

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with our proposal to amend Rule 13.91 to require issuers to disclose in their annual reports or ESG reports whether they have complied with the “comply or explain” provisions in the ESG Guide and if they have not, they must give considered reasons in the ESG reports?

Yes

No

Please give reasons for your views.

Agree with the general principle of ‘comply or explain’, as it is a familiar concept to HK issuers (as it has been used with guides on other topics). It is also well understood in the field of ESG reporting, as other jurisdictions have adopted this approach.

In general the level & quality of the reporting of ESG matters reflects the organization’s management’s understanding of non-financial risks associated with the operations of the organization / Company. The imperative of ‘comply or explain’ needs to be required in order that investors can understand why such matters are not being considered by the Board and management of the company. The necessity also comes from the reality that HKEx needs to raise the quality of reporting to that of competing markets.. Further, if HKEx does not encourage companies to raise the quality of ESG reporting it risks falling behind other jurisdictions

We query if the option should be given to disclose non-compliance in the annual report or ESG report, thereby making non-compliance disclosures the same as compliance disclosures. Issuers should be encouraged to make disclosures clear and logical, and easy/not misleading for users to understand the degree to which an issuer has complied/not complied.

We suggest that 13.91 (2) is expanded to clarify that ESG reports can be in print and or online.

While we believe the guide should remain titled ESG Guide, since it is a commonly used abbreviation, it may be helpful make reference to where the Governance or G requirements are stipulated in the Listing Rules.

2. Do you agree with our proposal to amend Rule 13.91 to require the issuer to report on ESG annually and regarding the same period covered in its annual report?

Yes

No

Please give reasons for your views.

We agree that the ESG report and annual report should cover the same period. This thereby steers companies towards the concept of integrated reporting, and more crucially, appreciating the greater value of ESG reporting, namely it should inform business strategy, be part of a continuous and ongoing circle of effort towards embracing sustainability and that the report is not an independent add on/end of itself.

Would caution against requiring ESG reporting annually as this may be to the detriment of more regular reporting, which market leaders are already under taking. International trends in ESG reporting record an increasing move towards dynamic, digital and interactive reports.

HKEx may also wish to consider including the requirement to report on ESG matters in the rules governing the listing of securities on HKEx. This would mean all future issuers will demonstrably be addressing ESG matters before they list, which will be helpful for potential investors and other stakeholders, as well as being familiar with the disclosure requirements as an issuer.

Do you agree with our proposal to include a Note under Rule 13.91 to clarify that:

- (i) an ESG report may be presented as information in its annual report, in a separate report, or on the issuer's website; and
- (ii) the issuer should publish the ESG report as close as possible to, and in any event no later than three months after, the publication of the issuer's annual report?

Yes

No

Please give reasons for your views.

Yes, although please see comments in 1 and 2 above.

3. Do you agree with our proposal to revise the introductory section of the Guide into four areas (i.e. "The Guide", "Overall Approach", "Reporting Principles" and "Complementing ESG Discussions in the Business Review Section of the Directors' Report"), and with the wording set out in Appendix II to the Consultation Paper?

Yes

No

Please give reasons for your views.

In general responses in 1 and 2 above, regarding proposed amendments to Main Board Rule 13.91 above should be taken to apply in the following feedback on proposed amendments to the Guide.

We fully agree with the comment made in para 101 regarding ‘Adopting a more consistent approach and similar terminology to that used in... the statute will help to reduce the burden on issuers...’

Other comments on wordings set out in the referenced paragraphs of Appendix II to the Consultation Paper:

- 1) Recommend a new paragraph is inserted after current para 4 (ie to be second paragraph in Overall Approach), to make mention of the Reporting Principles set out from para 11. The concept of materiality in particular, is of paramount importance, as it focuses reports on issues that are most meaningful and important. To explain any more about the disclosures required by the guide without highlighting this overarching ‘filter’ that determines what should be reported upon, is misleading. This is emphasised in para 6 where application of the ‘materiality’ concept through encouraging disclosure of significant and substantial items, over compliance only disclosures set out in the guide.*
- 2) Recommend that this phrase in para 5 is changed from:
‘for issuers to report on in order to demonstrate how they have performed.’
To
‘for issuers to report on in order to demonstrate how they measured, managed and monitored the item.’ since the disclosures concern more than performance.*
- 3) Suggest an additional phrase is inserted in para 6 to improve understanding. After ‘assessments and decisions of’ amend sentence to read ‘internal and external stakeholders including investors, supply chain partners, clients, NGOs, government, public’*
- 4) Suggest an additional sentence is added at the end of para 7: ‘An issuer may arrange assurance of all or some of the disclosures in their ESG report, and the assurance statement should indicate the level of assurance obtained’.*
- 5) Suggest this sentence is deleted in para 9:
‘Management should provide a confirmation to the board on the effectiveness of these systems’
Since it is implicit and understood by virtue of the opening sentence and mention of Corporate Governance Code.*

We recommend HKEx considers perhaps in launch communications rather than the guide itself, reference to the increased value that companies that embrace ESG reporting and ESG strategically can enjoy. There are many independent surveys that show costs and benefits. We feel this would help companies not just see this as a compliance necessity, more it’s a way to create more value and better manage a business.

