

Legal Opinion on Directors’ Duties and Disclosure Obligations under Hong Kong Law in the Context of Climate Change Risks and Considerations

A. Introduction

1. We are instructed by the Commonwealth Climate and Law Initiative to provide our joint Opinion on: (i) the extent to which directors of for-profit corporations are permitted or required, in the discharge of their duties under Hong Kong law, to have regard to considerations and risks associated with climate change; and (ii) in the case of companies listed on Stock Exchange of Hong Kong (“SEHK”), the extent of disclosure obligations in respect of climate change-related risks.¹
2. For the purpose of this Opinion, we have been provided with a substantial amount of material and research on climate change and related risks, certain of which are summarised at **Section B** below. Our legal opinions are given on the basis of those materials.
3. At **Section C** below, we consider the relevant law and principles on directors’ duties and disclosure obligations, in respect of Hong Kong companies in general. At **Section D** below, we consider similar issues in respect of companies listed on the SEHK.
4. Our main conclusions can be summarised as follows:
 - (1) Directors of Hong Kong-incorporated companies, whether listed or not, are obliged to act in the best interests of the company, and to exercise reasonable care, skill and diligence vis-à-vis the company. Accordingly, to the extent that climate change risks intersect with and affect the interests of such companies, directors are both entitled, and obliged, to take such risks and considerations into account in the discharge of their obligations to the company.
 - (2) Further, where climate change risks or opportunities are relevant to a company’s interests, its directors are obliged to be reasonably and sufficiently informed and

¹ This Opinion is provided to the Commonwealth Climate and Law Initiative for the purposes of guidance and reference at a general level, and for publication if deemed appropriate. However, the Opinion is not provided to any third party and should not be relied upon as containing legal or regulatory advice to any third party or in the context of any specific case or factual situation. Any third party wishing to obtain legal or regulatory advice on the subject-matter contained in the Opinion should obtain their own such advice from a professional legal adviser. The Opinion is provided on the basis that the authors will not incur any liability to any person(s) in respect of its contents.

knowledgeable about such risks and opportunities, in order to enable them to properly discharge their duties as directors.

- (3) There is at least the potential for directors to be held liable to the company for breach of such duties which result in losses to the company; though the analysis is ultimately highly fact-sensitive, and there are also potential obstacles to making good such a claim in the context of climate change risks (including the business judgment rule, and considerations of causation, foreseeability and remoteness of damage).
- (4) The position for listed companies, whether Hong Kong-incorporated or otherwise, is that the Listing Rules prescribe that directors owe duties similar to those referred to above; though the potential sanction for breach of the Listing Rules *per se* is (primarily) regulatory.
- (5) The regulatory environment in Hong Kong in respect of climate change risks and considerations is fast-developing. Regulatory authorities (including the Hong Kong Monetary Authority (“**HKMA**”)) have taken detailed and specific steps to bring climate change risks to the attention of certain regulated entities. Climate change has been placed at the forefront of Environmental, Social and Governance (“**ESG**”) considerations, and there is an increasing focus on the need for board level consideration of and responsibility for such matters. It seems reasonable to assume that this direction of travel will continue and be reinforced by recent developments in climate change science.
- (6) The latest ESG disclosure regime under the Listing Rules also draws to the attention of issuers various forms of climate change risks in some detail, and requires their consideration at board level as part of a regime of mandatory disclosure as well as “comply or explain” provisions. The effect of this includes mandating that the boards of issuers give detailed and specific consideration to climate change considerations which are material to the company.
- (7) In light of the aforesaid (as further elaborated below), directors of listed entities (and certain other regulated entities, going forwards) would find it very difficult to claim that they were reasonably unaware of various forms of climate change risks to their companies’ businesses, where those risks have been repeatedly drawn to their attention including during the ESG-disclosure process.

- (8) For these reasons, directors and boards of directors in Hong Kong would be well advised to conduct thorough analyses of the risks and opportunities faced by their company, in relation to climate change. The degree and manner of scrutiny required and consequential steps taken are, of course, case-sensitive, and affected by the nature of the particular company and its business. However, the points summarised above, together with the expectation of further regulatory developments in a similar direction, accentuate the need for directors to take active and genuine steps to address climate change risks which are material to their company's interests.
- (9) Further, there are various guidelines publicly available (such as the TCFD recommendations and recommendations based on Paris-aligned strategies - both defined below, see §§9, 24, and fn 116) which, though not currently mandatory in Hong Kong,² may assist in the selection of appropriate standards of conduct to adopt so as to minimise climate-change risks and promote appropriate disclosures.

B. Hong Kong's Responses to Climate Change

B.1 Climate Change Related Risks

5. Climate change refers to variations in the Earth's climate resulting from an increase in global average temperatures. According to a report by the G20 Financial Stability Board Task Force on Climate-related Financial Disclosures ("TCFD"), climate change poses two major types of risks to companies and to global industries generally, namely physical risks and transition risks³:-

- (1) Physical risks include: (i) acute physical risks, which are event driven, such as those caused by "*increased severity of extreme weather events. Examples include cyclones, hurricanes, or floods*"; and (ii) chronic risks, "*such as longer-term shifts in climate patterns (e.g., sustained higher temperatures) that may cause sea level rise or chronic heat waves*". Further, the financial performance of companies and organisations may also be affected by "*changes in water availability, sourcing, and quality; food security; and extreme temperature*

² Although see §§24, 27, and 28(4) below.

³ See, for example, TCFD, "Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures", June 2017, pp. 26-27.

<<https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>>

changes affecting organizations' premises, operations, supply chain, transport needs, and employee safety."⁴

- (2) Transition risks are those related to the transition to a lower-carbon economy, and include: (i) policy and legal risks, i.e. risks caused or driven by changes in regulation and climate-related litigation; (ii) technology risks, which stem from technological improvements or innovations that support the transition to a lower-carbon, energy- efficient economic system; (iii) market risks through shifts in supply and demand for certain commodities, products, and service; and (iv) reputation risks, which are tied to the changing perception of stakeholders (such as customers, regulators and shareholders) to a company or an organization's response to climate change.⁵ For example, in the People's Republic of China ("PRC"), energy intensity and consumption targets have recently been cited as a reason for electricity blackouts, and it is estimated that 44% of the PRC's industrial activity has been affected by power outages, affecting even listed companies.⁶

6. It is notable that the perceived magnitude and relevance of such physical and transition risks, as well as legal and regulatory responses, tend to evolve according to the latest developments in climate science. By way of example, scientific findings on the widespread impacts of a global warming of 1.5°C above pre-industrial levels⁷ would likely have increased pressure on governments and entities to adopt strategies to limit the increase in global average temperature to 1.5°C above pre-industrial levels, in line with the Paris Agreement (see §9 below).
7. In this regard, the IPCC on 6 August 2021 released the Working Group I contribution to the IPCC's Sixth Assessment Report on the physical impacts of climate change, endorsed by governments from 195 countries.⁸ The report contains the latest detailed

⁴ Ibid, p.6.

⁵ Ibid, pp.5-6

⁶ Carbonbrief, "China Briefing, 30 September 2021: Widespread power cuts; New orders on 'dual control'; Emissions peak likely 'before 2028'", 30 September 2021 <<https://www.carbonbrief.org/china-briefing-30-september-2021-widespread-power-cuts-new-orders-on-dual-control-emissions-peak-likely-before-2028>>.

⁷ See, for example, IPCC, "IPCC Special Report: Global Warming of 1.5C (Summary for Policymakers)", 2018

<https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf>

⁸ IPCC, "Climate Change 2021 The Physical Science Basis", 6 August 2021, SPM [A.1]

<https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Full_Report.pdf> and Sarah Barker, Simon Scott, Ellie Mulholland "The science is in – so what now? Implications of the new IPCC report for corporate and government decision-makers", 10 August 2021.

scientific data and findings, including on the causes, current effects, extent and severity of climate change as well as future projections under various emissions scenarios; and includes a finding that human activities are the “unequivocal” cause of increases in temperature of the ocean, atmosphere and land, and are likely to have caused 1.07°C average global temperature rise as compared to pre-industrial levels.⁹ As noted further below, we consider it reasonable to expect that such developments in climate science will further reinforce the direction in which legal and regulatory requirements in Hong Kong on climate-related risks and disclosures have progressed.

B.2 Hong Kong’s Responses to Climate Change

8. There have been significant recent developments in Hong Kong’s response to climate change, including an increasing commitment on the part of the regulatory authorities to addressing climate change risks. On the basis of materials provided to us, we summarise some of the key developments, as follows.

