global baseline standard for sustainability reporting, and when such standards are issued, SGX will incorporate the ISSB standards into the Listing Rules as mandatory disclosure requirements for listed issuers.

### ***Reliability of Information – Internal Review of Climate Reporting Process***

Issuers listed on SGX are now minimally required to subject the climate reporting process to internal review by their internal audit functions. SGX has not made external assurance mandatory because it is still a developing area, without globally recognised standards or frameworks in relation to assurance on sustainability and climate information. However, SGX has provided guidance in its [Sustainability Reporting Guide](#) for issuers that conduct external assurance.

### **(c) Real Estate, Construction and Infrastructure Sectors**

#### ***Green Mark Certification Scheme***

The Green Mark Certification Scheme ("**Scheme**") is a green building rating system to assess a building's environmental impact and performance. The Building and Construction Authority of Singapore ("**BCA**") administers the Scheme. The Scheme contains a comprehensive framework to assess the overall environmental performance of new and existing buildings to promote sustainable design, and best practices in construction and operations in buildings. The Scheme is open to application by developers, building owners and government agencies for new and existing buildings, districts, parks, infrastructure and building interiors.

#### ***Singapore Green Building Council***

Singapore Green Building Council ("**SGBC**") is a concerted private-public sector partnership to achieve a sustainable built-environment in Singapore. It is the first dedicated Certification Body for Green Building-Related Products and Services in Singapore to support BCA's

Green Mark Certification Scheme. SGBC has developed certification schemes to raise the environmental standards of building products and services, and to provide benchmarks on environmental performance of products and services. SGBC also fosters international collaboration. For instance, SGBC is a member of the World Green Building Council and has signed several Memoranda of Understanding with overseas counterparts.

### ***Regulatory Framework for Singapore's Sovereign Green Bond Issuance***

Having a regulatory framework helps to combat greenwashing. The Singapore Ministry of Finance issued the [Singapore Green Bond Framework](#) ("**Framework**") on 9 June 2022 which provides a regulatory and governance framework for green bond issuances by the Singapore Government under the Significant Infrastructure Government Loan Act 2021. The Framework sets out, among other things, how proceeds from green bonds issued may be used, how projects are evaluated and selected, how proceeds are managed, and requirements on post-issuance reporting on allocation of proceeds and impact on the environment.

# THAILAND



Relevant Laws	Summary of Legal Recourse
<p>Consumer Protection Act B.E. 2522 (1979) (as amended) ("<b>CPA</b>")</p>	<p><b>False advertisement</b></p> <p>Under section 4 of the CPA, a consumer has the following rights of protection in accordance with the laws on such matters or with the provisions of the CPA:</p> <ul style="list-style-type: none"> <li>(a) right to receive correct and sufficient information and description as to the quality of goods or services;</li> <li>(b) right to enjoy freedom in the choice of goods or services;</li> <li>(c) right to expect safety in the use of goods or services;</li> <li>(d) right to receive a fair contract; and</li> <li>(e) right to have the injury considered and compensated.</li> </ul> <p>An act of greenwashing involving false advertisement could be regarded as an offence under the CPA. Section 22 of the CPA stipulates that advertisements should not contain statements which are "unfair to consumers" or which "may cause adverse effect to the society as a whole". Those statements include:</p>