4. Do you agree with the proposed wording of the Reporting Principles (i.e. “Materiality”, “Quantitative”, “Balance” and “Consistency”) in the introductory section of the Guide, as set out in Appendix II to the Consultation Paper?

Yes

No

Please give reasons for your views.

In the spirit of paragraph 101, we encourage the principles to be applied to the ESG Guide, be harmonised with such principles that currently apply to the accounting profession in Hong Kong, as well as to definitions used in de facto international standards for ESG reporting like GRI. These would pertain to the principles of balance, comparability, accuracy, timeliness, reliability, and clarity, along with tests that can be used to help achieve the appropriate quality of the reported information.

The value of such alignment will make it easier to develop, apply and understand sustainability/ ESG/ non-financial disclosures as they will be based on more familiar financial accounting concepts. This also evolves ESG reporting as being an extension from ongoing processes rather than an add-on – it is another practice that companies naturally go through yearly as part of good governance.

5. Do you agree with the proposed wording in the Guide linking it to Appendix 16 to the Main Board Listing Rules (in relation to the requirement for ESG discussions in the business review section of the directors’ report), as set out in Appendix II to the Consultation Paper?

Yes

No

Please give reasons for your views.

We fully support the cross referencing of existing rules and laws to the revised ESG Guide. We think this is more efficient and less confusing for users.

We do however consider that the interaction of the Guide and Appendix 16 could be made clearer.

If it is the intention that the ESG content to be disclosed in the Business Review section is not to be repeated in the ESG report, then this section should state that the ESG report should make reference to the content in the Business Review.

A preferable approach to us would be for the ESG content to be repeated, so that the ESG Report is complete and stands alone as one comprehensive source on material ESG matters as well as meeting the legal requirements of the new Companies Ordinance.

This section could also make reference to the fact the ESG-related information contained in the ESG Report and the Directors Report should be consistent.

Suggest the wording of revised para12 is changed to reflect that not all companies' directors' reports must contain a business review, since the Ordinance applies to all companies except those that are exempt.

6. Do you agree with the proposal to re-arrange the Guide into two Subject Areas (A. Environmental and B. Social) and re-categorise “Workplace Quality”, “Operating Practices” and “Community Involvement” under Subject Area B?

Yes

No

Please give reasons for your views.

We are content with this suggestion to restructure the contents of the guide, not least because it then maps to the name of the guide.

It also maps well to the international de facto standard for ESG reporting, GRI G4 which uses three categories: economic, environmental and social,

This approach will thereby make it easier and more efficient for companies to use the same data, policies and disclosures to meet the needs of many ESG disclosure frameworks and guides.

It also gives appropriate profile to arguably the most urgent item for Hong Kong (and beyond): environment.

7. Do you agree with the proposal to change the heading “Workplace Quality” to “Employment and Labour Standards”?

Yes

No

Please give reasons for your views.

The new heading is broader, all –encompassing of relevant issues today and better reflects the content that falls under this heading. Although, if we are to shift the mindset away from sheer compliance, perhaps we can consider changing the term from ‘Employment and Labour Standards’ to ‘Employment and Labour Practices’.

For the same logic, we suggest the heading ‘The Environment and Natural Resources’ is changed to ‘Impact to the Environment and Natural Resources’. For the ‘resources’ element, this revised heading also serves to differentiate and clarify what ‘resources’ fall under this heading and which fall under re-numbered Aspect A2 ‘Use of Resources’.

8. Do you agree with our proposal to upgrade the General Disclosures for each Aspect of the ESG Guide to “comply or explain”?

Yes

No

Please give reasons for your views.

A lot of this upgrade in disclosure is likely to overlap with content that is to be disclosed according to the new Business Review of the Companies Ordinance.

Companies that must comply with that requirement, should find compliance with this raised obligation relatively straightforward.

Should any issuers claim exemption from preparing a business review, as set out in section 388(3), then they may find this an additional burden and a challenge to meet HKEx's suggested timeline.

We query the timeline that HKEx is advocating and the lead time that that will afford companies to prepare. The consultation period on the revised ESG Guide ends on 18 Sept 2015, but HKEx is targeting the new Guide to affect financial years commencing on or after 1 January 2016 (per para 9). After allowing for time to distil feedback comments and issue the revised ESG Guide, there will be very little lead time for companies exempt from preparing a business review to prepare.

