

**Submission for Public Consultation on the Review of the Environmental, Social
and Governance Guide**

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Introduction

1. The Centre for Comparative and Public Law (CCPL) at the University of Hong Kong welcomes the opportunity to comment on the Hong Kong Exchange (HKEx) Consultation Paper on the Review of the Environmental, Social and Governance Reporting Guide ('the Consultation Paper').
2. CCPL commends the HKEx's desire to improve the quality, sustainability and reputation of the Hong Kong market, and to align Hong Kong with international best practice related to sustainability and environmental, social and governance (ESG) reporting.
3. CCPL broadly supports most of the proposals put forward by the HKEx in its Consultation Paper including the need to upgrade many of the environmental and social disclosure requirements to require issuers to report on a 'comply and explain' basis.

Sustainability in the Context of Hong Kong's Standing as a Leading Financial Centre

4. The focus on environmental and social reporting has intensified following the UN Human Rights Council's unanimous endorsement in 2011 of the Guiding Principles for implementation of the UN 'Protect, Respect and Remedy' Framework for business and human rights (UN Guiding Principles).¹ The UN Guiding Principles emphasise that human rights are not just the responsibility of governments, but business enterprises also have a responsibility to ensure their activities do not negatively impact human rights, and to address any negative impact that may occur. The UN Guiding Principles provide recommendations for business on how to prevent and address corporate-related human rights impacts. UN Guiding Principle 12 states that 'the responsibility of business enterprises to respect human rights refers to internationally recognised human rights – understood at a minimum, as those expressed in the International Bill of Human Rights² and the principles

¹ Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UN Doc A/HRC/17/31, 21 March 2011.

² Consisting of the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR) and the Optional Protocols.



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concerning fundamental rights set out in the International Labour Organisations's Declaration on Fundamental Principles and Rights at Work.³

5. The business and human rights landscape is changing at a rapid pace. Many financial institutions have already incorporated environmental and social reporting into their risk assessments, recognising that participation in or association with environmental, labour or human rights violations, even indirectly, may negatively affect a company's profitability or reputation. Currently there are 80 financial institutions in 35 countries that have officially adopted the Equator Principles,⁴ covering over 70 percent of international Project Finance debt in emerging markets.
6. In 2014 two resolutions were tabled for adoption by the UN Human Rights Council related to the creation of an international legally binding instrument on Transnational Corporations and Other Business Enterprises with respect to human rights.⁵
7. In 2015 the UN Guiding Principles Reporting Framework was launched, setting out clear and practical guidance on reporting requirements under the UN Guiding Principles.⁶
8. In September 2015 the UN will officially launch the Sustainable Development Goals, which will come into force in January 2016.
9. These developments are noticeably absent in the discourse of corporate social and environmental responsibility in Hong Kong. Hong Kong runs the risk of falling behind these international developments, exposing its corporations to legal, reputational and financial risk and putting them at a competitive disadvantage. Hong Kong holds itself out as one of the World's leading international financial centres. It cannot afford to lag behind on these significant developments currently being played out on the international stage.
10. The structure of this paper is designed to respond to the 15 questions posed in the Consultation Paper. It also proposes amendments to the Guide to reflect what CCPL regards as important issues on sustainability that are currently

³ Article 39 of the Basic Law of the Hong Kong Special Administrative Region (the Basic Law) maintains in force the ICCPR, the ICESCR and the international labour conventions as applied to Hong Kong.

⁴ The Equator Principles are a financial industry benchmark for determining, assessing and managing environmental and social risks in projects.

(See: http://www.equatorprinciples.com/resources/equator_principles_III.pdf)

⁵ UN Draft Resolution A/HRC/26/L.1, 23 June 2014; UN Draft Resolution A/HRC/26/L.22/Rev.1, 24 June 2014

⁶ See: http://www.ungpreporting.org/wp-content/uploads/2015/02/UNGGuidingPrinciplesReportingFramework_withimplementationguidance_Feb2015.pdf



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absent from the Guide or the proposed amendments to the Guide outlined in the Consultation Paper.