Paris Agreement and Carbon Emissions

9. The Paris Agreement was adopted at the 21st Conference of Parties of the UN Framework Convention on Climate Change on 12 December 2015, and entered into force on 4 November 2016. The agreement, which was signed by 197 states including the PRC, sets out two primary collective goals, namely: (i) to limit the increase in the global average temperature to well below 2°C above pre-industrial levels, to be achieved through nationally determined contributions (“NDCs”); and (ii) to achieve net zero global emissions in the second half of the century.¹⁰ There is growing consensus amongst various jurisdictions and entities to adopt “Paris-aligned” strategies, to limit

<<https://www.minterellison.com/articles/implications-of-the-new-ipcc-report-for-corporate-and-government-decision-makers>>

⁹ More particularly, global average surface temperatures are on average 1.09°C above pre-industrial temperatures, which means that the world is warmer than it has likely been in at least 125,000 years (IPCC’s Sixth Assessment Report, Working Group I, SPM [A.1], [A.1.2], [A.3]). 1.07°C of the 1.09°C increase is likely to have been due to human influence (SPM [A.1.3]). Such changes to the climate system are unprecedented over centuries (SPM [A.2]). Furthermore, human-induced global warming has increased, and continues to increase the intensity and/or frequency of extreme weather events, and is already affecting many weather and climate extremes in every region across the globe, e.g. heatwaves, heavy precipitation, droughts and tropical cyclones (SPM [A.3]).

¹⁰ United Nations, Paris Agreement, 2015

<https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf>

the increase in global average temperature to 1.5°C, in line with the Paris Agreement’s objective to limit global warming to “*well below*” 2°C.¹¹

10. The PRC has committed to lower emissions per unit of GDP by 60-65% from 2005 levels.¹² In September 2020, the PRC announced that it will aim to reach peak emissions before 2030 and for carbon neutrality by 2060,¹³ although such a goal has not been enshrined in the PRC’s formal targets as at the date of this Opinion.
11. As a Special Administrative Region of the PRC, Hong Kong has acceded to the Paris Agreement, and the Hong Kong Government’s target is to reduce Hong Kong’s carbon intensity by 65-70% by 2030 compared with 2005 levels and to achieve carbon neutrality before 2050.¹⁴ In her recent policy address on 6 October 2021, the Chief Executive Carrie Lam announced that the government is budgeting HK\$240 billion aimed at mitigating the effects of climate change; and to meet Hong Kong’s 2050 carbon neutrality target, the Secretary for Environment will reveal a road map of proactive strategies and measures for cutting carbon emissions.¹⁵ On 8 October 2021, the Hong Kong Government published its Climate Action Plan 2050, which affirms the target of achieving carbon neutrality by 2050, sets out strategies to decarbonise sectors including energy, buildings, waste and transport.¹⁶ The Hong Kong Government has also recently set up a Steering Committee on Climate Change and Carbon Neutrality to formulate high-level strategy, and will set up an Office of Climate Change and Carbon

¹¹ See for example, UN Global Compact, Business Ambition for 1.5C, <<https://www.unglobalcompact.org/take-action/events/climate-action-summit-2019/business-ambition>>, with 815 companies worldwide having become signatories as of 24 September 2021 <<https://www.unglobalcompact.org/take-action/events/climate-action-summit-2019/business-ambition/business-leaders-taking-action>>

¹² Department of Climate Change, National Development & Reform Commission of China, “Enhanced Actions on Climate Change: China’s Nationally Determined Contributions, 3 September 2016, p.4 <<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/China%20First/China%27s%20First%20NDC%20Submission.pdf>> Further, the PRC has recently issued a joint statement with the United States confirming their commitment to the Paris Agreement, and stating an intention to raising international ambition before the UN Climate Change Conference (ie. the COP26) in November 2021 <https://www.chinadaily.com.cn/a/202104/18/WS607b76cda31024ad0bab63fe_2.html>

¹³ Matt McGrath, Climate change: China aims for ‘carbon neutrality by 2060’, BBC News, 22 September 2020 <<https://www.bbc.com/news/science-environment-54256826>>

¹⁴ News.gov.hk, “Carbon neutrality strategies in place”, 26 May 2021, <https://www.news.gov.hk/eng/2021/05/20210526/20210526_172826_420.html>

¹⁵ South China Morning Post, “Emotional Hong Kong leader Carrie Lam wraps up 2021 policy address, refers to tenure as ‘greatest honour’ – as it happened”, 6 October 2021, <<https://www.scmp.com/news/hong-kong/politics/article/3151331/hong-kong-leader-carrie-lams-2021-policy-address-will-chief>>

¹⁶ Hong Kong Government, Hong Kong’s Climate Action Plan 2050, 8 October 2021 <https://www.climateready.gov.hk/files/pdf/CAP2050_booklet_en.pdf>

Neutrality, as part of the Environment Bureau, to strengthen coordination and promote deep decarbonisation.¹⁷

12. In its 14th Five Year Plan, the PRC set out various strategies to tackle environmental challenges and climate change. Amongst these, the Plan outlines an 18% reduction target for “CO₂ intensity” and a 13.5% reduction target for “energy intensity” from 2021 to 2025. For the first time in a five-year plan, it also referred to China’s longer-term climate goals and introduced the concept of a “CO₂ emissions cap” (although such a cap has not yet been set).¹⁸
13. In 2017, the PRC announced plans to implement an emissions trading scheme from 2020, and on 5 January 2021, announced the launch of its emissions trading scheme.¹⁹ The scheme, which is the world’s largest carbon market, was formally launched in July 2021, and is seen as a key policy tool to help the PRC in reaching its carbon emissions peak.²⁰ Further, a significant number of jurisdictions such as Japan, Singapore and India (accounting for up to 20% of the world’s emissions) have introduced a price on carbon.²¹ As of the date of this opinion, Hong Kong has a Renewable Energy Certificates Scheme with power companies of Hong Kong,²² but does not have in place a general carbon emissions trading scheme. The administration has, however, recently taken steps to assess the feasibility of developing Hong Kong as a regional carbon trading centre, see §66 below.

¹⁷ Ibid, p. 63.

¹⁸ The 14th Five Year Plan for Economic and Social Development of the People’s Republic of China 2021-2025, Parts III and XI. <<https://www.ndrc.gov.cn/xxgk/zcfb/ghwb/202103/P020210313315693279320.pdf>>.

¹⁹ Measures for the Administration of Carbon Emissions Trading (for Trial Implementation), 2021 <http://mee.gov.cn/xxgk/2018/xxgk/xxgk02/202101/t20210105_816131.html>, cf The Oxford Institute for Energy Studies, “Key issues for China’s 14th Five Year Plan p.10 <<https://www.oxfordenergy.org/wpcms/wp-content/uploads/2021/03/Key-issues-for-Chinas-14th-Five-Year-Plan.pdf>>.

²⁰ Yuan Lin, “China’s national carbon market exceeds expectations”, 22 July 2021, <<https://www.refinitiv.com/perspectives/future-of-investing-trading/chinas-national-carbon-market-exceeds-expectations/>>.

²¹ OECD, “Taxing Energy Use 2019: Country Note – Japan, 2019”, p.1 <<https://www.oecd.org/tax/tax-policy/taxing-energy-use-japan.pdf>>, National Climate Change Secretariat, “Submission Of Singapore’s Enhanced Nationally Determined Contribution And Long-Term Low-Emissions Development Strategy To The United Nations Framework Convention On Climate Change”, 1 April 2020 <<https://www.nccs.gov.sg/media/press-release/submission-of-singapores-enhanced-nationally-determined-contribution-and-long-term-low-emissions-development-strategy>> and Shakti Sustainable Energy Foundation & EY, “Discussion Paper on Carbon Tax Structure for India”, 2018 <<https://shaktifoundation.in/wp-content/uploads/2018/07/Discussion-Paper-on-Carbon-Tax-Structure-for-India-Full-Report.pdf>>.

²² Gov HK, “Renewable Energy Certificates” <<https://www.gov.hk/en/residents/environment/renewable/certificates.htm>>.

Recent Regulatory Developments

14. In our view, recent developments in Hong Kong show that:
 - (1) The SEHK and certain regulatory authorities in Hong Kong are placing climate change considerations at the forefront of their approach to ESG disclosure and sustainable banking.
 - (2) Regulators have brought various types of climate change risks expressly to the attention of listed companies and other regulated entities, such as those regulated by the HKMA.
 - (3) The relevant regulatory requirements and guidance are specific and detailed.
 - (4) There is a focus on board level attention being required for ESG issues including climate change issues.
 - (5) There are indications that further developments are likely, tending towards increased scrutiny of regulated entities from the government and regulators in the field of ESG disclosure and climate-related risks.
15. In addition, these regulatory developments and their somewhat rapid progress themselves form part of the landscape of climate-related transition risks. Companies are obliged to comply with the relevant regulatory regimes, and will often have to engage in suitable planning and changes to their modes of operation, in response to, or in anticipation of, further regulatory changes. Furthermore, the direction of travel of such regulatory regimes is likely to be reinforced by recent and continuing developments in climate science: see §§5 and 7 above.
16. Some of the latest developments are highlighted as follows.
17. In September 2018, the Securities and Futures Commission (“SFC”) published its strategic framework to contribute to the development of green finance in Hong Kong, with a focus on corporate environmental and climate change-related disclosure, and sustainable investing.²³

²³ Securities and Futures Commission “Strategic Framework for Green Finance”, 21 September 2018. <[https://www.sfc.hk/web/files/ER/PDF/SFCs%20Strategic%20Framework%20for%20Green%20Finance%20-%20Final%20Report%20\(21%20Sept%202018....pdf](https://www.sfc.hk/web/files/ER/PDF/SFCs%20Strategic%20Framework%20for%20Green%20Finance%20-%20Final%20Report%20(21%20Sept%202018....pdf)>

