

Morgan Lewis

# ASIA TECHNOLOGY INNOVATION SERIES

## Why Technology Companies Should Care About ESG Issues

Carl A. Valenstein, Karen A. Abesamis, K. Lesli Ligorner and Sin Teck Lim

1 September 2022 | 9:00 am SGT/CST/HKT

# Presenters



**Carl A. Valenstein**  
Partner  
Boston



**Karen A. Abesamis**  
Partner  
Silicon Valley



**K Lesli Ligorner**  
Partner  
Beijing/Shanghai



**Sin Teck Lim**  
Partner  
Singapore

**Morgan Lewis**





# What is ESG

Morgan Lewis

# ESG - “The” Trend or Woke Nonsense

- “The biggest economic trend of 2021 is that we are now in a full blown ESG-driven economy” – *Forbes*, December 2021
  - Director and executive recruitment is focused on ESG expertise like never before
  - Exponential rise in the number of Chief Sustainability Officers and Chief Diversity Officers
  - Companies are now at an inflection point and the overwhelming majority of public companies issue Sustainability/ESG reports.
  - Stockholder Capitalism versus Stakeholder Capitalism

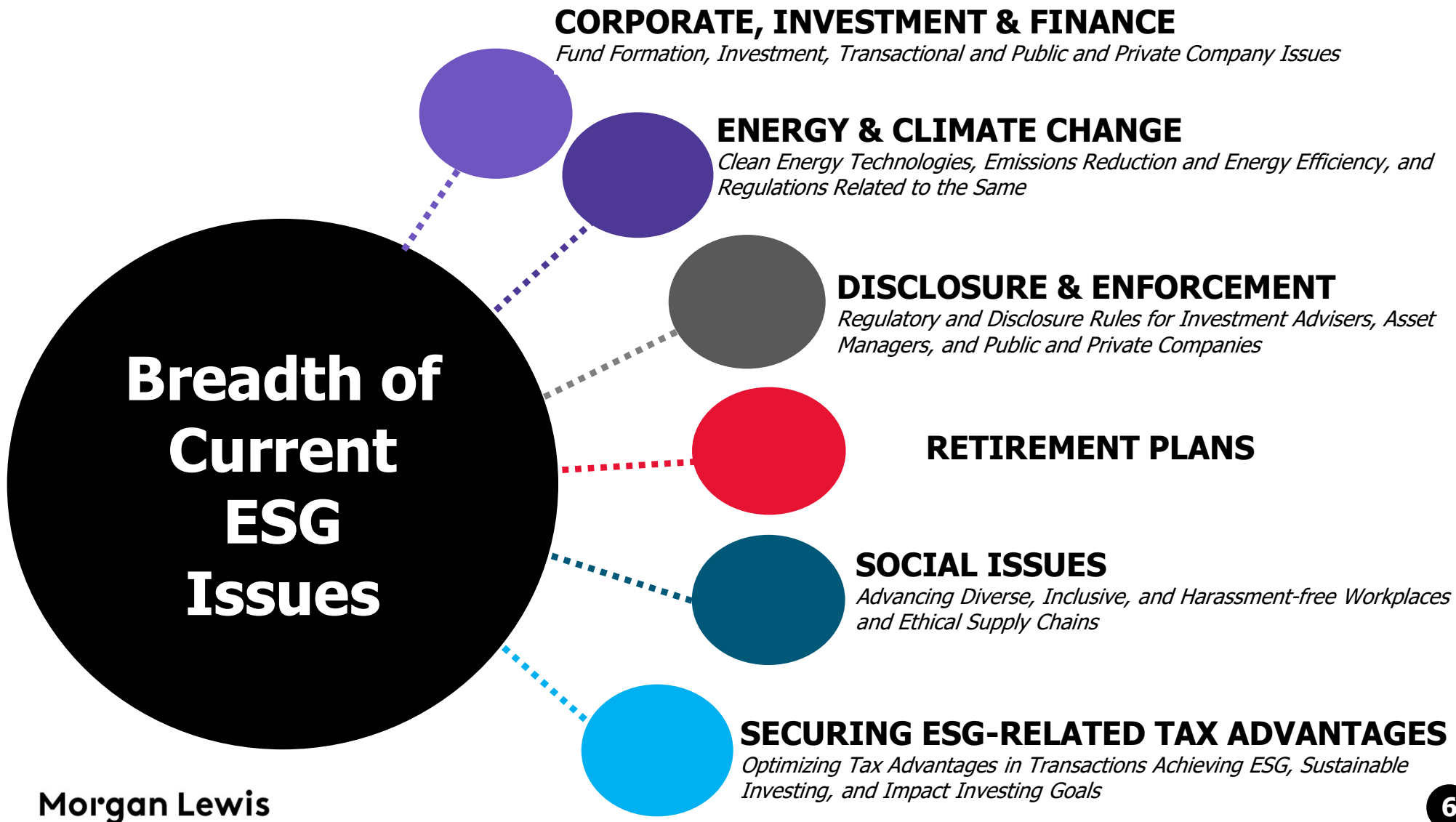
But ESG has its critics:

- “ESG investing is a woke scam. It restricts the free flow of capital, undermines U.S. energy freedom...and advances woke racial and gender ideologies...” – Congressman Chip Roy (R-Tx) advocating for No ESG in legislation relating to federal employee and retiree investment (HR 7896)
- Elon Musk tweeted that “ESG is an outrageous scam!” after Tesla lost its spot on an S&P Global index that tracks companies on their environmental, social and governance standards.