'Comply or Explain'

11. CCPL agrees that the next step in the 'evolutionary process' towards comprehensive ESG reporting is to move from voluntary disclosure to one that requires issuers to report on a 'comply and explain' basis. This will introduce a level of transparency and accountability consistent with the maturity of Hong Kong as a financial market, and will encourage companies to develop and enhance policies and procedures that reflect their environmental and social responsibilities.
12. CCPL acknowledges HKEx's rationale for adopting this approach, as articulated in Chapters 1 and 2 of the Consultation Paper. However, the concept of 'comply or explain' must be fully understood by companies if HKEx's overarching objectives are to succeed; specifically companies must understand the 'explain' component of this requirement. As presently drafted the Guide provides little guidance on how a company should respond in the event that it fails to 'comply'.
13. CCPL recommends that the Guide be amended to include disclosure principles and guidelines on what must be reported in order to satisfy the requirement to 'explain'. In order to ensure that companies do not simply provide a perfunctory response, an explanation must not just clearly identify the information that is omitted, but also provide insight into how the company is thinking on the matters that it fails to report, and/or a company should be required to explain how the company's alternative arrangement or strategy supports the relevant principle under consideration. This would align Hong Kong reporting requirements with international best practice. (See: GRI G4 UN Guiding Principles Reporting Framework, Reporting Principle G).

Timing of ESG Reporting

14. CCPL agrees that ESG Reporting needs to be reported on a regular basis and be proximate enough to the events disclosed in the report. To be useful the information needs to be available in time for stakeholders to effectively integrate information into their own decision-making, and thereafter make informed decisions, and timely responses.

Medium of ESG Reporting

15. With regard to the medium of an ESG report, this should be both publicly available and readily accessible.

Reporting Principles



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16. The Hong Kong and international investment community needs to trust issuers to demonstrate a genuine commitment to ESG reporting. This is only likely to ensue if there are shared beliefs of what constitutes best practice in order for any explanation to be a meaningful alternative to compliance. CCPL recommends that the Guide be amended to provide examples of international standards that it deems to be acceptable for these purposes in order to encourage a standardized approach to reporting. For example it could reference the Global Reporting Initiative's Sustainability Reporting Guidelines, which are widely endorsed and designed to be applicable to all organizations, both large and small, across the world. Alternatively, the Guide could more explicitly draw upon international standards (for example, the GRI G4 Reporting Principles, or the UN Guiding Principles Reporting Framework) in the proposed 'Reporting Principles' referred to in paragraph 96 of the Consultation Paper.
17. CCPL recommends that the Guide be amended to require issuers to list the international conventions, treaties, principles, guidelines, charters or other documents, codes of conduct or initiatives to which it refers, subscribes or endorses, and against which its ESG report can be assessed.
18. CCPL agrees with the amendments to the Guide to include four 'Reporting Principles': 'Materiality', 'Quantitative', 'Balance' and 'Consistency'. With regard to 'Balance' CCPL recommends that a statement be added to make clear that an issuer should reflect both positive and negative aspects of its performance to enable an assessment of the organisation's overall performance.
19. CCPL recommends that the 'Reporting Principles' be expanded to include other key principles to bring the Guide more in line with international best practice. The following recommendations do not represent the full spectrum of reporting principles that are suggested by authorities such as the UN, the GRI or OECD. It is hoped that they reflect a balance between the growing recognition of sustainability as a paramount concern to all nations (as reflected in the broad global commitment to the UN Sustainable Development Goals agreed by 193 member States and due to be launched in September 2015) and the fact that Hong Kong is at a relatively embryonic stage of developing its ESG reporting framework.