18. In 2019 and 2020, the SEHK introduced revisions to the ESG reporting requirements for issuers. The revised requirements include provision that the board of directors has overall responsibility for an issuer’s ESG strategy and reporting, mandatory disclosure requirements for various ESG matters, and “comply or explain” disclosure provisions in respect of certain specified ESG considerations including those pertaining to climate change risks and considerations. This is discussed further in **Section D.3** below.
19. In May 2020, the SFC initiated the establishment of the Green and Sustainable Finance Cross-Agency Steering Group, which is co-chaired by the SFC and HKMA, and includes also the Financial Services and the Treasury Bureau, the Environment Bureau, the SEHK, the Insurance Authority and the Mandatory Provident Fund Schemes Authority. The group aims, amongst other things, to coordinate the management of climate and environmental risks to the financial sector and to accelerate the growth of green and sustainable finance.²⁴
20. In June 2020, the SEHK announced plans to launch the SEHK Sustainable and Green Exchange, an online portal providing information, access and transparency on a wide range of sustainable, green and social investment products.²⁵
21. In the same month, the HKMA issued a White Paper on Green and Sustainable Banking, which presented the HKMA’s initial thinking about its supervisory approach to addressing climate-related issues and broader sustainability issues.²⁶ These initial thoughts were further developed in the HKMA’s draft guidelines on the management of climate-related risks by authorised institutions (“AIs”), see §28 below.
22. In July 2020, the HKMA issued a circular to all AIs on best practices for managing climate risks by major international banks, with reference to their White Paper on Green and Sustainable Banking and the aforesaid principles.²⁷ The circular stated, amongst other things, that: “*There is a growing recognition that climate risks are a source of*

²⁴ Hong Kong Monetary Authority and Securities & Futures Commission, “Joint statement on the establishment of the Green and Sustainable Finance Cross-Agency Steering Group”, 5 May 2020 <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/05/20200505-8>>

²⁵ Hong Kong Exchange, “SEHK to launch new sustainable and green exchange”, June 2020 <https://www.hkex.com.hk/News/News-Release/2020/200618news?sc_lang=en>

²⁶ Hong Kong Monetary Authority, “White Paper on Green and Sustainable Banking”, June 2020 <<https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2020/20200630e1a1.pdf>>

²⁷ Hong Kong Monetary Authority, Range of practices for management of climate risks, 7 July 2020 <<https://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2020/20200707e1.pdf>>

risk for the financial sector”, and outlined the types of risk in question, as well as summarising the key content of the White Paper.

23. In October 2020, the SFC issued a consultation paper on the management and disclosure of climate risks by fund managers. In that paper, the SFC proposed to amend the Fund Manager Code of Conduct to require fund managers to consider climate risks (defined as physical, transition and liability risks) in their investment and risk management processes and to make appropriate climate risk disclosures to meet investor demand for information and to combat “greenwashing”.²⁸ The consultation paper identified climate-related risks as the initial focus of the SFCs’ strategy on ESG in relation to fund managers, given the “*broad consensus that urgent action is needed to address the threat of climate change*”, such that it is “*imperative to raise the industry’s awareness of the importance and relevance of climate-related risks and to urge immediate action to address them*”.²⁹ This consultation has now concluded; please see §29.
24. On 17 December 2020, the Green and Sustainable Finance Cross-Agency Steering Group announced a green and sustainable financial strategy for Hong Kong, again emphasising the need to “*strengthen climate-related financial risk management*”. The strategy included five near-term action points, one of which is that Hong Kong will mandate TCFD disclosures (defined below) across “relevant sectors” no later than 2025. It appears the “relevant sectors” will or may include “*financial institutions including banks, asset managers, insurance companies and pension trustees*”.³⁰ The apparent intention is to: (i) expand climate-related disclosure obligations to institutions and companies beyond the twenty or so voluntary supporters of TCFD at present; and (ii) more significantly, expand mandatory climate-related disclosure to companies beyond listed-companies.³¹ The recommendations of the TCFD provide a framework for the kind of information that must be analysed and disclosed about the impact of

²⁸ “Hong Kong Securities and Futures Commission, Consultation Paper on the Management and Disclosure of Climate-related Risks by Fund Managers”, October 2020 <<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=20CP5>>.

²⁹ Ibid, §25.

³⁰ HKMA, “Cross-Agency Steering Group Launches its Strategic Plan to Strengthen Hong Kong’s Financial Ecosystem to Support a Greener and More Sustainable Future”, 17 December 2020 <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/12/20201217-4/>> and HKMA “Strategic Plan to Strengthen Hong Kong’s Financial Ecosystem to Support a Greener and More Sustainable Future”, 17 December 2020 <<https://www.hkma.gov.hk/media/eng/doc/key-information/press-release/2020/20201217e4a1.pdf>>.

³¹ HKMA, “Cross-Agency Steering Group Launches its Strategic Plan to Strengthen Hong Kong’s Financial Ecosystem to Support a Greener and More Sustainable Future”, 17 December 2020 <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2020/12/20201217-4/>>.

climate-related risks and opportunities on financial positions and prospects of business. The TCFD recommendations are structured around four thematic areas that represent core elements of how organisations operate: governance, strategy, risk management, and metrics and targets. A central plank of the TCFD recommendations relates to the conduct, and disclosure, of stress-testing and scenario planning of business strategies against a plausible range of climate futures, including a well below 2°C emissions pathway, consistent with Paris Agreement targets.³² In addition, updated guidelines issued by the TCFD in 2021 state that Scope 1 and Scope 2 emissions (i.e. emissions directly attributable to the company’s activities, and emissions produced by the generation of energy purchased by the company) should be disclosed independently of a materiality assessment.³³

25. In April 2021, the SEHK published a consultation paper on the Corporate Governance Code and Related Listing Rules which suggests the alignment of the publication timeframe of ESG reports and annual reports.³⁴
26. On 29 June 2021, the SFC issued a circular to management companies of SFC-authorized unit trusts on disclosures which ESG funds (i.e., SFC-authorized funds which incorporate ESG factors as their key investment focus and reflect such in the investment objective and/or strategy) must make.³⁵
27. On 15 July 2021, the Green and Sustainable Finance Cross-Agency Steering Group announced that: (i) it is making progress towards mandating TCFD disclosures across relevant sectors by 2025 (§24 above), and it supports the efforts by the International Sustainability Standards Board under the International Financial Reporting Standards Foundation to develop a new standard which would be built on the TCFD framework; (ii) it has set up a Carbon Market Work Stream co-chaired by the SFC and HKSE to assess the feasibility of developing Hong Kong as a regional carbon trading centre to

³² TCFD, “Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures”, June 2017, pp. 19-23 <<https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>>.

³³ TCFD, “Task Force on Climate-related Financial Disclosures Guidance on Metrics, Targets, and Transition Plans”, October 2021, p. 15 https://assets.bbhub.io/company/sites/60/2021/07/2021-Metrics_Targets_Guidance-1.pdf; TCFD, “Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures”, October 2021, pp. 4-5, <https://assets.bbhub.io/company/sites/60/2021/07/2021-TCFD-Implementing_Guidance.pdf>

³⁴ SEHK, “Review of Corporate Governance Code and Related Listing Rules” 16 April 2021 <<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/April-2021-Review-of-CG-Code-and-LR/Consultation-Paper/cp202104.pdf?la=en>>.

³⁵ SFC, “Circular to management companies of SFC-authorized unit trusts and mutual funds - ESG funds” <<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/products/product-authorization/doc?refNo=21EC27>>.

strengthen collaboration in the Guangdong-Hong Kong-Macao Greater Bay Area; and (iii) it has launched the Centre for Green and Sustainable Finance, cross-sector platform which aims to coordinate efforts of regulators, government agencies, industry stakeholders and academia.³⁶

28. On 20 July 2021, HKMA issued draft guidelines on the management of climate-related risks by AIs.³⁷
- (1) The draft guidelines singled out climate change as an area of particular importance, amongst sustainability issues, and accordingly identified climate change as the initial focus of the HKMA’s strategy.³⁸
 - (2) The draft guidelines spelt out in substantial detail the impact of climate change to the banking industry in Hong Kong, and included significant detailed information as to the various climate change related risks posed to that industry.³⁹ It referred also to the particular foreseeability of climate change risks, and to a “*high degree of certainty*” that some combination of physical and transition risks will materialise in the near future.⁴⁰
 - (3) The draft guidelines expressly stated that “*The board has primary responsibility for an AI’s climate resilience*” (emphasis added),⁴¹ and further spelled out the overall responsibilities of the board and the senior management in this respect.⁴²
 - (4) The draft guidelines outlined the general requirements for AIs to, *inter alia*, (i) embed climate considerations throughout the current strategy formulation process and ensure effective implementation of their strategy;⁴³ (ii) incorporate climate-related risk considerations into their risk management framework, and establish effective risk management processes to identify, measure, monitor,

³⁶ HKMA “Cross-Agency Steering Group announces next steps to advance Hong Kong’s green and sustainable finance strategy”, 15 July 2021 <<https://www.hkma.gov.hk/eng/news-and-media/press-releases/2021/07/20210715-4/>>.