Relevant Laws	Summary of Legal Recourse
	<p>(a) statements which are false or exaggerated;</p> <p>(b) statements which will cause misunderstanding in the essential elements concerning goods or services, whether the statements are based on or refer to any technical report, statistics or anything which is false or exaggerated; and</p> <p>(c) other statements as prescribed in the relevant ministerial regulation.</p> <p>Pursuant to section 27 of the CPA, if the Committee on Advertisement considers that any advertisement contravenes, among other things, section 22 of the CPA, the Committee on Advertisement has the power to issue any one or more orders to the effect as follows:</p> <p>(a) requiring correction of statements or means of advertisement;</p> <p>(b) prohibiting the use of certain statements appearing in the advertisement;</p> <p>(c) prohibiting the advertisement or prohibiting the use of such means in the advertisement; and</p> <p>(d) requiring an advertisement correcting consumers' misunderstanding which may have occurred, in accordance with the rules and procedures prescribed by the Committee on Advertisement.</p> <p>Any person who fails to comply with the order of the Committee on Advertisement is liable to imprisonment for a term not exceeding six months or to a fine not exceeding 100,000 Baht, or to both, pursuant to section 49 of the CPA.</p> <p>Moreover, section 47 of the CPA prescribes that a person who, has an intention to cause misunderstanding as to the origin, condition, quality, quantity or other essential matters concerning goods or services (whether such goods or services belong to him/her or any other person) and such person advertises or uses a label containing a statement which is false or, which he knows or should have known, to cause the misunderstanding, is liable to imprisonment for a term not exceeding six months or to a fine not exceeding 100,000 Baht, or to both.</p> <p>The penalties pursuant to sections 47 and 49 of the CPA may be applicable to the director or manager of the company/legal entity, or any person who is responsible for the operation of the company/legal entity or where such a person has a duty to order or perform and omits to order or perform causing the company/legal entity to be in breach of the obligations under the CPA.</p> <p>An act of false advertisement via an online platform or computer system could also be regarded as an offence under section 14(1) of the Computer Crime Act B.E. 2550 (2007) (as amended). Section 14(1) prescribes that any person, with dishonest or fraudulent intent, imports into a computer system of distorted or forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to the public, in which is not a defamation offence under the Criminal Code, is subject to imprisonment for a term not more than five years or to a fine of not more than 100,000 Baht, or to both.</p>

Relevant Laws	Summary of Legal Recourse
<p>Criminal Code of Thailand</p>	<p><b>Cheating and fraud</b></p> <p>Under section 341 of the Criminal Code of Thailand, a person who:</p> <ul style="list-style-type: none"> <li>(a) dishonestly deceives another person with the assertion of a falsehood or the concealment of the facts which should have been revealed; and</li> <li>(b) by such deception, obtains a property from the person who so deceived or a third person, or causes the person who so deceived or the third person to execute, revoke or destroy a document of right,</li> </ul> <p>is said to commit the offence of cheating and fraud. A person who commits the offence of cheating and fraud will be punished with imprisonment of a term not exceeding three years or to a fine not exceeding 60,000 Baht, or to both.</p> <p>If the offence under section 341 is committed by the assertion of a falsehood to the public or by the concealment of the facts which should be revealed to the public, the offender will be punished with imprisonment of a term not exceeding five years or to a fine not exceeding 100,000 Baht, or to both in accordance with section 343 of the Criminal Code of Thailand.</p>
<p>Securities and Exchange Act B.E. 2535 (as amended) ("<b>SEC Act</b>")</p>	<p><b>Disclosure requirements</b></p> <p>The SEC Act imposes obligations on listed companies on the Stock Exchange of Thailand to prepare a report on the financial condition and the business operation in accordance with the rules, conditions and procedures specified by the Capital Market Supervisory Board. The report must be submitted to the Office of the Securities and Exchange Commission for further disclosure of information to the public pursuant to sections 56 and 60 of the SEC Act.</p> <p>In August 2020, the Capital Market Supervisory Board issued the Notification of the Capital Market Supervisory Board of Thailand No. TorJor. 55/2563 re: Criteria, Conditions, and Procedures on Disclosure of Information Relating to the Financial Conditions and Operations of a Company Issuing Securities (No. 20), specifying new disclosure requirements for listed companies, to be in accordance with Form 56-1 One Report which applies to the reports with financial period ending 31 December 2021 onwards. The information to be reported and disclosed to investors includes, among other things, information on the environmental, social and governance matters, including environmental management results, greenhouse gases ("<b>GHG</b>") emissions, and policies of the company showing the intention to reduce negative impacts on the environment or the management of GHG emission.</p> <p>In this regard, greenwashing issues could potentially be addressed by the abovementioned disclosure requirements as any person having such duty to disclose the information pursuant to section 56 of the SEC Act who makes a false statement or conceals material facts which should have been stated, will be liable to imprisonment for a term not exceeding two years</p>