Stakeholder Inclusiveness

20. Although the proposed new Guide does recommend consultation with 'stakeholders' it does not require companies to identify whom their stakeholders are, nor how a company has engaged or proposes to engage with its stakeholders. The amended draft does not give a comprehensive definition of what is meant by 'stakeholders'. By contrast, the Guide as currently drafted defines stakeholders in the following terms: 'Stakeholders are parties that have interests in or are affected by the decisions and activities of an issuer. They



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may include shareholders (including independent shareholders), business partners, employees, suppliers, sub-contractors, consumers, regulators and the public.’ (Paragraph 12 of the Guide). Paragraphs 13 and 14 of the Guide also suggest that companies disclose the issuer’s stakeholders, the basis for their identification, how it has engaged or intends to engage with stakeholders, the objectives of such engagement and how it has responded to stakeholder’s views. These recommendations are entirely absent from the amended version of the Guide that is being proposed. There seem to be no justifiable reason why this should be so.

21. Paragraph 12(iii) of the proposed amendments to the Guide requires an issuer to give an account of its ‘key relationships with its employees, customers and suppliers and others that have a significant impact on the issuer and on which the issuer’s success depends’. In CCPL’s view this does not go far enough in discharging an issuer’s responsibility to engage with non-financial stakeholders such as civil society, or communities adversely impacted by the issuer’s operations.
22. CCPL recommends that the guidance and suggestions contained in paragraphs 12, 13, and 14 of the Guide as currently drafted are useful and necessary in order for meaningful stakeholder engagement to become widespread. CCPL recommends that paragraphs 12, 13 and 14 of the current Guide be retained.
23. Further, CCPL recommends that the Guide be amended to adopt an expansive definition of ‘stakeholder’ to include supply chain workers, communities, consumers and end users of products, disadvantaged or marginalized sections of society such as children, women, indigenous peoples, people belonging to ethnic or other minorities, or persons with disabilities. A definition of ‘stakeholder’ should also embrace civil society groups who engage actively on human rights issues related to the issuer’s operations or value chain. (See: UN Guiding Principles Reporting Framework, Part C2).

Sustainability Context

24. One of the underlying aims of sustainability reporting is to get companies to think about how their organisation contributes or aims to contribute in the future to the improvement or deterioration of environmental, social and governance conditions and developments.
25. CCPL recommends that the Guide be amended to include a reporting principle requiring issuers to have regard to their environmental and social footprints; namely, to discuss the performance of their organisations in the context of the limits and demands placed on environmental or social resources not just at the local level and within their own sector, but also within the regional and global context. (See: GRI G4 Reporting Principles, p. 17; UN Guiding Principles Reporting Framework, Reporting Principle A).



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Reliability

26. It is important for the credibility of a sustainability reporting process that an organisation gather, record, compile, analyse and disclose information and processes used in the preparation of a report in a way that can be subject to examination and that establishes the quality and materiality of the information. This enables stakeholders, both shareholders and others who have a relationship with the organization, to have confidence that a report can be checked to establish the veracity of its contents and the extent to which it has appropriately applied reporting principles. Whilst paragraph 7 of the proposed amendments to the Guide suggest that ‘an issuer may also consider obtaining assurance on its ESG Report’ this does not go far enough.
27. CCPL recommends that the Guide be amended to explain what is meant by ‘assurance’ in this context, and require an issuer to maintain these standards. (See: GRI G4 Reporting Principles, p. 18).

Complement to the Reporting Requirements under the Companies Ordinance (Cap 622) (CO)

28. As presently drafted the amendments to the Guide do not make it clear to issuers that the level of detail required in their ESG report should be necessarily any greater than the high level discussion required for the director’s report required to be filed pursuant to the reporting requirements in the new CO.
29. CCPL recommends that the Guide be amended to spell out the fact that an issuer’s ESG report should be designed to provide issuers with substance and information for the director’s report.

Subject Area A

30. CCPL commends the HKEx’s proposal to upgrade to “comply or explain” the current KPIs falling under subject Area A. This would bring Hong Kong in line with international best practices, and respond to the growing concern within the community for positive steps to be taken to address pollution levels within Hong Kong.
31. CCPL recommends that the ‘comply or explain’ reporting requirement be extended to all of the KPIs falling under Subject Area A, including the proposed A1.3 and A1.6. CCPL hopes that the HKEx will take a leadership role on this issue given what is at stake for the long-term sustainability of Hong Kong and the health of its residents, rather than waiting to seek ‘market views’ on this issue. Reporting on the amount of hazardous waste that is produced and how it is handled is not an issue that can simply be left to the market. The people of Hong Kong have a right to information that may adversely affect their health and that of future generations. The requirement



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of the proposed KPIs A1.3 and A1.6 do not impose an overly burdensome task upon issuers, it simply calls for transparency in a matter of public interest and concern.