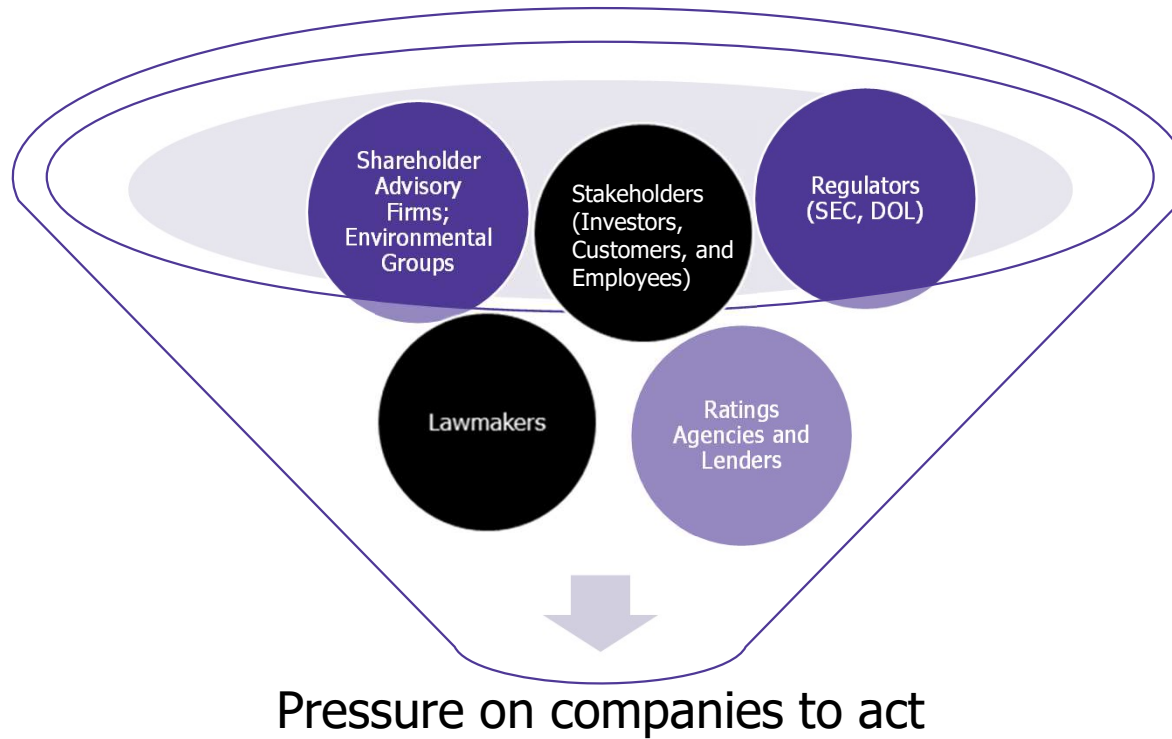
# What is ESG?

E is for "Environment"	S is for "Social"	G is for "Governance"
<ul style="list-style-type: none"><li>• Climate change</li><li>• Greenhouse gas emissions (GHG)</li><li>• Energy use</li><li>• Water use</li><li>• Pollution</li><li>• Hazardous waste</li><li>• Recycling</li><li>• Sustainability</li></ul>	<ul style="list-style-type: none"><li>• Diversity and inclusion</li><li>• Corporate giving and philanthropy</li><li>• Working conditions</li><li>• Workplace health and safety</li><li>• Compensation and benefits</li><li>• Internal pay equity</li><li>• Employee opportunity</li><li>• Labor and human rights</li><li>• Child and forced labor</li><li>• Supplier practices</li></ul>	<ul style="list-style-type: none"><li>• Board structure and composition (including tenure and diversity)</li><li>• Executive compensation</li><li>• Shareholder rights</li><li>• Enterprise risk management</li><li>• Audit oversight</li><li>• Disclosure and reporting</li><li>• Ethics and compliance</li><li>• Privacy and cybersecurity</li></ul>





# Who Is Paying Attention to ESG



# ESG Challenges in Asia

## Geographically and Climatically Diverse

- Largest continent in the world by land mass
- Covers an area of 44,579,000 square kilometres (17,212,000 sq mi), about 30% of Earth's total land area
- From the equator to near the north pole
- Ranges from sprawling urban super cities to undeveloped rural areas