³⁷ HKMA “GS-1 Climate Risk Management for Consultation” 20 July 2021 <https://www.hkma.gov.hk/media/eng/doc/key-functions/banking-stability/supervisory-policy-manual/GS-1_for_consultation_20Jul2021.pdf>.

³⁸ Ibid, §§1.1 -1.2.

³⁹ See e.g. *ibid*, §1.2.3 entitled “How does climate change pose risks to banks?”, 2.1-2.2, 5.2 which detailed various types of physical risks, transition risks and litigation risks, and included detailed sections on risk identification and measurement faced by AIs.

⁴⁰ Ibid, §2.2.1.3.2.

⁴¹ Ibid §3.1.1.

⁴² Ibid §§3.1-3.2.

⁴³ Ibid §§4.2-4.3.

report, control and mitigate climate-related risks;⁴⁴ (iii) have sufficient understanding of how climate risks could be transmitted into the traditional risks faced by them and assess the potential impacts on their business;⁴⁵ (iv) build the capacity to measure climate-related risks using various methodologies and tools, such as climate-focused scenario analysis and stress testing;⁴⁶ (v) implement processes to monitor and report exposures to climate-related risks to ensure that such exposures are consistent with their risk appetite;⁴⁷ and (vi) provide climate-related disclosure aligned with TCFD recommendations (as a minimum), and to make their first disclosures no later than mid-2023.⁴⁸

29. On 20 August 2021, the SFC issued amendments to the Fund Manager Code of Conduct in a circular setting out expected standards for fund managers managing collective investment schemes to take climate-related risks into account. In particular, managers of at least HK\$8 billion in assets must make a reasonable effort to report their investees' and funds' greenhouse gas emissions from November 2022 onwards.⁴⁹

C. General Law on Directors' Duties and Disclosure Obligations in respect of Hong Kong companies

C.1 Directors' Duties under Hong Kong Law

30. In this section, we outline the general law on directors' duties in respect of solvent companies incorporated in Hong Kong. This is not intended to be an exhaustive account of all duties which may be owed by such directors, but rather a general summary of the key duties owed.
31. The general duties owed by directors of Hong Kong can be classified into two broad categories. The first category is fiduciary duties. Notably:

⁴⁴ Ibid §5.1.

⁴⁵ Ibid §5.2.

⁴⁶ Ibid §5.3.

⁴⁷ Ibid §5.4.1.

⁴⁸ Ibid §6.2. In particular §6.2.7.

⁴⁹ SFC, "Circular to licensed corporations Management and disclosure of climate-related risks by fund managers", 20 August 2021 <<https://apps.sfc.hk/edistributionWeb/gateway/EN/circular/intermediaries/supervision/doc?refNo=21EC31>>

- (1) Directors owe to the company fiduciary duties of utmost good faith. They must not exercise their powers for improper purposes or otherwise than for the benefit and in the best interests of the company;⁵⁰
 - (2) Directors owe to the company fiduciary duties to make decisions only for proper purposes and having considered relevant matters;⁵¹ and
 - (3) Directors owe to the company fiduciary duties to avoid situations in which the director's interests may conflict with those of the company, and not to obtain any undisclosed profit through their position as a director.⁵²
32. Where a fiduciary has committed a breach of any such fiduciary duty, it may be significant to ascertain what impact that breach has had on any company property. For breaches leading directly to damage to or loss of the company's property, strict rules of causation apply. These are rules borrowed from those developed in relation to traditional trusts, requiring the director to restore to the company what he/she has caused it to lose as a result of his/her breach. Causation is established on a "but for" basis without the constraints of common law causation rules on remoteness and foreseeability, and the duty of mitigation has only very limited application. The court is entitled to assess compensation with the full benefit of hindsight.⁵³ For breaches involving an element of infidelity or disloyalty which engage the conscience of the fiduciary, once the plaintiff has shown a loss arising out of a transaction to which the breach was material, the plaintiff is entitled to recover unless the defendant fiduciary, who then bears the onus to show that the loss or damage would have occurred in any event, i.e. without any breach on the fiduciary's part. Questions of foreseeability and remoteness do not arise in this kind of case either. Where the breach resulted in a gain for the fiduciary, equity will not allow such a fiduciary to retain such profit but will require him to account for it, imposing a constructive trust.⁵⁴
33. Further, even where a breach of duty of fiduciary duty has not yet occurred and no loss has yet been suffered, it is possible in principle for the Hong Kong court to grant *quia timet* injunctive relief to prevent director(s) from threatening or intending to breach

⁵⁰ **Re Tysan Holdings Ltd** [2013] 4 HKC 425, §35, per Mimmie Chan J, §38

⁵¹ **Passport Special Opportunities Master Fund LP & Another v eSun Holdings Ltd & Others** [2011] 4 HKC 62 at §§57-60, 88, 90, 143, 147, 150-156, per Barma J (as he then was)

⁵² **Chung Pui Tak v Tam Chi Leung Nolan** [2021] HKCFI 242 per DHCJ Simon Leung at §§106-107.

⁵³ **Libertarian Investments Ltd v Hall** (2013) 16 HKCFAR 681 §§75, 78-81.

⁵⁴ **Libertarian Investments Ltd v Hall**, *supra*, §§75, 82-83.

their fiduciary duties, either at common law or under ss.728-729 of the Companies Ordinance (Cap. 622) (see §43 below).

34. The second category is the duty to exercise reasonable care, skill and diligence:

- (1) Directors of a company owed at common law a duty to the company to exercise reasonable care, skill and diligence.
- (2) Section 465 of the Companies Ordinance (Cap. 622) (“**Companies Ordinance**”), which came into force on 3 March 2014, codified and replaced the aforesaid common law position, expressly providing that a director owes to the company a duty to exercise reasonable care, skill and diligence.⁵⁵
- (3) The standard of care under s.465 of the Companies Ordinance has been referred to as the dual objective/ subjective standard, similar to the pre-existing position at common law.⁵⁶ Section 465(2) expressly provides that reasonable care, skill and diligence means the care, skill and diligence that would be exercised by a reasonably diligent person with: (a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company; and (b) the general knowledge, skill and experience that the director has.
- (4) For a director to be liable towards the company for breaches of any duty of care, skill, and diligence, the common law rules as to causation, foreseeability and remoteness generally apply.⁵⁷
- (5) Importantly, Hong Kong directors have a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company’s business to enable them properly to discharge their duties as directors. The exercise of the power of delegation does not absolve a director from the duty to supervise

⁵⁵ Commentary on s.465 in the **New Companies Ordinance (Cap. 622) Volume IV: Directors, Company Secretaries & Shareholder Remedies**, pp.20-22.

⁵⁶ See **Re D’Jan of London Ltd** [1993] BCC 646 at 648 per Hoffmann LJ (as he then was); **Daniels v Anderson** (1995) 16 ACSR 607 at 668 per Clarke and Sheller JJA. See also **Wong Luen Hang & Another v Chan Yuk Lung & Others** unrep., CACV 112/2012, (30.10.2013), *per* Yuen JA at §25 (citing **Re City Equitable Fire Insurance Co** [1925] Ch 407 at 427 and **Daniels v Anderson** (1995) 16 ACSR 607 at 668): the degree of care required of a director is measured by the care an ordinary man might be expected to take in the circumstances on his own behalf; and a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience.

⁵⁷ **Libertarian Investments Ltd v Hall**, *supra* §§75 and 77.

the discharge of delegated functions. The extent of the duty, and the question of whether it has been discharged, must depend on the facts of each particular case, including the director's role in the management of the company.⁵⁸

35. It is to be noted that s.465 of the Companies Ordinance only codified one of the duties owed by company directors in Hong Kong, namely the duty to exercise reasonable care, skill and diligence. Whilst many of the Companies Ordinance's provisions mirror the UK's Companies Act 2006, following public consultation, the Hong Kong administration decided not to follow the UK's approach in codifying a wide range of directors' duties.⁵⁹ Further, a provision equivalent to s.172(1)(d) of the UK's Companies Act 2006, which provides that directors must have regard to the impact of the company's operations on the community and the environment, was not enacted. Accordingly, unlike the position in the UK, there is at present no express common law or statutory provision obliging directors of Hong Kong companies to take into account climate change risks and/or other environmental considerations.⁶⁰

C.2 Directors' Duties and Climate Change Risks and Considerations

36. We have been instructed to advise on the extent to which directors of for-profit corporations are permitted or required in the discharge of their duties under Hong Kong law to have regard to considerations and risks associated with climate change. Some of these considerations and risks have been briefly summarised at §§5 to 7 above.
37. As noted above, a director's fiduciary duties and duty of care and diligence are in general owed to the company (rather than, say, its shareholders, or its members).⁶¹
38. Since directors are in general obliged to act in the company's best interests, and to exercise reasonable care, skill and diligence vis-à-vis the company, to the extent that climate change risks intersect with and affect the interests of the company, we consider that directors are both entitled, and indeed obliged, to take such risks and considerations into account in the discharge of their duties owed to the company.

⁵⁸ **Re Copyright Ltd** [2004] 2 HKLRD 113 per Kwan J (as she then was) at §34; **Chan Tat Joel Ma Ji v The Stock Exchange of Hong Kong Limited** [2020] HKCFI 675 per Chow J (as he then was) at §§69-77.