32. CCPL recommends that Aspects falling under Subject Area A be extended to incorporate a separate Aspect titled 'Supply Chain Management'.

Supply Chain Management

33. CCPL considers that 'Supply Chain Management' should form a separate Aspect in the Guide in Subject Area A. It is noted that disclosure of policies relating to environmental risks in an issuer's supply chain is required under Aspect B5: 'Supply Chain Management'. However, CCPL believes that the environmental issues and the social issues relating to supply chain management warrant separate focus.
34. CCPL recommends that the Guide be amended to include 'Supply Chain Management' as a separate category under Subject Area A to place sufficient emphasis upon the importance of responsible management of the environmental risks in an issuer's supply chain.
35. CCPL recommends that the Guide be amended to require issuers to report on actual and potential negative environmental impacts in the supply chain and actions taken by the issuer to address these on a 'comply and explain' basis.

Subject Area B

36. CCPL recommends that a number of Aspects under Subject Area B that are currently recommended disclosures be upgraded to 'comply or explain' disclosures.

(i) Gender Diversity

37. CCPL welcomes the inclusion of gender diversity reporting to the Guide. However, given the importance of gender diversity as an issue concerning not just sustainability, but more broadly the human rights issues of gender equality and non-discrimination.
38. Women in Hong Kong remain significantly under-represented in leadership, senior executive and non-executive roles across industry sectors and professions. Moreover, pay disparity is a real and continuing source of inequality and discrimination affecting women. Local NGO's, including The Women's Foundation and Community Business, and the 30 percent Club of Hong Kong report that women in Hong Kong earn on average 20% less than



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their male counterparts; 39% of Hong Kong companies have no women on their boards, and women make up just over 11% of directors in Hong Kong.⁷

39. The issues of sustainability and increased participation of women in senior leadership roles are linked. Women have a vital role to play in the future of Hong Kong but barriers of entry exist that thwart the notion of substantive equality.
40. The HKEx has a crucial role to play in urging issuers to regard gender diversity not just as a social justice issue, but also as a business imperative within their organizations. The EU Directive and jurisdictions such as UK, Australia, and Canada have all recognized the importance of gender diversity, and the role that diversity reporting can play in shifting corporate thinking and practices around the issue of diversity and inclusion. The dynamics of gender diversity in Hong Kong are no different. Women in Hong Kong are afflicted and held back by the same structures and systems that affect women in the workplace across the globe.
41. The proposed recommendation that issuers report on gender diversity, rather than requiring such reporting on a 'comply or explain' basis, fails to give sufficient weight to developments that are occurring within the global labour and investment markets. There is a growing body of international evidence linking gender diversity to better business performance. In 2011 the Lord Davies Report on Women on Boards, commissioned by the UK Government, concluded that having more women on boards is essential for: (1) improving business performance; (2) accessing the widest possible talent pool; (3) being more responsive to the market; and (4) improving corporate governance.⁸ In jurisdictions that have required reporting on a 'comply and explain' basis results have been dramatic: in the UK and Australia the percentage of female directors has almost doubled since the introduction of such reporting.⁹
42. Hong Kong issuers ought to be alive to the fact that talented employees, both men and women, want to work for employers who treat their employees with fairness, dignity and respect. Similarly, institutional investors want to invest in companies that are committed to these fundamental workplace principles. Gender diversity is a significant indicator of these principles and is simply good for business.