## Developmentally Diverse

- Economic development
- Infrastructure development
- Institutional frameworks
- Corporate governance

## Culturally Diverse

- Multitude of ethnicities
- Multitude of languages
- Multitude of religions
- Generally conservative values





# Trends in ESG-Carbon Neutrality

- Net Zero/SEC Climate Change Regulations
  - The UN is seeking net zero emissions by 2050
  - According to *Harvard Business Review*, more than 2,000 companies have set a science-based carbon target
  - According to *Forbes*, as of March 2021 over 20% of the world's 2,000 largest public companies have committed to meet net zero targets
  - Extensive comments and opposition to SEC's proposed climate change regulations; concern particularly with reporting on Scope 3 emissions
  - Perception of lack of alignment between aspirations of net zero versus concrete plans to actually achieve these goals

# Trends in ESG-DEI – Global

- Diversity, Equity and Inclusion (“DE&I”)
  - Companies continue to expand diversity and inclusion efforts, including by establishing Chief Diversity Officer positions
  - PWC Board Survey 2021
    - Only 33% of directors believe that board diversity can “happen naturally,” compared to 71% last year. “While directors aren’t ready to embrace diversity mandates, they can make significant improvements by setting goals and creating an internal succession plan,” the report says.
    - While in the past three to five years, board diversity discussions have centered on gender, **they have more recently turned to racial/ethnic diversity**. Twenty-five percent said the single most important attribute their boards will prioritize in searching for a new director is racial/ethnic diversity.
    - Yet not all directors view the push toward diversity in a positive light. 58% say that diversity is driven by political correctness—**up six points from 2020**. Directors are more likely this year than last to say that board diversity results in the nomination of additional unneeded candidates (31%, compared to 26% last year). In addition, 27% say that the push for diversity can result in boards nominating unqualified candidates to address these issues.

# Trends in ESG-Supply Chain

- Supply Chain Sustainability and Integrity/Forced Labor
  - More companies focused on sustainability of products and integrity of supply chain
  - Modern Slavery Act (UK) and California Transparency in Supply Chains Act Reporting
  - Effective June 21, 2022, the Uygher Forced Labor Prevention Act creates a reputable presumption that imports of products from China's Xinjiang Uyghur Autonomous Region are made from forced labor and should be excluded from importation into the US.
  - More countries across APAC reviewing the source of goods. For example, **Australia**:
    - 1 Jan 2019: Modern Slavery Act 2018 (Cth) (**Commonwealth Act**) came into force
      - Mandatory reporting, but...
      - August 2021: a proposed amendment to Australia's Customs Act passed the first stage in the process of becoming law.



# ESG and Technology Companies

Morgan Lewis



# Why Tech Companies Need To Think About ESG

- Perception of profitability correlation
- Differentiation from, or keeping up with, peers
- Aligning with stakeholders (customers, investors and employees)
- Proxy for preparedness
- Reputational risk
- Access to growing investment capital earmarked for ESG
- Future positioning for enhanced global regulations and policy

# Benefitting Stakeholders and Stockholders

Examples of actions that benefit other stakeholders but promote long-term stockholder value:

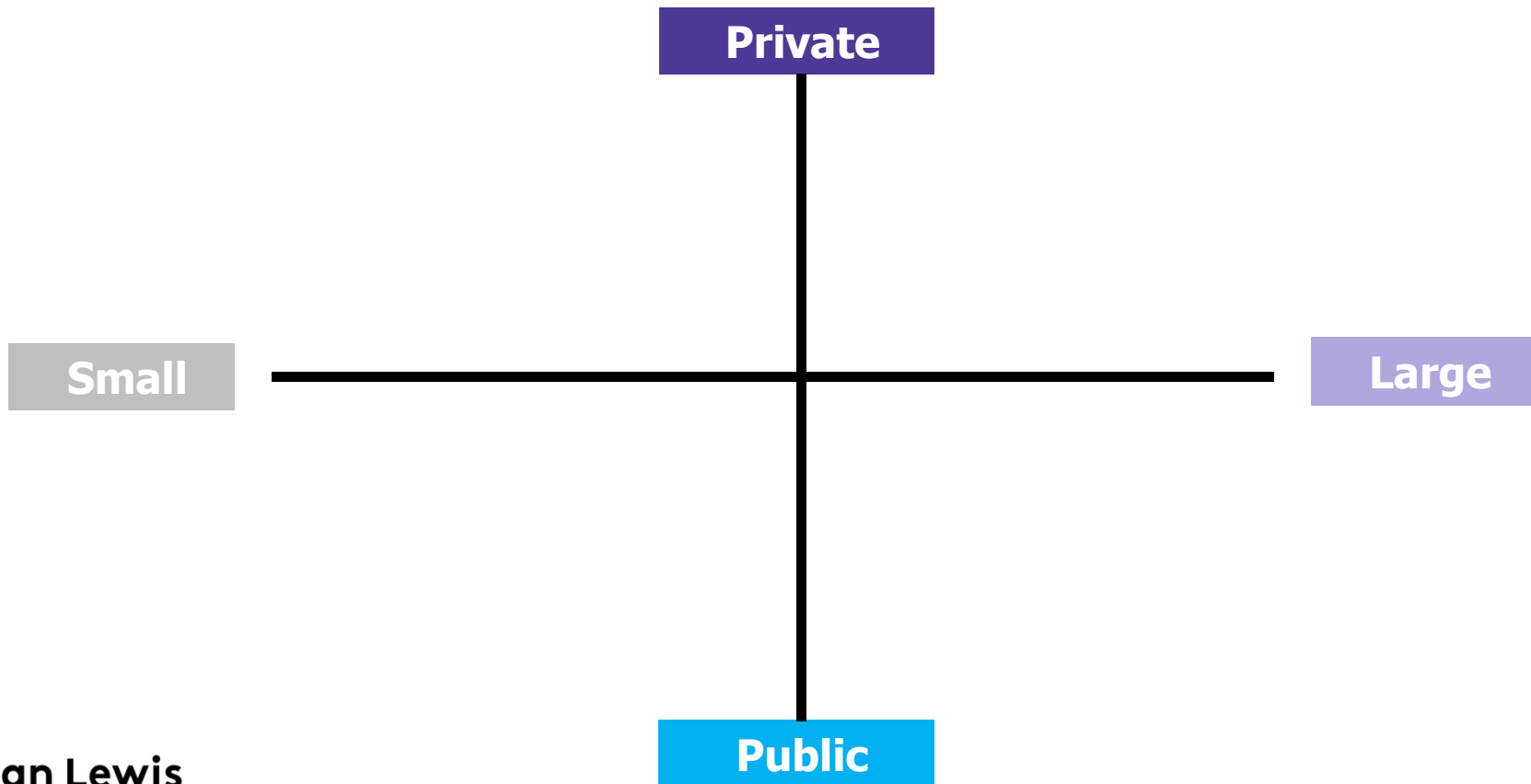
- Increasing employee wages
- Allocating resources to diversity and inclusion initiatives
- Offering fair terms to small, local suppliers and ensuring supply chain integrity
- Giving back to, and conscientiously engaging with, local communities
- Adopting environmentally sustainable measures

# Challenges for Tech Companies

- Upfront costs
- Green versus Gold
- No national / global standardization
- Need to measure and track related metrics to avoid claims of “greenwashing”
- Linking growth strategy with wider societal purpose
- Lack of in-house expertise

## ESG- Not One Size Fits All

Larger Cap Public Companies Lead the Way Because of Greater Resources and Reporting Obligations





# Why ESG Needs Tech Companies

- Fulfillment of many ESG objectives requires digital transformation and IT innovations
  - Datacenter sustainable energy
  - Robust cybersecurity
  - Leadership spotlight
  - Technology will underpin processes and products to improve ESG commitments

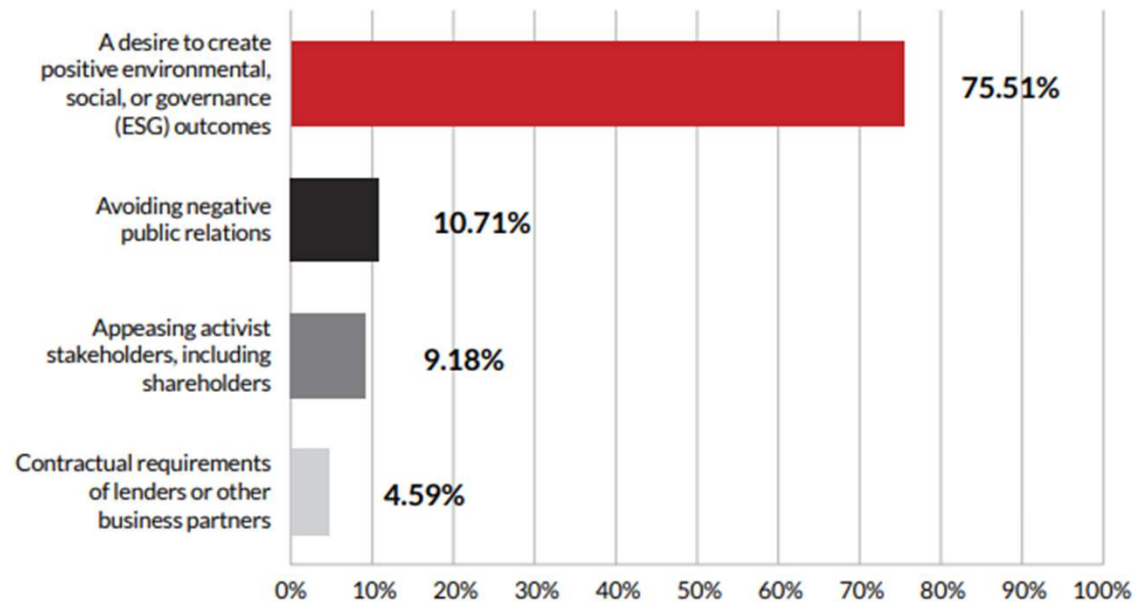


# Publicizing ESG

Morgan Lewis

# What Drives ESG Disclosures?

What is the primary motivation behind your company's ESG initiatives?