⁵⁹ Company Registry, "Second Public Consultation on Companies Ordinance Rewrite (2 April 2008)" <https://www.cr.gov.hk/en/publications/docs/042008_ch3-e.pdf>, cf Consultation Conclusions §§16-24 <https://www.cr.gov.hk/en/publications/docs/101208_conclusion_e.pdf>

⁶⁰ Although see the disclosure provisions discussed in **Section C.3** below.

⁶¹ There are certain narrow scenarios where a duality of duties may exist, such as when a director has, on top of his fiduciary duties, incurred additional duties towards a company's shareholders, see **Peskin v Anderson** [2001] 1 BCLC 372 §§33-34.

39. Furthermore, there is at least the potential for directors to be held liable to the company for breach of such duties resulting in loss to the company.
40. The analysis is highly fact-sensitive, and it is not possible to comprehensively outline instances where the interests of a company and climate change risks may intersect. However, some general examples may be provided by way of illustration:
- (1) Where a director takes a decision which pays no or insufficient regard to environmental considerations, resulting in a fine, a claim for damages, or other pecuniary losses (for example because of some breach of environmental legislation), the director could be held to be liable to the company for the loss caused by the fine or claim for damages.⁶² The same may apply where the director's conduct in breach of duty leads to adverse consequences under regulatory requirements applicable to the company.⁶³ For example, if failure to comply with ESG requirements in the Listing Rules (discussed below) were to result in adverse regulatory consequences to a listed company, it is conceivable that directors could incur liability to the company for breach of their duties leading to losses to the company. Similarly, it is conceivable that a director's breach(es) of duties causing a company to become liable to pay a fine under, say, s.10 of the Air Pollution Ordinance (Cap. 311) for failing to comply with an air pollution abatement notice, could be liable to the company for the losses resulting from that breach.
 - (2) Where climate change risks could potentially affect a company (whether by physical risks caused by global warming affecting the company's premises or operations, or transition risks such as the shift in regulatory regimes or consumer demand to more environmentally friendly businesses practices and products), the law would generally expect and require the director(s) of that company to have sufficient knowledge and understanding of such climate change risks (see §34(5) above). A failure to be sufficiently informed as to and take account of such climate change risks could potentially amount to a breach of duty of care,

⁶² This was the example raised in Mortimore QC (ed), **Company Directors Duties, Liabilities, and Remedies** (3rd ed. 2017) §12.43.

⁶³ **Hong Kong Company Law in Hong Kong, Practice and Procedure**, January 2021, at §6.050 cites as examples **Australian Securities and Investments Commission v Cassimatis v MacDonald (No. 11)** (2009) 256 ALR 199 and **Brumder v Motornet Service and Repairs Ltd** [2013] 1 WLR 2783, showing that directors may be liable for failing to ensure that the company complies with legal and regulatory requirements applied to it (including disclosure requirements under legislation and listing rules); and failing to ensure compliance with workplace health and safety laws.

skill, and diligence, and the director could in principle be held to be liable for resulting losses to the company.

- (3) Where a director is of the view that a climate change-related consideration poses risks to the company's financial performance, and/or presents a business opportunity to the company, he/she is obliged to take into account such considerations in discharging his/her duty to make decisions only for proper purposes and to consider relevant matters, and his/her duty to act in the best interests of the company.
- (4) More specifically, in view of anticipated further changes to the ESG disclosure and climate risk-related regulatory landscape outlined at §§17 to 25 above, directors of say, AIs (regulated by the HKMA) or asset management firms, would likely have to take into consideration the forthcoming anticipated changes in regulatory landscape and regulators' stances, in discharging their duties to their companies.
- (5) As observed at §§6 and 7 above, information on climate change risks may evolve in accordance with the latest developments in climate-based science. Developments in such science, for example the IPCC's Sixth Assessment Report, may accordingly affect what is required by a reasonable director when assessing climate-change risks, as well as impacting the foreseeability of any resulting losses.
- (6) As noted above, a director's breach(es) of duties may result in the company being exposed to climate change litigation, causing losses to the company. Globally, there has been an uptick in climate change related litigation against corporations.⁶⁴ Historically, the majority of climate change litigation has been launched against governments, but there is a recent trend for climate change litigation against corporations and directors, in particular fossil fuel and cement companies.⁶⁵ For example, there have been recent claims in other jurisdictions

⁶⁴ According to a report by the Geneva Association and Clyde & Co published in April 2021, making reference to climate change litigation databases by the London School of Economics and Columbia Law School respectively, since the adoption of the Paris Agreement, climate litigation has gained pace. Between 1986 and 2020, 1,727 litigation cases were documented worldwide: 1,308 in the U.S. and 419 in other jurisdictions and regional and international courts. More than half of the total recorded cases have been brought since 2015. The Geneva Association, and Clyde & Co "Climate Change Litigation: Insights into the evolving global landscape", p.6 <https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/climate_litigation_04-07-2021.pdf>

⁶⁵ Ibid, pp.14-16.

against corporate directors, trustees, and other fiduciaries for failure to consider carbon emissions and failure to disclose transition risks.⁶⁶ Another notable development is the rise of climate change litigation targeting “greenwashing”, i.e. misrepresentation by a company (usually through advertising campaigns) of the extent to which its products or business practices are environmentally sound.⁶⁷ Though litigation of this nature has, as far as we are aware, not yet been tested in the Hong Kong courts, this may occur in the future.

- (8) Further, there may be debate whether directors causing non-pecuniary losses to the company (such as reputational losses as a result of their decisions in relation to climate change, a type of transition risk) may in principle be held liable for breach(es) of their duties.⁶⁸ There is so far no Hong Kong case law on point, but regard may be made to Edelman J’s judgment in in **Australian Securities and Investments Commission v Cassimatis (No. 8)** [2016] FCA 1023 at §§481-483. Edelman J held that in the context of directors’ duty of care and diligence under s.180(1) of the Australian Corporations Act 2001, the scope of possible harm to the corporation is not limited to pecuniary loss and might extend to unlawful conduct which can cause non-pecuniary consequences for a corporation. Hence, “*the foreseeable risk of harm to the corporation which falls to be considered in s 180(1) is not confined to financial harm. It includes harm to all the interests of the corporation. The interests of the corporation, including its reputation, include its interests which relate to compliance with the law.*” (§483).⁶⁹

41. It is also relevant to mention the “business judgment” rule, pursuant to which the Hong Kong courts are slow to interfere with the business judgments and decisions of

⁶⁶ Ibid, p.16, cf **O'Donnell v Commonwealth**, VID482/2020 (Federal Court of Australia), **Massachusetts v ExxonMobil**, 1984CV03333 (Mass. Super. Ct), and **New York v ExxonMobil**, 452044/2018 (N.Y. Sup. Ct.)

⁶⁷ Ibid, p.16. See for example ClientEarth’s complaint against BP in the UK in 2019 <http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20191204_NA_complaint-1.pdf>, and a complaint brought by the Australasian Centre for Corporate Responsibility against the energy company Santos Limited, alleging that Santos’ net zero target and strategy are misleading <<http://climatecasechart.com/climate-change-litigation/non-us-case/australasian-centre-for-corporate-responsibility-v-santos/>>.

⁶⁸ It is of course possible for non-pecuniary losses and pecuniary losses to result from the same breach. Reputational losses may in turn lead to pecuniary losses, for example where a director’s breach of duties causes negative impact to a company’s reputation, which in turn leads to financial loss through cancellation of client contracts.

⁶⁹ Mr. and Mrs. Cassimatis’s appeal to the Full Federal Court was dismissed in **Cassimatis v Australian Securities and Investments Commission** [2020] FCAFC 52.

directors, if exercised in good faith and not for irrelevant purposes.⁷⁰ However, there are limits to the principle of judicial non-interference with *bona fide* management decisions, including that the director should have taken steps to apprise him or herself of the relevant information in relation to the company's business.⁷¹

42. In the climate change context, whilst directors may gain some degree of protection from the business judgment rule, it by no means provides a *carte blanche*, since directors of companies potentially affected by material climate change risks should remain obliged to be properly informed as to those risks, to genuinely take those risks into account when making business decisions, and to reach *bona fide* management decisions which properly consider such risks. Furthermore, there may be increased risk for directors of certain types of companies such as issuers which are subject to ESG disclosure requirements (see **Section D** below), other regulated entities to whose attention climate-change risks have been specifically drawn (see above), and companies which have been identified by the TCFD as the having the highest likelihood of climate-related financial impacts.⁷²
43. For completeness, ss.728 and 729 of the Companies Ordinance provide a statutory route for an application by members or creditors of a company to apply to court where their interests have been adversely affected by certain conduct, which expressly includes a breach of fiduciary or other duty owed to the company by a director. The remedies available include injunction⁷³ and damages, though the damages provision has been held to be available only as an adjunct to injunctive relief, rather than a free-standing damages remedy available to creditors or shareholders.⁷⁴ Furthermore, the remedy can be available in respect of non-Hong Kong companies which have established a place of business in Hong Kong.⁷⁵

⁷⁰ **Wong Luen Hang & Another v Chan Yuk Lung & Others**, supra, at §26.