⁷ See: <http://www.communitybusiness.org/DOB/WOB/index.htm> ; <http://30percentclub.org.hk/>

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31480/11-745-women-on-boards.pdf

⁹ Since the UK Corporate Governance Code in 2012 required companies to effect and report on their boardroom diversity policy and disclose gender split in the workplace from board level down, more than 85% of FTSE100 companies now disclose their boardroom diversity policy and over 58% have set clear measurable objectives. The percentage of women on FTSE 100 boards has increased from 12.5% in 2011 to 23.5% in 2015. See 'Women on Boards Davies Review Annual Report 2015': https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415454/bis-15-134-women-on-boards-2015-report.pdf



43. CCPL recommends that the HKEx give issuers more than just ‘an opportunity to provide a fuller picture of the diversity within their entire workforce.’ This will simply result in issuers who are already invested in increasing gender diversity to report on their initiatives and successes, but it will do little to encourage those that are not engaged or invested to change their current thinking, policies or practices.
44. CCPL recommends that issuers should be required to report on a ‘comply or explain’ basis. This would bring gender diversity reporting obligations in line with international best practice (e.g. as required under G4-10 of the GRI G4 General Standard Disclosures) and would demonstrate leadership by the HKEx in an area that has much support within the business community and broader society of Hong Kong.
45. CCPL recommends that the Guide be amended to require that issuers report on the gender diversity reporting referred to in the proposed KPIs B1.1, B1.2, B3.1, and B3.2 on a ‘comply or explain’ basis. CCPL believes that this will raise the level of awareness and accountability of issuers and prompt them to take proactive steps to promote gender diversity in their companies. In turn this will align Hong Kong with international best practices that will enable issuers to compete in the global marketplace for talent and investment.
46. Further, CCPL recommends the Guide be amended to include a separate Aspect headed ‘Equality and Non-Discrimination’ listed under a new title ‘Human Rights’ to reflect its status and significance as a human rights issue (see paragraph 59 below).

(ii) Health and Safety

47. CCPL regard the disclosure of information relating to work-related fatalities, lost days due to work injury, and occupational health and safety measures (the proposed KPIs B2.1, B2.2 and B2.3) as vital information for any shareholder, investor or prospective worker. CCPL recommends that these be upgraded to a ‘comply or explain’ basis of reporting.

(iii) Labour Standards

48. CCPL regard disclosure of information relating to the measures taken to review employment practices to avoid child and forced labour, and a description of steps taken to eliminate such practices (the proposed KPIs B4.1 and B4.2) as essential information for any shareholder, or investor.
49. Information relating to the measures taken to review employment practices and steps taken to eliminate practices to avoid child and forced labour may negatively affect a company’s profitability or reputation. Media investigations and reports relating to the discovery of modern slavery practices on Thai



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fishing boats have negatively affected retail giants such as Tesco, Aldi, Morrisons, Walmart, and Costco.¹⁰ One suit has already been filed in the U.S. courts against Costco and its Thai seafood supplier, Charoen Pokphand (CP) Foods alleging complicity and seeking an injunction to prevent the retailer Costco from selling prawns unless they are labeled as being the product of Asian slave labour.¹¹ These cases and others (such as the poor labour standards in the Apple supply chain uncovered by the spate of suicides at the Foxconn City Industrial Park in Shenzhen, China in 2010)¹², illustrate the importance to internal and external stakeholders of measures taken by an organization to avoid slavery in its own operations as well as its supply chain.

50. The U.S 2015 Trafficking in Persons (TIP) Report ranked Hong Kong in Tier 2 of the TIP Report for the seventh consecutive year and classified it as a 'destination, transit, and source territory for men, women, and children subjected to sex trafficking and forced labour.'¹³ The TIP report 2015 cites the prevalence of forced of labour as a matter of particular concern. What is problematic is that Hong Kong does not have a dedicated piece of legislation that outlaws human trafficking, or addresses the issue of modern slavery in a holistic or comprehensive way.¹⁴
51. The prohibitions against human trafficking that do exist are piecemeal in nature and are focused on the sex trade and prostitution. The only specific reference to trafficking appears in section 129 of the Crimes Ordinance (Cap. 200) ("CO"), which creates an offence of trafficking in persons to or from Hong Kong for the purposes of prostitution. There is no reference to forced labour, debt bondage, servitude, or other forms of human trafficking commonly regarded as modern day forms of slavery, indeed there is no reference at all to force, coercion or exploitation, which are generally regarded as hallmarks of human trafficking. Compliance with relevant laws and regulations in Hong Kong relating to preventing forced labour, as is required under the general disclosure requirement of the proposed Aspect B4 of the Guide, is therefore meaningless.