Relevant Laws	Summary of Legal Recourse
	<p>or to a fine not exceeding 500,000 Baht, or to both pursuant to section 281/10 of the SEC Act.</p> <p>In addition, under section 317/1 of the SEC Act, an offence with respect to presenting a false statement or concealing material facts that should have been stated pursuant to section 281/10 of the SEC Act is deemed an offence where civil sanctions may be imposed on the offenders in lieu of the criminal punishment. Civil sanctions specified under the SEC Act include, among other things, civil penalties/fines, and compensation at an equal amount to the benefit received or should have been received from committing an offence.</p> <p>In practice, civil sanctions are more likely to be imposed on listed companies than criminal punishments, because proving the guilt of stock market offenders requires considerable time.</p>
<p>Civil and Commercial Code of Thailand ("CCC") for private companies</p> <p>Public Limited Companies Act B.E. 2535 (1992) (as amended) for public companies</p>	<p><b>Breach of directors' duties</b></p> <p>Directors of a company have fiduciary duties to exercise a duty of care, a duty of obedience, a duty of disclosure and a duty of loyalty towards the company.</p> <p>For private companies, section 1168 of the CCC specifies that directors must, in their conduct of the business, apply the diligence of a careful business person.</p> <p>Moreover, directors would be liable for damages caused by him/her. Pursuant to section 1169 of the CCC, claims against the directors for compensation for injury caused by them to the company may be entered by the company or, in the case where the company refuses to act, by any of the shareholders. Such claims may also be enforced by the creditors of the company in so far as their claims against the company remain unsatisfied.</p> <p>For public companies, section 85 of the Public Limited Companies Act B.E. 2535 (1992) (as amended) imposes duties on directors to act in accordance with the law, the objects and articles of association of the company, and resolutions of meetings of shareholders with integrity, honesty and due care to protect the benefits of the company. In addition, if the act or omission of such an act of the directors causes loss to the company, the company may claim compensation from such directors.</p> <p>In this regard, with respect to greenwashing acts, a company may claim compensation from the directors for the damages caused by his/her action in the name of the company in breach of the duties imposed by laws.</p>

### Regulators' Approaches and Initiatives to Address Greenwashing

At present, the emphasis on environmental, social and governance ("ESG") efforts in Thailand permeates both the public and private sectors, as evidenced by the

increase in the number of public-sector initiatives and voluntary private-sector responses, as well as the rapidly evolving regulatory landscape pertaining to ESG issues. Examples of approaches and/or initiatives implemented by the Thai government and regulators in Thailand to address greenwashing can be briefly summarised below.

### **(a) Sustainable Finance Initiatives for Thailand Guidelines**

In August 2021, several Thai financial authorities (i.e. the Fiscal Policy Office (FPO), the Bank of Thailand ("**BOT**"), the Office of Insurance Commission (OIC), the Stock Exchange of Thailand (SET) and the Security and Exchange Commission ("**SEC**")) formed a working group on sustainable finance ("**WG-SF**") and jointly issued Thailand's Guidelines entitled "Sustainable Finance Initiatives for Thailand" ("**Thailand's Guidelines**"), to establish a collective direction and structure for promoting sustainable finance for the financial sector in Thailand.

#### ***Improving the Data Environment***

Greenwashing issues could potentially be addressed by the key strategic initiatives outlined in the Thailand's Guidelines. The Thailand's Guidelines set out "Improving the Data Environment" as one of the key strategic initiatives. It emphasises that disclosure of ESG information that complies with international disclosure standards is essential for not only making and monitoring financial decisions, but also designing financial products and policies to serve the needs of businesses. This initiative will lead to the establishment of ESG reporting standards, in terms of the reliability and quality of data, and will raise the level of transparency for monitoring business conducts, which would subsequently help eliminate greenwashing.

#### ***Development of Practical Taxonomy***

Another key strategic initiative set out in the Thailand's Guidelines is the development of a practical taxonomy. With this initiative, a common definition and classification system of economic activities deemed as environmentally-sustainable will be standardised. It is also expected that sustainable finance policies of relevant regulators will be harmonised, and innovative financial products and services will be encouraged and all of such development will go towards attracting funding for the achievement of Thailand's sustainable development. This would result in the formulation of definitive criteria for determining what kind of activities, products and services would be qualified as "green". From 26 December 2022 to 26 January 2023, on behalf of the WG-SF, BOT and SEC sought public feedback on the principles-based draft Thailand Taxonomy Phase 1. In this Phase 1, economic activities with high GHG

emissions, which are the energy and transportation sectors, will be classified as "green", "yellow" and "red", depending on the impact of the activities on the environment.