Source: Intelligize Survey (August 2021)

# Global Trends in ESG Reporting for 2022

- In November 2021, the International Financial Reporting Standards Foundation (IFRS) announced a new International Sustainability Standards Board to be charged with developing global ESG disclosure mandates
- In July 2021, the Global Reporting Initiative announced that it was working with the EU on sustainability standards
- In April 2021, the European Commission adopted a proposal for a new corporate sustainability reporting directive
  - Companies would need to report under new EU specific sustainability reporting standards
  - Directive would apply “double materiality” – not only how ESG issues impact the company, but also how the company’s actions and policies affect ESG-related matters, like climate change
  - Potential for broad impact on any entity engaged in an economic activity in the EU (with an estimated 50,000 companies impacted)
  - First set of standards are targeted for adoption in October 2022, with sector-specific standards to follow in 2023



# ESG Reporting in Asia

- ESG reporting requirements are generally not mandated by specific legislation
- Tend to be effected through listing rules or securities commission regulations
- Mandatory or “comply or explain”
- Push for greater transparency; nowhere to hide in the digital age
- Only 18% of directors say they support mandatory reporting or disclosure, while 67% support the current, voluntary approach. 94% said they are offering some voluntary disclosure already- Latest PWC Board Survey (2021)

# Asian Trends in ESG Reporting for 2022 – the “E”

- TCFD recommendations are gaining widespread recognition as the gold star of climate reporting. Many countries in Asia are choosing to adopt the framework as the basis for ESG reporting regulations.
- Effective June 1, 2022 China published its first ESG disclosure standard, the “Guidance for Enterprise ESG Disclosure”
  - Developed with strong focus on Chinese laws, regulations and policies
  - 3 secondary indicators for environmental, 4 indicators for social and 3 indicators for governance, with 35 tertiary indicators 118 metrics (including one for the disclosure of Scope 3 greenhouse gas emissions)
- Singapore – sustainability disclosure requirements (includes climate disclosures) for Singapore Exchange (SGX) listed companies are not new (comply or explain in place since 2016). In December 2021, the SGX announced that climate-related disclosure part of the sustainability reporting (based on TCFD recommendations) will become mandatory for companies in the financial, agriculture, food and forest products, and energy industries beginning in 2023. For companies in the materials and buildings and transportation industries, reporting becomes mandatory beginning in 2024.

# Asian Trends in ESG Reporting for 2022 - the “E”

- In November 2021, Hong Kong Exchanges and Clearing Limited (HKEX) published guidance to listed issuers on climate disclosures, whether through mandatory disclosures or “comply or explain” provisions. Follows the recommendations of the TCFD. HKEX expects listed companies in relevant sectors (e.g., financial institutions) to be annually reporting in line with TCFD no later than 2025.
- The Hong Kong Monetary Authority (HKMA) also recently released the supervisory policy manual for climate risk management. It provides high-level guidance for financial institutions to build climate resilience by incorporating climate considerations into governance, strategy, risk management, and disclosure. Financial institutions must disclose in line with the TCFD framework no later than 2025, with initial disclosures occurring no later than mid-2023.
- Japan’s Corporate Governance Code recommends that all companies listed on the Tokyo Stock Exchange to produce sustainability reports to disclose opportunities and risks related to climate change. As recently as April 2022, Prime Market listed companies became obligated to meet TCFD requirements. Japan’s Financial Services Agency is also working on a proposal for mandatory climate risk disclosure and updated disclosure guidelines.
- In 2021, the Securities and Exchange Board of India issued a requirement for the top 1,000 listed companies in India to prepare Business Responsibility and Sustainability Reports (BRSR). Based on internationally regarded reporting frameworks, including GRI, SASB, and TCFD. Standardized quantitative and qualitative disclosure guidelines for ESG issues are in the works for future enhancements of the BRSR.

# Asian Trends in ESG Reporting for 2022 - the "S"

- Hong Kong: "Delivery on good corporate governance practices and ESG measures is more than a box-ticking exercise... The change needs to begin with a shift of mindset at the top of organisations."
  - the Stock Exchange introduced initiatives and rules regarding gender diversity at the board level and reporting requirements on gender ratio in the workforce.
  - Example: all applicants for an IPO since July 1, 2022 must identify at least 1 director of a different gender in their IPO prospectus.
- Singapore: effective January 2022, listed companies required to set a board diversity policy that addresses gender, skill and experience and other relevant aspects of diversity and to make appropriate disclosures (including details such as diversity targets, plans, timelines and progress) in their annual reports.