¹⁰ Kate Hodal, Chris Kelly, Felicity Lawrence, "Revealed: Asian slave labour producing prawns for supermarkets in US, UK" *The Guardian*, 10 June 2014. See: <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour>

¹¹ Felicity Lawrence, "Costco and CP Foods face lawsuit over alleged slavery in prawn supply chain", *The Guardian*, 19 August 2015 <http://www.theguardian.com/global-development/2015/aug/19/costco-cp-foods-lawsuit-alleged-slavery-prawn-supply-chain>

¹² James Murray, "Apple slammed over latest Chinese Supply chain allegations", *Greenbiz.com*, July 29, 2013, <http://www.greenbiz.com/blog/2013/07/29/apple-slammed-over-latest-chinese-supply-chain-allegations>

¹³ The full TIP Report 2015 can be found at: <http://www.state.gov/j/tip/rls/tiprpt/2015/>

¹⁴ See: 'How Many More Years a Slave? Trafficking for forced labour in Hong Kong' A Report by Justice Centre Hong Kong and Liberty Asia's Report: March 2014. http://www.justicecentre.org.hk/framework/uploads/2014/03/JCHK_Report_final_spreads.pdf



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52. This presents a dangerous lacuna: Hong Kong companies focused purely on compliance with existing laws and regulations may be less inclined to devote resources to implementing measures to safeguard against modern slavery. Issuers ought to be aware of their increasing exposure they have to the risk of human trafficking arising in their operations and supply chains. Making issuers report their efforts to protect against child labour and forced labour on a 'comply or explain' basis will focus corporate efforts on measures to address these issues in their supply chains. CCPL regards this information as essential for stakeholders as participation in or association with child or forced labour, even indirectly, may negatively affect a company's profitability or reputation.

(iv) Supply Chain Management

53. The comments relating to disclosures regarding child trafficking and forced labour apply equally in respect of the requirement to disclose the number and location of suppliers and a description of practices relating to engaging suppliers, and implementation and monitoring of such practices (the proposed KPIs B5.1 and B5.2). Issuers in Hong Kong face an increasing risk of exposure to labour related human rights abuses in their supply chains. CCPL believes that imposing a 'comply and explain' requirement will help issuers understand, observe and comply with measures that will protect them against such risk. CCPL regards this information as essential for stakeholders as participation in or association with environmental, labour or human rights violations, even indirectly, may negatively affect a company's profitability or reputation.

(v) Anti-Corruption

54. CCPL regards information relating to anti-corruption, that goes beyond a general disclosure relating to policies and compliance with relevant laws, as essential to stakeholders, as participation in or association with corrupt practices may negatively affect a company's profitability or reputation.

55. CCPL recommend that issuers be required to disclose information relating to the number of legal cases regarding corrupt practices brought against the issuer and its employees, and the outcomes of those cases, as well as descriptions of preventative measures and whistle-blowing procedures (as set out in the proposed KPIs B7.1, B7.2). CCPL recommends that issuers should be required to make such disclosures on a 'comply or explain' basis.

(vi) Community Involvement

56. CCPL recommends that the proposed KPI B8.1 of the Guide be amended to require disclosure of significant actual and potential negative impacts on local communities, as well as areas of contribution that may directly address these. This will provide more meaningful data to stakeholders from which to assess a company's profitability and reputation.