### **(b) Disclosure Requirements**

#### ***Draft Climate Change Act ("Draft Act")***

As part of Thailand's commitment to combat climate change, the country has established a goal of reaching carbon neutrality by the year 2050 and reaching net-zero emissions by the year 2065. As part of this commitment, Thailand is now planning to enact the Climate Change Act, which will lay out Thailand's action plan for climate change mitigation, adaptation, and reductions in emissions of GHG.

The Draft Act also sets out the establishment of a national GHG inventory, whereby certain state agencies will be required to report GHG-related information to the Office of Natural Resources and Environmental Policy and Planning ("**ONEP**"). The ONEP and those state agencies are also empowered to request GHG information from certain private entities (e.g. factory and energy operators as may be prescribed in the future). The Draft Act imposes administrative penalties for those who fail to provide the requested GHG information or provide false information.

In addition, the Draft Act includes provisions on the affirmation of public participation, both in terms of the right to receive climate change information and the right to provide information and opinions regarding efforts to combat climate change.

#### ***Securities Regulations***

In August 2020, the Capital Market Supervisory Board under the SEC Act issued new disclosure requirements for listed companies on the Stock Exchange of Thailand called Form 56-1 One Report. This is to enhance disclosure of ESG information and includes additional topics regarding ESG matters, including, among other things, GHG emissions, and policies of the company indicating an intention to reduce negative environmental impact or GHG emission management. These requirements became effective from the financial period ending 31 December 2021 onwards.

With these ESG disclosure requirements, greenwashing issues could potentially be addressed and combated, as any listed company that makes a false statement or conceals material facts which should have been stated in the reports or disclosed to the public, would be liable to criminal punishments and civil sanctions prescribed under the SEC Act.

In January 2023, SEC released the "Guidelines on Management and Disclosure of Climate-related Risk by Asset Managers" for asset managers (i.e., asset management companies) who manage mutual funds, private funds and provident funds. The guidelines, which are to be adopted voluntarily by the asset managers, serve as a manual for asset managers when: (1) considering the impact of climate change on their investee companies; and (2) disclosing such information to their stakeholders in accordance with the Task Force on Climate-related Financial Disclosure (TCFD) recommendations. This will enhance transparency and mitigate greenwashing risk.

### **(c) ESG Bonds Database**

An information platform for ESG bonds was jointly designed and launched by SEC and the Thai Bond Market Association (ThaiBMA) in October 2020. This platform serves as an information hub for ESG bonds, which include green bonds, social bonds, sustainability bonds and sustainability-linked bonds. Information about ESG bonds issued by Thai entities can be found on this platform, including details on a bond's key features, information of the issuer, external review sources, and others.

# VIETNAM



Relevant Laws	Summary of Legal Recourse
<p>Law on Advertising 2012</p>	<p><b>False and misleading advertising</b></p> <p>The Law on Advertising 2012 prohibits the conduct of false and misleading advertising that is incorrect or causes confusion about:</p> <ul style="list-style-type: none"> <li>(a) "the business competence, the ability to provide products, goods and services of organisations and individuals trading and providing such products, goods and services"; and</li> <li>(b) "the quantity, quality, prices, features, designs, package, brand name, kinds, method of service, warranty duration of the registered or announced products<sup>3</sup>, goods and services".</li> </ul> <p>An advertisement relating to a product, goods and service which contains false and misleading statement about the "sustainable" or "green" status of the product, goods and service constitutes a violation of the Law on Advertising 2012.</p> <p>Violations under the Law on Advertising 2012 will be handled as follows:</p> <ul style="list-style-type: none"> <li>(a) Organisations which commit the above prohibited conduct are liable to administrative sanctions and may be liable to pay compensation for the damages.</li> </ul>

<sup>3</sup> The Vietnamese laws require certain products (e.g., cosmetic) to be "announced" at the relevant Vietnamese regulators, in accordance with their announcement procedures, before the products can be sold in Vietnam.