# Asian Trends in ESG Reporting for 2022 - the "S"

- Japan: Act for the Promotion of Women's Participation and Advancement in the Workplace (the "Act")
  - Requires "large companies" to prepare and file action plans to improve gender equality and publicize at least two types of data
  - Since April 2022, companies that regularly employ > 100 but < 300 employees required to prepare and file action plans and publicize at least one type of data.
  - Prescribed data items, such as:
    - a) percentage of newly hired female employees,
    - b) percentage of female executives,
    - c) the difference in average tenure between men and women,
    - d) the difference in overtime work between men and women.
- On June 7, 2022, the Prime Minister adopted the "women's version" of the government's basic policy of 2022 that plans to require "large companies" to disclose their gender wage gaps

# Asian Trends in ESG Reporting for 2022 - the "S"

- PRC: the Law on Protection of Women's Rights and Interests was promulgated in 1992 and last amended in 2018; latest draft would, among other things:
  - protect and enhance the role and experience of females in the workplace;
  - enhance protections during the employees' marriage, pregnancy, maternity, and nursing periods; and
  - require companies to include information regarding gender equality in their annual reports, such as:
    - the promotion of the recruitment of females,
    - the gender ratio for management level employees, and
    - the gender ratio across the company's workforce.

# Asian Trends in ESG Reporting for 2022 - the "G"

- Government-directed initiatives and enforcement
  - China:
    - a goal of "common prosperity"
    - issuing and enforcing laws that direct how companies should act
  - Singapore:
    - Code of Corporate Governance for listed companies
    - First issued in 2001
    - Comply or explain effective January 2003



# Sustainability

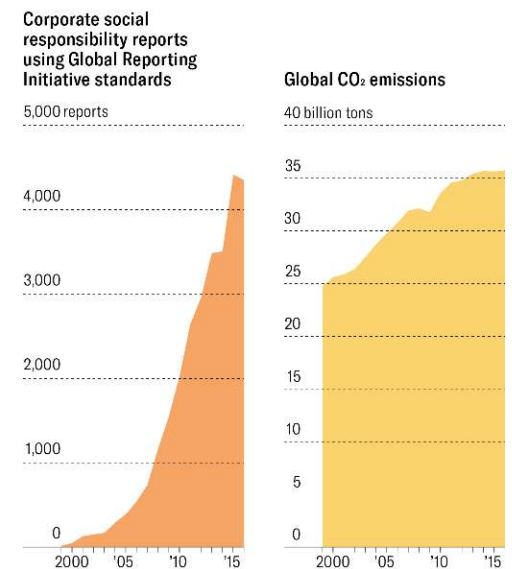
Morgan Lewis

# Sustainability Reports

- Key instrument for disclosure and communication of ESG goals for a company and the company's progress towards them.
- Benefits:
  - Helps an organization set goals and measure performance
  - Accountability
  - Positive press
- Downsides
  - Lack of clear impact
  - Greenwashing
  - Confusion and inattention
  - SEC enforcement and private litigation risk.

## Growing CO<sub>2</sub> Levels Despite Heightened Attention

The dramatic increase in corporate reporting on social and environmental performance hasn't curbed carbon emissions.



Source: Global Reporting Initiative; Worldometer

HBR

# Tracking Sustainability and Role of Data Collection

- Collecting and analyzing sustainability data allows a company to:
  - More easily see the parameters for operations
  - Optimize efficiently and reduce costs
  - Communicate progress
  - Conduct historical comparisons and showcase improvement
  - Establish measurable targets
  - Identify previously unidentified potential
  - Maintain transparency and ensure compliance






# AI Impact on Sustainability

## Categorization of Sustainable Development Goals (SDGs)



Vinuesa, R., Azizpour, H., Leite, I. *et al.* The role of artificial intelligence in achieving the Sustainable Development Goals. *Nat Commun* 11, 233 (2020).

# Takeaways

 Focus on ESG and Sustainability is here to stay



Critical that all public disclosures relating to ESG – whether in an SEC-filed document or otherwise – are thoroughly vetted and can be backed up



Expect changes – but these may be slow in coming



Expect continued focus on ESG from external and internal constituents.

# Questions?

Morgan Lewis

# Next Session:

**WEBINARS**


**TECHNOLOGY DISPUTES INVOLVING FOUNDERS AND STARTUP COMPANIES IN ASIA**  
ASIA TECHNOLOGY INNOVATION SERIES 2022

Tuesday, September 6, 2022  
11:00 AM - 12:00 PM JST  
10:00 AM - 11:00 AM SGT  
10:00 AM - 11:00 AM CST

[Register Now](#)

Startup disputes can vary in complexity from basic contract disputes to billion-dollar tech transactions, among other conflicts. As technology and innovation develop, the businesses become more global, and startups are likely entering into cross-border agreements not only with customers and employees, but with contractors, business partners, and stakeholders.