⁷¹ **Sanju Environmental Protection (Hong Kong) Limited v Wang Lishan and Ors** [2021] HKCFI 1503 per Linda Chan J at §§36 and 37.

⁷² Namely, companies in the (i) energy, (ii) transportation, (iii) materials and buildings, and (iv) agriculture, food and forest products industries. TCFD, "Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures", June 2017, p. 16 <<https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>>.

⁷³ Including *quia timet* injunctions, see **Lee Chi Yuen Arctic v Lau Siu Ming.**, unrep. HCMP 778/2016, (6 May 2016) §9.

⁷⁴ **Re L & A International Holdings Ltd** [2020] 4 HKLRD 544 §§69-77, 79.

⁷⁵ Under s.722(1) of the Companies Ordinance, "company" under ss.728-729 is defined to include non-Hong Kong companies. See for example **Sanju Environmental Protection (Hong Kong) Limited v Wang Lishan and Ors**, supra, in which injunctive relief was granted in respect of a Cayman Islands company which was registered as a non-Hong Kong company under Part 16 of the Companies Ordinance, and which was listed on the main board of the SEHK.

C.3 Disclosure under the Companies Ordinance (Cap. 622)

44. In addition to the aforementioned directors' duties, under the Companies (Directors' Report) Regulation,⁷⁶ Hong Kong company directors are statutorily required to annually publish a directors' report which outlines the state of the company's business operations.
45. Further, ss.388, 389 and Schedule 5 of the Companies Ordinance mandate all Hong Kong-incorporated companies "*to the extent necessary for an understanding of the development, performance or position of the company's business*" to include in the business review section of their annual directors' reports:-
- (1) a discussion of their environmental policies and performance;
 - (2) a discussion of their compliance with relevant laws and regulations that have a significant impact on them; and
 - (3) an account of their key relationships with employees, customers and suppliers and others that have a significant impact on them and on which their success depends.
46. A director who fails to take all reasonable steps to procure the compliance with s. 388(1) and (2) of the Companies Ordinance (including the inclusion of the matters outlined at §§45(1) to 45(3) in the directors' report), or wilfully fails to do so, may be liable to criminal sanction.⁷⁷
47. It should be noted, however, that certain companies are exempt from the aforesaid reporting requirement. For example, small private companies would likely qualify for simplified financial reporting and are thus exempt from this disclosure obligation. Additionally, shareholders can unanimously agree in writing for the company to be exempt from such reporting requirement for the financial year.⁷⁸

⁷⁶ As enacted under s.452(3) of the Companies Ordinance.

⁷⁷ Under s.388(6), a director of a company who fails to take all reasonable steps to procure the compliance with s.388(1) and (2) commits an offence and may be liable to a fine up to HK\$150,000. Further, under s.388(7) a director who wilfully fails to take all reasonable steps to secure compliance with s.388(1) and (2) commits an offence and may be liable to a fine up to HK\$150,000 and to imprisonment for up to 6 months.

⁷⁸ See Part 9 of the Companies Ordinance, in particular ss. 388(3)-(4) and 389.

48. Notwithstanding this, insofar as the disclosure obligation under Schedule 5 is applicable, the provision for directors to include in their directors' report a discussion of their environmental policies and performance, serves to focus the directors' minds on those issues at least once a year.

D. Listed Companies

49. With respect to listed companies in Hong Kong (and, as the case may be, companies applying to be listed in Hong Kong), recent developments in the Listing Rules, in particular in the disclosure regime thereunder, mean that directors of Hong Kong listed companies are mandated to consider (at board level) climate change risks not only for providing ESG or climate change disclosure, but also as a matter of practical effect, in the discharge of their directors' duties.
50. At the outset, it is important to note that the Listing Rules do not have statutory force. However, breaches of the listing rules may result in disciplinary sanction imposed by the SEHK. In this regard, the SEHK has recently introduced a wider range of sanctions, aimed at lowering the threshold for the issuance of public statements regarding individuals, and ensuring that disciplinary action can be brought against a broader range of individuals, including members of senior management, if they cause or knowingly participate in a contravention of the Listing Rules.⁷⁹ The revised Listing Rules set out in the Disciplinary Consultation Conclusions are implemented with effect from 3 July 2021, and provide for the following possible sanctions:⁸⁰
- (1) issue a private reprimand;
 - (2) issue a public statement involving criticism;
 - (3) issue a public censure;

⁷⁹ SEHK, "Review of Listing Rules Relating to Disciplinary Powers and Sanctions", May 2021 <[https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Conclusions-\(May-2021\)/cp202008cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Conclusions-(May-2021)/cp202008cc.pdf?la=en)>

⁸⁰ Main Board Listing Rules 2A.9-2A.10 and GEM Listing Rules 3.10 - 3.11, cf Amendments to the Main Board Listing Rules pp.1-4 <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-Main-Board-Listing-Rules/2021/Update-No-132/mb_132_attachment.pdf?la=en>, Amendments to the GEM Listing Rules, pp.1-4 <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-GEM-Listing-Rules/2021/Update-68/gem_68_attachment.pdf?la=en>

- (4) state publicly that in the SEHK's opinion the occupying of the position of director or senior management of a named listed issuer or any of its subsidiaries by an individual may cause prejudice to the interests of investors;
 - (5) in the case of serious or repeated failure by a director to discharge his responsibilities under the Listing Rules, state publicly that in the SEHK's opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries;
 - (6) deny the facilities of the market to a listed issuer for a specified period and/or until fulfilment of specified conditions and prohibit dealers and financial advisers from acting or continuing to act for that issuer;
 - (7) suspend trading in the listed issuer's securities or any class of its securities;
 - (8) cancel the listing of the listed issuer's securities or any class of its securities;
 - (9) ban a professional adviser or a named individual employed by a professional adviser from representing any or a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;
 - (10) recommend reporting the conduct of the party in breach to the SFC or another regulatory authority, whether in Hong Kong or overseas (for example, the Financial Secretary or any professional body);
 - (11) order rectification or other remedial action to be taken within a stipulated period; and
 - (12) take, or refrain from taking, such other action as it thinks fit, including making public any action taken.
51. It is further notable that under s.214 of the Securities and Futures Ordinance (Cap.571) (the "SFO"), the SFC may apply to the court where it appears that the business or affairs of a listed corporation (which could be a Hong Kong or a non-Hong Kong-incorporated corporation listed on the SEHK⁸¹) have been conducted in certain specified ways,

⁸¹ For example, **Securities and Futures Commission v Shandong Molong Petroleum Machinery Co Ltd** [2021] HKCFI 497, which involved a joint stock company incorporated in the PRC and listed in the SEHK and the Shenzhen Stock Exchange (Schedule §10).

prejudicial to the interests of its members. The conduct covered includes misfeasance or other misconduct towards the corporation or its members, conduct resulting in members or part of them not having been given all the information with respect to the corporation's business or affairs which they might reasonably expect, and conduct which is unfairly prejudicial to the members or part of the members.

52. On such an application, the court has power to make a wide variety of orders, including requiring or restraining the carrying out of acts, ordering that the corporation bring proceedings in its own name, and barring directors from acting as such for a specified period. Though the cases in which s.214 is invoked tend to involve rather serious misconduct, the provision has been held sufficiently wide to cover directors who have failed to exercise due skill and care, and may potentially apply where the directors procure or allow breaches of the Listing Rules.⁸²
53. In addition, a breach of the Listing Rules can in an appropriate case be ground for members to seek an unfair prejudice remedy under s.724 of the Companies Ordinance, which provision can apply to non-Hong Kong companies that have established a place of business in Hong Kong.⁸³

D.1 Fiduciary Duties and Duty of Care

54. Directors of Hong Kong companies which are listed, owe to the company the same fiduciary duties and duty of care and diligence, as are owed by private companies under Hong Kong law: see outline at **Section C.1** above. However, three additional points should be made with respect to directors of listed companies.
55. **First**, the Listing Rules require directors of listed companies to, amongst other things:
 - (1) ensure compliance with the Listing Rules (which includes all of the ESG and climate change related disclosure obligations under the Listing Rules, discussed below);⁸⁴

⁸² **SFC v Fung Chiu & Ors** [2009] 6 HKC 423 *per* Chu J (as she then was) at §§20-22, 50-53.

⁸³ For example, **Luck Continent Ltd v Cheng Chee Tock Theodore** [2013] 4 HKLRD 181. Under s.722(1) of the Companies Ordinance, "company" under ss.724-725 (which pertain to the unfair prejudice remedy) is defined to include non-Hong Kong companies.