Relevant Laws	Summary of Legal Recourse
	<p>(b) Individuals who commit the above prohibited conduct are liable to administrative sanctions or criminal prosecution and may be liable to pay compensation for the damages (if any).</p> <p>Administrative sanctions include a monetary fine up to VND 80,000,000 for individuals and VND 160,000,000 for organisations.</p> <p>Additional sanctions include not being permitted to announce the product from five to seven months, or not being permitted to use advertising content certification for 22 to 24 months for the violation of the requirements on advertisement of health food products two or more times within a period of six months.</p> <p>Remedial measures include compelling the removal, demolition and deletion or erasure of advertisements or recall of printed newspapers and magazines with advertisements, and compelling rectification of false information.</p> <p>According to the Criminal Code 2015, a person who falsely advertises his/her goods or services shall be liable to a fine ranging from VND 10,000,000 to VND 100,000,000 or face a penalty of up to three years' community sentence. The offender may also be liable to a fine ranging from VND 5,000,000 to VND 50,000,000, and be prohibited from holding certain positions or doing certain works.</p>
<p>Law on Commerce 2005</p>	<p><b>Misleading acts</b></p> <p>The Law on Commerce 2005 also sets out prohibitions relating to misleading acts. Misleading acts include advertisements containing misleading information relating to, among other things, the quantity, quality, price, utility, design, origin, category, packing, service mode and warranty duration of goods or services.</p> <p>For example, a person has violated the Law of Commerce 2005 if he/she misleads another person into believing that certain goods are made from renewable or sustainable resources.</p> <p>Violations of the Law on Commerce 2005 may be handled as follows:</p> <ul style="list-style-type: none"> <li>(a) Sanctions according to the provisions of law on handling of administrative violations.</li> <li>(b) Where an act of violation satisfies all elements of a criminal offence, the violator may be examined for penal liability according to the provisions of law;</li> <li>(c) Where an act of violation causes harm to the interests of the State or legitimate rights and interests of any organisations and/or individuals, compensation must be paid according to the provisions of law.</li> </ul>

Relevant Laws	Summary of Legal Recourse
<p>Law on Protection of Consumer Rights 2010</p>	<p><b>Misleading or deceptive conduct</b></p> <p>The Law on Protection of Consumer Rights 2010 prohibits acts that deceive or mislead consumers by organisations or individuals trading goods and/or service. These include misleading or deceptive conducts against consumers via advertising activities, hiding or providing information that is incomplete, false or inaccurate about: (i) the "goods and/or services provided by the organisations or individuals trading goods and/or services"; (ii) the "reputation, business ability, and ability to provide the goods and/or services"; and (iii) the "contents and characteristics of a transaction between consumers and organisations or individuals trading goods and/or services".</p> <p>An organisation or individual trading goods and/or services who represents to the consumers that it/he/she conducts business in a sustainable manner, which turns out to be untrue, would be in violation of the Law on Protection of Consumer Rights 2010.</p> <p>How a violation of the Law on Protection of Consumer Rights 2010 is handled depends on the nature and seriousness of the violation. Such a violation is subject to administrative sanctions or examinations for penal liability.</p>
<p>Law on Competition 2018</p>	<p><b>Unfair competition practice</b></p> <p>The Law on Competition 2018 prohibits unfair competition practices. An unfair competition practice involves a business practice by an enterprise which intends to induce its customers to enter into a business transaction with the enterprise through the provision of false or misleading information about itself or its products/services. This prohibition is wide enough to cover any "greenwashing" conduct by an enterprise such as when it represents to its customers that it adopts a net zero commitment which turns out to be false or misleading.</p> <p>Under the Law on Competition 2018, an enterprise that has violated the competition law will, depending on the nature and seriousness of its violation, be disciplined, incur penalties for administrative violations or face a criminal prosecution.</p>

### Regulators' Approaches and Initiatives to Address Greenwashing

In Vietnam, the concept of greenwashing is relatively new and not governed specifically by any laws. However, an action by an enterprise that is found to constitute greenwashing amounts to misleading conduct, or misrepresentation or false claims made, by the enterprise in relation to itself and/or its goods and services.

Various laws in Vietnam that govern advertising, commercial activities, competition and consumer right protection contain general prohibitions against misleading conduct which covers greenwashing activities. Whilst there have been discussions on strengthening the laws to deal specifically with greenwashing activities, to date, this issue has yet to be addressed by any draft law.