**OUR PARTICIPANTS**

 **DANIEL CHIA**  
PARTNER  
Singapore

**RELATED RESOURCES**

**SECTORS**

- > Technology
- > Fintech

**SERVICES**

- > Commercial Litigation
- > Consumer Protection Defense
- > Class Actions & Group Litigation
- > White Collar Litigation & Government Investigations
- > International Arbitration
- > Emerging Business & Technology

For more information:

<https://www.morganlewis.com/events/asia-technology-innovation-series-2022>

# Upcoming Sessions

September

Title	Date / Time	Speaker(s)
<b>CFIUS Considerations with Foreign Investors</b>	Tuesday, September 13, 2022 09:00am CST/SGT   10:00am JST	Carl Valenstein, David Plotinsky
<b>Digital Innovation and Disruption: Tech &amp; Sourcing—The Year in Review</b>	Wednesday, September 21, 2022 09:00am CST/SGT   10:00am JST	Mike Pierides, Peter M. Watt Morse
<b>Key Issues in Tech M&amp;A</b>	Wednesday, September 28, 2022 09:00am CST/SGT   10:00am JST	Wai Ming Yap, Todd Liao, Shaobin Zhu, Motonori Araki, Yuting Zhu

For more information: <https://www.morganlewis.com/events/asia-technology-innovation-series-2022>

**Morgan Lewis**

# Biography



**Carl A. Valenstein**

Partner

Boston

[carl.valenstein@morganlewis.com](mailto:carl.valenstein@morganlewis.com)

Carl Valenstein focuses his practice on domestic and international corporate and securities matters, mergers and acquisitions, project development, and transactional finance. He counsels extensively in the life science, telecom/electronics, and maritime industries, and has worked broadly in Latin America, the Caribbean, Europe, Africa, Asia, and the Middle East. He previously served as co-chair of the International Section of the Boston Bar Association and co-chairs the firm's environmental, social, and governance (ESG) and sustainable business and Cuba initiatives. Carl is the leader of the Boston office corporate and business transactions practice.

**Morgan Lewis**

# Biography



## **Karen Abesamis**

Partner  
Silicon Valley/San Francisco  
karen.abesamis@morganlewis.com

Karen A. Abesamis focuses her practice on mergers and acquisitions, strategic and venture capital investments, and technology transactions. She advises on general corporate matters, including securities compliance and corporate governance. Karen also advises social impact investors and private foundations on a range of impact investments and environmental, social, and governance (ESG) matters. Her clients include public and private companies, financial institutions, venture capital funds and corporate investors.

Having practiced in the Bay Area for more than a decade, Karen has significant experience working with technology companies and non-technology companies that are finding opportunities to grow through the use of technology.

Prior to joining Morgan Lewis, Karen interned with the Securities and Exchange Commission's Enforcement Division, and worked in-house at Sun Microsystems, Dodge & Cox Mutual Fund, and Visa International. She has also worked in-house through secondment with a firm client.

**Morgan Lewis**



# Biography



**K Lesli Ligorner**

Partner  
Shanghai  
[lesli.ligorner@morganlewis.com](mailto:lesli.ligorner@morganlewis.com)

Lesli Ligorner has more than 20 years of experience serving clients on a wide range of labor and employment matters, with nearly 15 of those years spent on the ground in China. She advises a broad range of financial services, telecommunications, media, technology, life sciences, and general manufacturing clients on the full suite of employment issues in China, including hiring and termination, discrimination and harassment policies, training, and investigations. Lesli is admitted to practice in New York and New Jersey.

**Morgan Lewis**

# Biography



## **Sin Teck Lim**

Partner  
Singapore  
[sinteck.lim@morganlewis.com](mailto:sinteck.lim@morganlewis.com)

Sin Teck Lim serves capital market clients in a broad range of debt and equity capital markets transactions. He represents issuers and underwriters involved in transactions in Southeast Asia, India, and China. He counsels clients on initial and secondary public offerings in the Indonesia Stock Exchange (IDX), Stock Exchange of Thailand (SET), Singapore Exchange Limited (SGXC), and Bursa Malaysia (MYX).

Sin Teck advises clients on the issuance of high-yield bonds (with US-style high-yield covenants), sovereign bonds, medium-term note (MTN) programs, Eurobonds, and convertible bonds. He also advises issuers on exchange and tender offers of debt securities, as well as bond trustees in a wide range of bond offerings and related transactions.