As with all the 'upgrading' of disclosures in the Guide, we fully support the evolution of this guide for Hong Kong. It is essential for Hong Kong that issuers continue down this path of transparent disclosures of non-financial information for many reasons: Hong Kong has to keep up with its peers being one of the largest stock exchanges in the world; Hong Kong serves such a massive role as the international financial centre for the Mainland, which has various strong commitments to environment policy and impact etc.

9. Do you agree with our proposal to amend the wording of paragraph (b) under current Aspects A1, A2, A4, B1, C2 and C3, re-numbered Aspects A1, B1, B2, B4, B6 and B7, to “compliance with relevant laws and regulations that have a significant impact on the issuer...” in order to align it with the language of the relevant provisions of the Companies Ordinance?

Yes

No

Please give reasons for your views.

It makes sense to make the new ESG Guide align directly to the legal requirements.

This will make it easier to apply the Guide, it will also keep data consistent and comparable whether it is collected for the purpose of the Companies Ordinance or ESG Guide.

10. Do you agree with our proposal to revise proposed Aspect A1 (“Emissions”) by upgrading to “comply or explain” the current KPIs B1.1, B1.2, B1.4 and B1.5, re-numbered KPIs A1.1, A1.2, A1.4 and A1.5, concerning disclosure of emissions and non-hazardous waste?

Yes

No

Please give reasons for your views.

We agree with this upgrade to comply or explain. This should enhance Hong Kong’s ability to demonstrate capacity to effect real carbon management.

Independent research indicates the urgent need for Hong Kong companies to reduce carbon emissions and disclose information on managing climate risk (This research was done by Trucost and released earlier in 2015. They analyzed carbon reporting and performance by 100 companies listed on the Hong Kong Stock Exchange, based on a performance period of three years (2011 to 2013) For more: <http://www.trucost.com/news-2015/203/Hong-Kong/carbon-disclosure>).

Some issuers may however have problems in collecting this data. For example, where issuers have operations outside of Hong Kong, and disclosures on emissions of non hazardous waste may not be measured/available.

11. Do you agree with our proposal to upgrade to “comply or explain” the current KPIs B1.3 and B1.6, re-numbered KPIs A1.3 and A1.6, concerning disclosure of hazardous waste?

Yes

No

Please give reasons for your views.

We recognise the difficulty in identifying, separating, tracking and accounting for hazardous waste especially for HK-listed companies with operations outside of HK. However, in light of greater transparency, and preparedness for monitoring, we support the comply or explain rule for hazardous waste.

As first steps, issuers can explain through a narrative how they are starting to address this requirement, and take the same approach as they did when they started to disclose GHG emissions, disclosing increasing amounts of information over time.

Given that regulation in Mainland China remains staunch with environmental commitments as evidenced by the New Environmental Protection Law (which has particular focus on anti-pollution practices), Hong Kong companies will find benefit in aligning earlier rather than later because disclosure in these areas will sooner or later become mandatory in the Mainland.

It is our view that companies should not only abide by but also anticipate, the implications of this maturing set of policies from the Mainland and embrace environmental transparency. This seems an appropriate approach for Hong Kong issuers for many reasons, including being competitive, taking a responsible approach to a global problem and more.

12. Do you agree with our proposal to upgrade to “comply or explain” the KPIs under the current Aspect B2, re-numbered Aspect A2, “Use of Resources”?

Yes

No

Please give reasons for your views.

Embedding the discipline in separating, monitoring and reporting on hazardous waste allows companies to better manage this issue and track progress on making improvements. We feel it is appropriate to include this disclosure under ‘Use of Resources’.

13. Do you agree with our proposal to upgrade to “comply or explain” the current KPI B3.1,

re-numbered KPI A3.1, concerning disclosure of the significant impacts of activities on the environment and natural resources?

Yes

No

Please give reasons for your views.

Yes, we feel this is appropriate given the importance and priority of this topic to Hong Kong (and the world).

14. Do you agree with our proposal to incorporate gender disclosure in proposed Subject Area B. Social, under the sub-heading “Employment and Labour Standards”?

Yes

No

Please give reasons for your views.

We agree with the proposal to incorporate gender disclosures in Aspect B1 and recommend calling it “Employment and Labour Practices”

This will bring the ESG Guide further in line with other international standards like GRI G4.

This will also resonate and align well with increasingly popular local Hong Kong issues, such as diversity in the Boardroom.

It does however represent an additional disclosure over and above the first ESG Guide issued in 2012 (all be it, not at a ‘comply or explain level’), so it may warrant highlighting eg when the new guide is launched.

We suggest HKEx consider expanding re-numbered Aspect B4 to include the need to make general disclosures (on a ‘comply or explain’ basis) and KPIs (recommended disclosures) about labour relations and standards. At present, we feel the disclosure for Labour Standards concerns only the exceptional negative occasions, rather than the normal operations. Other ESG reporting frameworks, like GRI, encapsulate more on labour relations and standards.

- End -