### ***National Strategy on Green Growth***

Vietnam's commitments at COP26 resulted in the Prime Minister's issuance of Decision No. 1658/QD-TTg dated 1 October 2021 which approved the National Strategy on Green Growth for the 2021-2030 period to protect the environment. The Law on Investment No. 61/2020/QH14 dated 17 June 2020 disallows extension of investment projects which utilise obsolete technologies that may be harmful to the environment.

### ***ESG Reporting***

Corporate governance and disclosures guidelines are provided in Circular No. 96/2020/TT-BTC which provides that Vietnamese public and listed companies are required to disclose in their annual reports and ESG (environment, social and governance) reports, an assessment report on the environmental and social responsibilities of the company.

### ***Scheme on Green Banking Development***

Recently, the State Bank of Vietnam ("**SBV**") issued the Scheme on Green Banking Development in Vietnam, the SBV's action plan to implement Resolution No. 54/NQ-CP on 12 April 2022 ("**Resolution**"). The Resolution facilitates green credit and green banking to promote bank credit for low-carbon emission production and consumption sectors.

This initiative complements the Government's ongoing effort in preparing a set of regulations that prescribe the criteria and certification for projects that may be classified as "green credits" and "green bonds". On 23 December 2022, SBV issued Circular No. 17/2022/TT-NHNN ("**Circular**") providing guidelines on environmental risk management in credit extension by credit institutions and foreign bank branches. The Circular will take effect on 1 June 2023. These initiatives lay down common standards for "green credits" and "green bonds" and this will help to mitigate greenwashing.

### ***Regulating Greenhouse Gas Emitters***

Meanwhile, the Law on Environmental Protection will regulate, among other things, entities that are greenhouse gas emitters ("**GHG emitters**"). Accordingly, GHG emitters are required to reduce their GHG emissions by conducting GHG inventory and building and implementing their own plans for GHG reduction.

Additionally, commencing in 2026, GHG emitters are expected to only discharge GHG within its allocated quota set by the Ministry of Natural Resources and the Environment ("**MONRE**") on an annual basis.

Further, a detailed legal framework on the trading of carbon credits is expected to be completed by the end of 2027.

### ***Green Label and Energy Label***

Specifically, green marketing in Vietnam is monitored by the MONRE and the Ministry of Industry and Trade (MOIT). Vietnam promotes Green Label and Energy Label which apply to products/services made from environmentally friendly materials/technologies and that meet minimum level of energy consumption efficiency. The validity of the Green Label is for three years and issued by the MONRE. For the Energy Label, the label will be withdrawn if the product is found to contain false information, or a higher energy consumption level is found to exist from that advertised.

### ***Reduction in Corporate Income Tax and Land Rent***

In terms of incentives, companies who engage in green practices are entitled to receive a reduction in the corporate income taxes and a reduction in land rent.

### ***Classification of Investment Projects Based on Environmental Impact***

Under the relevant laws, all investment projects are classified into four groups depending on the impact of the projects on the environment. These investment projects are required to comply with certain requirements before they start operations, including among other things, conducting environmental impact assessment, applying for environmental permit or notifying the regulator of environmental work completion. The compliance requirements that are applicable to an investment project vary according to the classification of the project. All investment projects are also subject to annual reporting requirements relating to environmental protection.

## KEY CONTACTS

### Cambodia



**Heng Chhay**  
R&T Sok & Heng Law Office  
Managing Partner  
Partner, Sustainability  
Partner, Business Law

T +855 23 963 112/113  
[heng.chhay@rajahtann.com](mailto:heng.chhay@rajahtann.com)



**Prom Savada**  
R&T Sok & Heng Law Office  
Partner, Sustainability  
Partner, Dispute Resolution

T +855 23 963 112/113  
[prom.savada@rajahtann.com](mailto:prom.savada@rajahtann.com)

### Indonesia



**Ibrahim Sjarief Assegaf**  
Assegaf Hamzah & Partners  
Partner, Sustainability  
Partner, Banking & Finance

T +62 21 2555 7825  
[ibrahim.asegaf@ahp.id](mailto:ibrahim.asegaf@ahp.id)



**Harun Wailan Ngantung**  
Assegaf Hamzah & Partners  
Partner, Sustainability  
Partner, Banking & Finance

T +62 21 2555 7800  
[harun.ngantung@ahp.id](mailto:harun.ngantung@ahp.id)