⁸⁴ Main Board Listing Rules 3.16 (GEM Listing Rules 5.03)

- (2) fulfil fiduciary duties and duties of care, skill and diligence (which are framed in the Listing Rules in terms which mirror the duties applicable under the general law in Hong Kong);⁸⁵ and
- (3) take an active interest in the issuer’s affairs, obtain a general understanding of its business and follow up anything untoward that comes to his/her attention.⁸⁶
56. The Listing Rules expressly remind directors that if they fail to discharge their duties and responsibilities, they may be disciplined by the SEHK and may attract civil and/or criminal liabilities under Hong Kong or overseas law.
57. Notably, these requirements in the Listing Rules apply to companies which are listed on the SEHK, even if they are non-Hong Kong-incorporated companies.
58. **Second**, the standard of conduct required of directors in a particular fact-set may be affected, and may be potentially rendered more onerous, by factors specific to listed companies, including the provisions and requirements of the Listing Rules.
59. In this regard, insofar as fiduciary duties are concerned, Mimmie Chan J held in **Re Tysan Holdings Ltd** supra, at §38 that “*Directors of public companies are under the same if not more onerous duties, bearing in mind that they are governed by the Listing Rules, and considering the fact that public investors look to them for the proper governance of the company and its compliance with the Listing Rules*”.⁸⁷
60. By way of example, as outlined at **Section D.3** below, in view of the various ESG disclosure requirements which are the overall responsibility of the board, directors of listed companies are in practical effect mandated by the Listing Rules to take into consideration climate change related risks. Accordingly, in considering whether a director of a listed company has breached his/her duty of care, skill, and diligence, applying the dual objective/subjective test, a reasonable director of a listed company would or should be knowledgeable about climate change related risks (as he/she is obliged to take those into consideration under the Listing Rules under ESG Disclosure requirements), and further any director who has previously prepared ESG reports would have subjective knowledge of climate change risks.

⁸⁵ Main Board Listing Rules 3.08 (GEM Listing Rules 5.01)

⁸⁶ Ibid.

⁸⁷ For a recent summary of the duties owed by directors of listed companies, see also **Chan Tat Joel Ma Ji v The Stock Exchange of Hong Kong Limited** (*supra*) at §§69-77.

61. In other words, in light of the regulatory environment, it is difficult to see that the director of a listed company could act reasonably, if he/she fails to inform him or herself of relevant climate change risks, or fails to take those risks reasonably into account in managing the company's affairs. Furthermore, the same regulatory environment has at least the potential to present obstacles to arguments that resulting losses related to climate change risks, were not foreseeable or were too remote.
62. **Third**, where there is a breach of directors' duties referred to under the Listing Rules, the possible consequences faced by directors of Hong Kong-incorporated companies, and non-Hong Kong-incorporated companies, differ.
63. For Hong Kong-incorporated companies, in addition to sanctions by the SEHK such as public reprimands (see §50(2) above), the company may have a cause of action against the directors under Hong Kong law for breach of duty. However, for non-Hong Kong-incorporated companies, the latter type of remedy would not generally be available under Hong Kong law, and its availability would likely depend on the law of the company's place of incorporation.

D.2 Director's Report

64. Following public consultations,⁸⁸ the disclosure requirements outlined at §45 above have been incorporated into the Listing Rules⁸⁹ as mandatory disclosure requirements for all companies listed on the SEHK, regardless of their place of incorporation in 2015.

D.3 ESG Guide

65. The SEHK's first ESG Guide came into effect for issuers with financial years ending after 31 December 2012, following public consultations.⁹⁰ The 2012 reporting guide provided for the voluntary disclosure of ESG information.

⁸⁸ Hong Kong Exchanges and Clearing Limited, "Consultation Paper Review of Listing Rules on Disclosure of Financial Information with reference to the new Companies Ordinance and Hong Kong Financial Reporting Standards and Proposed Minor/ Housekeeping Rule Amendments.", August 2014 <<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2011-to-2015/August-2014-Consultation-Paper/Consultation-paper/cp201408.pdf>>

⁸⁹ Appendix 16 of the Main Board Listing Rules, paragraph 28(2)(d) (GEM Listing Rule 18.07A(2)(d))

⁹⁰ Hong Kong Exchanges and Clearing Limited, "Consultation Paper Environmental, Social and Governance Reporting Guide", December 2011 <<https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201112.pdf>>, and Hong Kong Exchanges and Clearing Limited, "Consultation Conclusions Environmental, Social and Governance

66. Following a consultation on the review of the ESG Guide,⁹¹ a revised ESG Guide was issued in 2015.⁹² Some significant changes were introduced in the 2015 revision, including the introduction of “comply or explain” provisions in the ESG Guide, requiring issuers to disclose various aspects pertaining to ESG (or provide considered reasons to explain why good corporate governance was achieved by means other than strict compliance with disclosure requirement),⁹³ such as greenhouse gas emissions, total hazardous waste produced, energy and resource consumption, and significant impacts of activities on the environment and natural resources and actions taken to manage them.⁹⁴ Further, the Listing Rules then required listed companies to publish an ESG report on an annual basis (covering the same period as its annual report), which had to state whether it had complied with the “comply or explain” provisions of the ESG Guide for the relevant financial year.⁹⁵
67. In 2020, following another round of consultation,⁹⁶ further, more stringent changes were introduced in the latest version of the ESG Guide.⁹⁷ These include, *inter alia*, the following:
- (1) Express provision that the “*board has overall responsibility for an issuer’s ESG strategy and reporting.*” (emphasis added);⁹⁸

Reporting Guide”, August 2012 <<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2011-to-2015/December-2011-Consultation-Paper/Conclusions/cp201112cc.pdf>>

⁹¹ Hong Kong Exchanges and Clearing Limited, “Consultation Conclusions Environmental, Social and Governance Reporting Guide”, July 2015 <<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2011-to-2015/July-2015-Consultation-Pape/Consultation-paper/cp201507.pdf>>.

⁹² Amendments to ESG Guide 2015 <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/mb_esg_1601.pdf> <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/gem_esg_1601.pdf>.

⁹³ Corporate Governance Code and Corporate Governance Report, Appendix 14 of the Main Board Listing Rules <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_3828_VER10.pdf> and Appendix 15 of the GEM Listing Rules <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Continuing-Obligations-and-Annual-Listing-Fees/Continuing-Obligation-Fee/appendix_15.pdf?la=en>.

⁹⁴ See Appendix at Legislative Council Paper CB(1)994/15-16(04) “Environmental, Social and Governance Disclosure Requirements of Listed Companies”.

⁹⁵ Main Board Listing Rule 13.91 (GEM Listing Rule 17.103) (previous version).

⁹⁶ Hong Kong Exchanges and Clearing Limited, “Consultation Conclusions Environmental, Social and Governance Reporting Guide”, December 2019.

⁹⁷ Main Board Listing Rules Appendix 27 <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_3841_VER20.pdf>, GEM Listing Rules Appendix 20 <https://en-rules.hkex.com.hk/sites/default/files/net_file_store/HKEX4476_1892_VER20.pdf>.

⁹⁸ Main Board Listing Rules Appendix 27 §10 and GEM Listing Rules Appendix 20 §10.

- (2) For the first time, mandatory disclosure requirements, including:
- (i) a board statement setting out the board's consideration of ESG matters, including: the board's oversight of ESG issues; the board's ESG management approach and strategy; the process used to evaluate, prioritise and manage material ESG-related issues (including risks as to the issuer's business); and how the board reviews progress made against ESG-related goals and targets, with an explanation of how they relate to the issuer's business.⁹⁹ This change was introduced following SEHK's consultation report which observed that ESG reports from a majority of the sample listed issuers contained little or no description of board involvement;¹⁰⁰
 - (ii) an explanation of how the issuer has applied the reporting principles in the preparation of the ESG report (the principles being "materiality", "quantitative" and "consistency");¹⁰¹ and
 - (iii) an explanation of reporting boundaries of ESG reports, describing the process used to identify which entities or operations are included in the ESG report;¹⁰²
- (3) The "comply or explain" disclosure category is expanded to include: (i) a new aspect under subject area "Environmental" requiring disclosure of the significant climate-related issues which have impacted, and those which may impact, the issuer, and the actions taken to manage them;¹⁰³ and (ii) disclosure obligation of all "Social" KPIs;¹⁰⁴ and

⁹⁹ Main Board Listing Rules Appendix 27 §13 and GEM Listing Rules Appendix 20 §13.

¹⁰⁰ Hong Kong Exchanges and Clearing Limited, "Analysis of Environmental, Social and Governance Practice Disclosure in 2018", December 2019 §7 <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Environmental-Social-and-Governance/Exchange-Publications-on-ESG/esgreport_2018.pdf>.

¹⁰¹ Main Board Listing Rules Appendix 27 §14 and GEM Listing Rules Appendix 20 §14.

¹⁰² Main Board Listing Rules Appendix 27 §15 and GEM Listing Rules Appendix 20 §15.

¹⁰³ Main Board Listing Rules Appendix 27 Part C, Aspect A4; and GEM Listing Rules Appendix 20 Part C, Aspect A4.

¹⁰⁴ Main Board Listing Rules Appendix 27 §4(d); and GEM Listing Rules Appendix 20 §4(d).