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'Human Rights' as an Additional Aspect under Reporting Requirement

57. CCPL recommends that the scope of Subject Area B be extended to incorporate a broader range of issues that more fully address sustainability issues and concerns most directly affecting Hong Kong at a local and regional level.
58. CCPL recommends that Subject Area B be extended to incorporate a new Aspect titled 'Human Rights'. Inclusion of a human rights reporting requirement would reflect the growing global consensus that corporations have a responsibility to respect human rights. The following recommendations draw upon, but are not as extensive as, the international best practices set out in the GRI G4 Reporting Principles and the UN Guiding Principles Reporting Framework.
59. CCPL recommends that the Guide be amended to require an issuer to disclose information on the policies and human rights due diligence processes that it has in place to meet its responsibility to respect human rights on a 'comply or explain' basis.¹⁵ Information regarding due diligence should refer to steps the issuer has taken to identify, prevent, mitigate and account for how it addresses its impacts on human rights.
60. If the reporting requirements under the Guide were to be extended in the proposed manner suggested at paragraph 59 herein, CCPL recommends that the proposed KPIs B4.1 and B4.2 relating to child labour and forced labour (amended to reflect a 'comply or explain' disclosure requirement) be moved to the proposed new Aspect titled 'Human Rights'. Similarly, the proposed KPIs B1.1 and 1.2 relating to gender diversity should be moved to this section.
61. CCPL also recommends that the proposed Aspect 'Human Rights' include KPIs related to the areas of non-discrimination, equal pay for women and men and freedom of association and collective bargaining.

Non-Discrimination

62. CCPL recommends that the Guide be amended to require an issuer to disclose the total number of incidents of discrimination and corrective actions taken. Currently non-discrimination is mentioned in the 'comply or explain' disclosure under the proposed Aspect B1 but this only requires an issuer to disclose information on its policies and compliance with laws and regulations. Placing this reporting requirement under a new 'Human Rights' section gives

¹⁵ The business responsibility to respect human rights refers to internationally recognized human rights, which at a minimum are those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO's Declaration on Fundamental Principles and Rights at Work (see: UNGP Principle 12).



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due recognition to the importance of this fundamental workplace principle, and will give stakeholders a level of meaningful transparency regarding the extent to which an issuer encourages and fosters non-discrimination workplace behaviors in practice.

Equal Pay for Women and Men

63. CCPL recommends that the Guide be amended to require an issuer to disclose the ratio of the basic salary and remuneration of women to men for each employee category, by significant locations of operation. Placing this reporting requirement under a new 'Human Rights' section gives due recognition to the importance of this fundamental workplace principle, and will give stakeholders a level of meaningful transparency regarding the extent to which an issuer implements gender pay parity principles in practice.

Freedom of Association and Collective Bargaining

64. CCPL recommends that the Guide be amended to require an issuer to disclose the operations and suppliers in which employee rights to exercise freedom of association or collective bargaining may be violated or at significant risk either in terms of type of operation (such as manufacturing plant) and supplier Countries or geographical areas with operations and suppliers considered at risk. Placing this reporting requirement under a new 'Human Rights' section gives due recognition to the importance of this fundamental workplace principle, and will give stakeholders a level of meaningful transparency regarding the extent to which an issuer respects the human rights of its workforce to organise and participate in industrial relations.
65. To extend the Guide to require issuers to report on the human rights issues as recommended in paragraphs 57 to 64 above would be a meaningful way of engaging issuers in Hong Kong with their obligations under the UNGPs. Companies who practice this level of reporting will be well placed to comply with their human rights obligations should developments in the field of business and human rights lead to the creation of an international legally binding treaty to regulate the human rights impact of corporations.

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Signature (with Company/Entity Chop if the response represents company/entity view)

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.

Please see attached paper for details.

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.

Please see attached paper for details.

3. 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.

Please see attached paper for details.

4. 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.

Please see attached paper for details.

5. 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.

Please see attached paper for details.

6. 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.

Please see attached paper for details.

7. 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.

Please see attached paper for details.

8. 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.

Please see attached paper for details.

9. 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.

Please see attached paper for details.

10. 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.

Please see attached paper for details.

11. 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.

Please see attached paper for details.

12. 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.

Please see attached paper for details.

13. 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.

Please see attached paper for details.

14. 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.

Please see attached paper for details.

15. 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.

Please see attached paper for details.

- End -