**Kanya Satwika**  
Assegaf Hamzah & Partners  
Partner, Sustainability  
Partner, Energy & Resources

T +62 21 2555 7825  
[kanya.satwika@ahp.id](mailto:kanya.satwika@ahp.id)

### Lao PDR



**Lee Hock Chye**  
Rajah & Tann (Laos) Co., Ltd.  
Managing Partner  
Partner, Sustainability  
Partner, Banking & Finance

T +60 3 2273 1919  
[hock.chye.lee@christopherleeong.com](mailto:hock.chye.lee@christopherleeong.com)



**Khanti Syackhaphom**  
Rajah & Tann (Laos) Co., Ltd.  
Legal Advisor, Sustainability  
Legal Advisor, Banking & Finance

T +856 21 454 239  
[khanti.syackhaphom@rajahtann.com](mailto:khanti.syackhaphom@rajahtann.com)

---

**Malaysia**

---



**Jack Chor**  
Christopher & Lee Ong  
Partner, Sustainability  
Partner, Energy & Natural Resources

T +60 3 2273 1919  
[jack.chor@christopherleeong.com](mailto:jack.chor@christopherleeong.com)



**Rubini Murugesan**  
Christopher & Lee Ong  
Partner, Sustainability  
Partner, Commercial Litigation

T +60 3 2273 1919  
[rubini.murugesan@christopherleeong.com](mailto:rubini.murugesan@christopherleeong.com)



**Han Li Meng**  
Christopher & Lee Ong  
Partner, Sustainability  
Partner, Dispute Resolution & Litigation

T +60 3 2273 1919  
[li.meng.han@christopherleeong.com](mailto:li.meng.han@christopherleeong.com)

---

**Myanmar**

---



**Dr U Min Thein**  
Rajah & Tann Myanmar Company  
Limited  
Managing Partner  
Partner, Sustainability  
Partner, Corporate Commercial

T +959 7304 0763  
[min.thein@rajahtann.com](mailto:min.thein@rajahtann.com)



**Chester Toh**  
Rajah & Tann Myanmar Company  
Limited  
Director  
Partner, Sustainability  
Partner, Corporate Commercial

T +65 6232 0220  
[chester.toh@rajahtann.com](mailto:chester.toh@rajahtann.com)

---

**Philippines**

---



**Ben Dominic R. Yap**  
Gatmaytan Yap Patacsil Gutierrez &  
Protacio (C&G Law)  
Senior Partner & Managing Partner  
Co-Head, Energy, Construction &  
Infrastructure  
Co-Head, Disputes

T +632 8894 0377 to 79  
[bdryap@cagatlaw.com](mailto:bdryap@cagatlaw.com)



**Jaime Renato B. Gatmaytan**  
Gatmaytan Yap Patacsil Gutierrez &  
Protacio (C&G Law)  
Senior Partner  
Co-Head, Energy, Construction &  
Infrastructure

T +632 8894 0377 to 79  
[jrbgatmaytan@cagatlaw.com](mailto:jrbgatmaytan@cagatlaw.com)



**Annalisa J. Carlota**  
Gatmaytan Yap Patacsil Gutierrez &  
Protacio (C&G Law)  
Partner, Energy, Construction &  
Infrastructure  
Partner, General Corporate Practice  
(including Banking & Finance)

T +632 8894 0377 to 79  
[annalisa.carlota@cagatlaw.com](mailto:annalisa.carlota@cagatlaw.com)

## Singapore

**Lee Weilin**

Rajah & Tann Singapore LLP  
Head, Sustainability  
Partner, Banking & Finance

T +65 6232 0707

[weilin.lee@rajahtann.com](mailto:weilin.lee@rajahtann.com)

**Kala Anandarajah, BBM**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Head, Competition & Antitrust and Trade

T +65 6232 0111

[kala.anandarajah@rajahtann.com](mailto:kala.anandarajah@rajahtann.com)

**Soh Lip San**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Construction and Projects

T +65 6232 0228

[lip.san.soh@rajahtann.com](mailto:lip.san.soh@rajahtann.com)