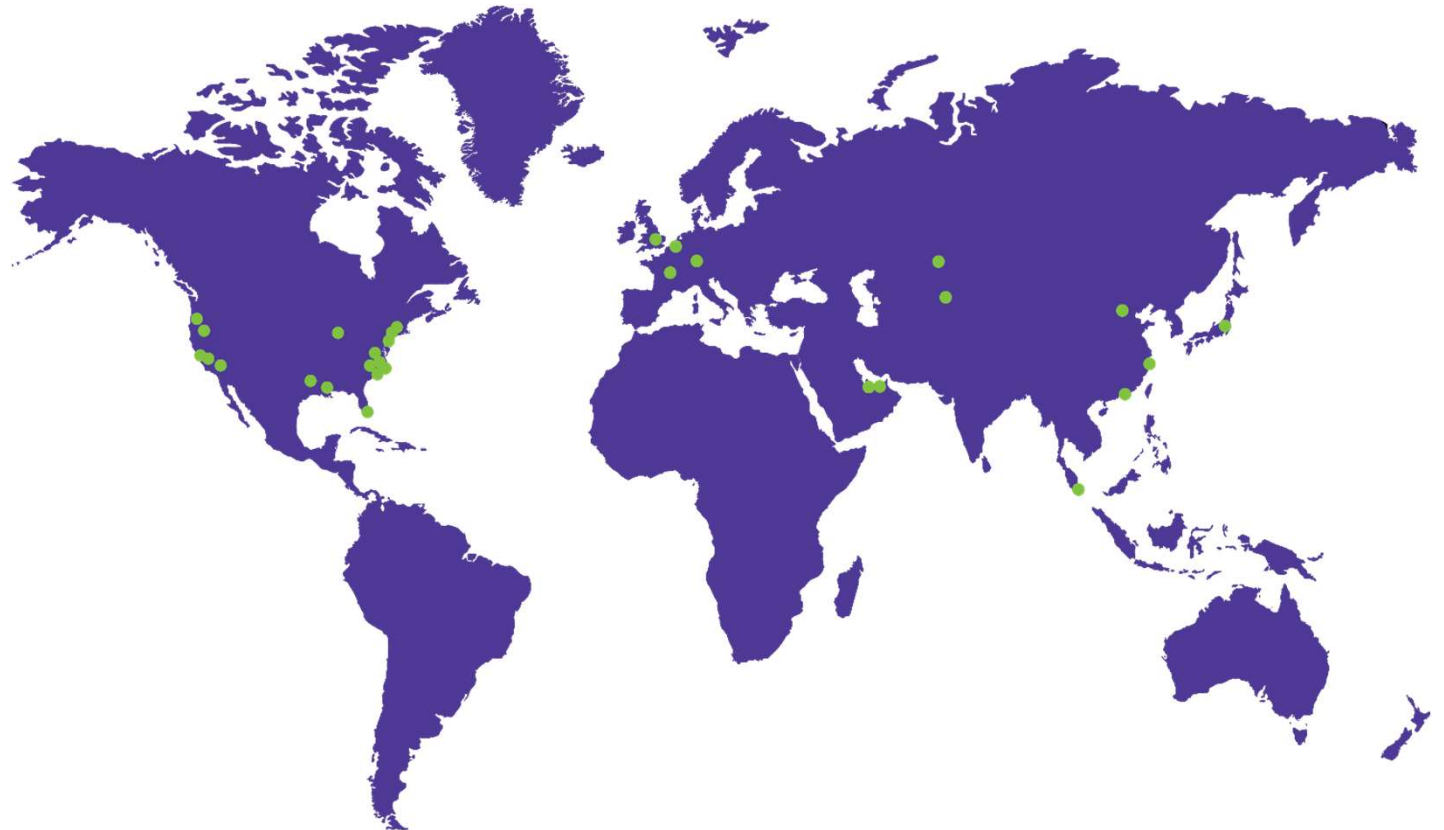
**Morgan Lewis**

## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

Abu Dhabi  
Almaty  
Beijing\*  
Boston  
Brussels  
Century City  
Chicago  
Dallas  
Dubai  
Frankfurt  
Hartford  
Hong Kong\*  
Houston  
London  
Los Angeles  
Miami  
New York  
Nur-Sultan  
Orange County  
Paris  
Philadelphia  
Pittsburgh  
Princeton  
San Francisco  
Shanghai\*  
Silicon Valley  
Singapore\*  
Tokyo  
Washington, DC  
Wilmington



# Morgan Lewis

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

# THANK YOU

© 2022 Morgan, Lewis & Bockius LLP  
© 2022 Morgan Lewis Stamford LLC  
© 2022 Morgan, Lewis & Bockius UK LLP

Morgan, Lewis & Bockius UK LLP is a limited liability partnership registered in England and Wales under number OC378797 and is a law firm authorised and regulated by the Solicitors Regulation Authority. The SRA authorisation number is 615176.

Our Beijing and Shanghai offices operate as representative offices of Morgan, Lewis & Bockius LLP. In Hong Kong, Morgan, Lewis & Bockius is a separate Hong Kong general partnership registered with The Law Society of Hong Kong. Morgan Lewis Stamford LLC is a Singapore law corporation affiliated with Morgan, Lewis & Bockius LLP.

This material is provided for your convenience and does not constitute legal advice or create an attorney-client relationship. Prior results do not guarantee similar outcomes. Attorney Advertising.

**Morgan Lewis**