- (4) The “Environmental” key performance indicators (KPIs) are amended to require disclosure of relevant targets, such as regarding emissions, energy use and water efficiency, waste reduction, etc. and steps taken to achieve them.¹⁰⁵
68. These new changes are significant for the following reasons, amongst others.
69. **First**, there is now an increased focus on encouraging and compelling directors of issuers to focus on ESG-related disclosure and climate change risks, including an express statement that the directors have the overall responsibility for an issuer’s ESG strategy and reporting.¹⁰⁶
70. Moreover, the various requirements for disclosure are reasonably specific and detailed. For example, focusing on the requirement to disclose the policies and compliance with relevant regulations on carbon emissions, which is a “comply or explain” disclosure category,¹⁰⁷ issuers are obliged to disclose (or otherwise, provide considered reasons to explain why good corporate governance was achieved by means other than strict compliance with disclosure requirement) six specific KPIs, namely: (i) the types of emissions and respective emissions data; (ii) direct and energy indirect greenhouse gas emissions; (iii) total hazardous waste produced; (iv) total non-hazardous waste produced; (v) description of emissions target(s) set and steps taken to achieve them; and (vi) description of how hazardous and non-hazardous wastes are handled, and a description of reduction target(s) set and steps taken to achieve them. It is clear that the issuers (in particular, the boards of issuers) are obliged to pay particular attention, and give consideration to each of the comprehensive list of items under each disclosure category.
71. Furthermore, issuers are now required to disclose their reporting principles of “materiality”, in particular: (i) the process to identify and the criteria for the selection of material ESG factors; (ii) if a stakeholder engagement is conducted, a description of significant stakeholders identified, and the process and results of the issuer’s stakeholder engagement.¹⁰⁸ Hence, the mandated disclosure of the “materiality”

¹⁰⁵ Main Board Listing Rules Appendix 27 Part C, KPI A2.4; and GEM Listing Rules Appendix 20 Part C, KPI A2.4.

¹⁰⁶ See Interview by the Sustainable Finance Initiative with Katherine Ng, MD, Chief Operating Officer and Head of Policy, Listing Division at Hong Kong Exchanges and Clearing Limited <<https://sustainablefinance.hk/hong-kongs-market-regulator-tightens-esg-rules-and-calls-on-investors-to-act-now/>>.

¹⁰⁷ Main Board Listing Rules Appendix 27 Part C, Aspect A1; and GEM Listing Rules Appendix 20 Part C, Aspect A1.

¹⁰⁸ Main Board Listing Rules Appendix 27 §14; and GEM Listing Rules Appendix 20 §14.

exercise reinforces the practical effect of compelling the boards of issuers to actively and systematically consider and address ESG factors and climate change risks, and how these affect a listed company. The approach to “materiality” is further discussed at §§74(2)-74(4) below.

72. **Second**, it is notable that these requirements apply to all issuers, regardless of their places of incorporation. This means that foreign or mainland Chinese companies listed on the SEHK, or subject to an application to be listed on the SEHK, are obliged to comply with these disclosure obligations.
73. **Third**, the latest ESG disclosure requirements for listed companies are also consistent with (i) the Hong Kong regulators’ approach in placing climate change considerations at the forefront of their approach in terms of sustainable banking and ESG-related issues, as outlined above at §§17 to 29; and (ii) a trend or expectation in Hong Kong for ESG disclosure to be made, not only for listed companies, but potentially certain other private corporations along the lines of TCFD requirements (see §§24, 27 and 28(4) above).
74. **Finally**, whilst there have undoubtedly been significant developments in the ESG disclosure regime, we highlight also the following points:
 - (1) Whilst strictly speaking, any breaches of ESG disclosure requirements (whether under the mandatory provisions or the “comply or explain” requirements) would be a breach of the Listing Rules attracting possible sanctions by the SEHK (see §50), we are not aware of any disciplinary sanction having been taken to date with respect to such breaches. In a 2018 report by the SEHK, it was observed that out of the ESG reports sampled, many companies did not comply with the “comply or explain” provisions, i.e. did not proffer any explanation for the lack of disclosure.¹⁰⁹ Whilst the 2018 report prompted the SEHK to introduce further mandatory disclosure requirements in 2020, the extent of future compliance, and of regulatory consequences for non-compliance, remains to be seen.
 - (2) Whilst the mandatory requirement to disclose reporting principles such as “materiality” effectively requires all boards of issuers to focus their minds on assessing and prioritising ESG-related risks, we note that “materiality” is

¹⁰⁹ SEHK, “Analysis of Environmental, Social, and Governance Practice Disclosure in 2018” §§9-10 <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Environmental-Social-and-Governance/Exchange-Publications-on-ESG/esgreport_2018.pdf>

defined in a manner which appears to provide to issuers some degree of flexibility. The materiality assessment was most relevantly recommended by TCFD's report in 2017. In that report, the task force did not define materiality but rather deferred to existing reporting standards and legal requirements, stating that "*organizations should determine materiality for climate-related issues consistent with how they determine the materiality of other information included in their annual financial filings*".¹¹⁰

- (3) With respect to ESG disclosure, materiality is defined under the Listing Rules to be the threshold at which ESG information is "*determined by the board to be sufficiently important to investors and other stakeholders that it should be reported and considered in determining the scope and content of an entity's reporting*".¹¹¹ Elsewhere in the Listing Rules, there does not appear to be a detailed definition of "materiality".¹¹²
- (4) Accordingly, the approach to materiality appears to provide considerable flexibility to issuers since, in effect: (i) it is for the boards of issuers to determine what is sufficiently important for investors to know; and (ii) on the basis of this materiality assessment, issuers can choose not to make certain disclosures under the "comply or explain" disclosure category on the basis of immateriality.¹¹³ This may raise concerns as to extent to which issuers are able to avoid making ESG related disclosures, by reference to their own internal assessments of materiality, and as to the extent to which effective regulatory oversight might be accordingly curtailed.¹¹⁴

¹¹⁰ TCFD, "Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures", June 2017, p. 33 <<https://assets.bbhub.io/company/sites/60/2020/10/FINAL-2017-TCFD-Report-11052018.pdf>>

¹¹¹ Main Board Listing Rules Appendix 27 §11(1); and GEM Listing Rules Appendix 20 §11(1).

¹¹² See e.g. Main Board Listing Rules §2.16; and GEM Listing Rules §2.16. Material interest in a transaction has no exact definition, as "*There is no benchmark for materiality of an interest nor may it necessarily be defined in monetary or financial terms. The materiality of an interest is to be determined on a case by case basis, having regard to all the particular circumstances of the transaction concerned.*"

¹¹³ SEHK, "Analysis of Environmental, Social, and Governance Practice Disclosure in 2018" §9 <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Environmental-Social-and-Governance/Exchange-Publications-on-ESG/esgreport_2018.pdf>

¹¹⁴ In a similar vein, in an interview with Katherine Ng, MD, chief operating officer and head of policy, Listing Division at Hong Kong Exchanges and Clearing Limited, Ms. Ng stated that one of challenges of SEHK's ESG- e-training course is to urge directors of companies to take ESG disclosure requirements seriously. <<https://sustainablefinance.hk/hong-kongs-market-regulator-tightens-esg-rules-and-calls-on-investors-to-act-now/>>

- (5) As noted at §24 above, the TCFD has more recently issued guidelines stating that the disclosure of certain emissions data should be carried out independently of a materiality assessment. While it remains to be seen whether this requirement will be incorporated into mandated disclosures by the HKSE, HKMA and the SFC, issuers and regulated entities should be aware of the possibility of future developments along these lines.

75. In addition to the above legal and regulatory considerations, it is notable that unsatisfactory ESG disclosure may result in adverse reputational risks to an issuer. Related to this point, stakeholders and potential stakeholders may take into account a company's consideration of climate issues in deciding whether to invest, which in turn may motivate listed companies to focus additional energies on addressing climate change related risks and making appropriate disclosures. The existence and extent of such considerations depends in part upon investors' demand for climate-related information. In this regard, we refer to: (i) the SFC's recent amendments to the Fund Manager Code of Conduct (see §§23 and 29 above), which was expressly made to (*inter alia*) "meet investors' growing demand for climate risk information";¹¹⁵ and (ii) on a world-wide scale, recent efforts by various coalitions of institutional investors in setting out net zero investment frameworks.¹¹⁶ These are broadly supportive of growing demand by Hong Kong investors for climate risk information, and a trend among institutional investors globally that climate change considerations form a relevant part of their investment decision-making process.

¹¹⁵ Hong Kong Securities and Futures Commission, "Consultation Paper on the Management and Disclosure of Climate-related Risks by Fund Managers", October 2020 §3 <<https://apps.sfc.hk/edistributionWeb/api/consultation/openFile?lang=EN&refNo=20CP5>>

¹¹⁶ Examples include (i) the Climate Action 100+ (a global investor coalition to drive corporate action on climate change representing investors with US\$40 trillion in assets under management), which has released its Net Zero Benchmark; and (ii) the Institutional Investor Group on Climate Change (comprising of 240 members who represent a collective €33 trillion of funds under management), which has also released its Net Zero Investment Framework for consultation to its members: see "Climate Action 100+ Issues Its First Ever Net Zero Company Benchmark of the World's Largest Corporate Emitters", 22 March 2021 <<https://www.climateaction100.org/news/climate-action-100-issues-its-first-ever-net-zero-company-benchmark-of-the-worlds-largest-corporate-emitters/>> and The Institutional Investors Group on Climate Change, "Net Zero Investment Framework for Consultation", August 2020 <<https://www.iigcc.org/download/net-zero-investment-framework-consultation/?wpdmdl=3602&masterkey=5f270ef146677>>.

E. Conclusions

76. Our conclusions are summarised at §4 above.

Dated this 19th day of October 2021



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