**Sandy Foo**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Deputy Head, Corporate and  
Transactional Group  
Head, Mergers & Acquisitions

T +65 6232 0716

[sandy.foo@rajahtann.com](mailto:sandy.foo@rajahtann.com)

**Ng Sey Ming**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Co-Head, Banking & Finance

T +65 6232 0473

[sey.ming.ng@rajahtann.com](mailto:sey.ming.ng@rajahtann.com)

**Disa Sim**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Head, Appeals & Issues

T +65 6232 0415

[disa.sim@rajahtann.com](mailto:disa.sim@rajahtann.com)

**Cindy Quek**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Banking & Finance

T +65 6232 0492

[cindy.quek@rajahtann.com](mailto:cindy.quek@rajahtann.com)

**Cynthia Wu**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Mergers & Acquisitions

T +65 6232 0775

[cynthia.wu@rajahtann.com](mailto:cynthia.wu@rajahtann.com)

**Loh Yong Hui**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Construction & Projects

T +65 6232 0550

[yong.hui.loh@rajahtann.com](mailto:yong.hui.loh@rajahtann.com)

**Alvin Tan**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Competition & Antitrust and Trade

T +65 6232 0904

[alvin.tan@rajahtann.com](mailto:alvin.tan@rajahtann.com)

**Priscilla Soh**

Rajah & Tann Singapore LLP  
Partner, Sustainability  
Partner, Restructuring & Insolvency

T +65 6232 0495

[priscilla.soh@rajahtann.com](mailto:priscilla.soh@rajahtann.com)

---

**Thailand**

---



**Piroon Saengpakdee**  
R&T Asia (Thailand) Limited  
Partner, Sustainability  
Partner, Banking & Finance

T +66 2656 1991  
[piroon.s@rajahtann.com](mailto:piroon.s@rajahtann.com)

---

---

**Vietnam**

---



**Nguyen Hung Du**  
Rajah & Tann LCT Lawyers  
Partner, Sustainability  
Partner, Corporate Regulatory

T +84 91267 4188  
[du.nguyen@rajahtann.com](mailto:du.nguyen@rajahtann.com)

---

## REGIONAL CONTACTS

R&T SOK & HENG | *Cambodia*  
**R&T Sok & Heng Law Office**  
 T +855 23 963 112 / 113  
 F +855 23 963 116  
 kh.rajahtannasia.com

RAJAH & TANN 立杰上海  
 SHANGHAI REPRESENTATIVE OFFICE | *China*  
**Rajah & Tann Singapore LLP**  
**Shanghai Representative Office**  
 T +86 21 6120 8818  
 F +86 21 6120 8820  
 cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*  
**Assegaf Hamzah & Partners**

**Jakarta Office**  
 T +62 21 2555 7800  
 F +62 21 2555 7899

**Surabaya Office**  
 T +62 31 5116 4550  
 F +62 31 5116 4560  
 www.ahp.co.id

RAJAH & TANN | *Lao PDR*  
**Rajah & Tann (Laos) Co., Ltd.**  
 T +856 21 454 239  
 F +856 21 285 261  
 la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*  
**Christopher & Lee Ong**  
 T +60 3 2273 1919  
 F +60 3 2273 8310  
 www.christopherleeong.com

RAJAH & TANN | *Myanmar*  
**Rajah & Tann Myanmar Company Limited**  
 T +95 1 9345 343 / +95 1 9345 346  
 F +95 1 9345 348  
 mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL  
 GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*  
**Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)**  
 T +632 8894 0377 to 79 / +632 8894 4931 to 32  
 F +632 8552 1977 to 78  
 www.cagatlaw.com

RAJAH & TANN | *Singapore*  
**Rajah & Tann Singapore LLP**  
 T +65 6535 3600  
 sg.rajahtannasia.com

RAJAH & TANN | *Thailand*  
**R&T Asia (Thailand) Limited**  
 T +66 2 656 1991  
 F +66 2 656 0833  
 th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*  
**Rajah & Tann LCT Lawyers**  
  
**Ho Chi Minh City Office**  
 T +84 28 3821 2382 / +84 28 3821 2673  
 F +84 28 3520 8206

**Hanoi Office**  
 T +84 24 3267 6127  
 F +84 24 3267 6128  
 www.rajahtannlct.com

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