

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/-/media/HKEX-Market/News/Market-Consultations/2016-Present/May-2019-Review-of-ESG-Guide/Consultation-Paper/cp201905.pdf>.

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

Timeframe for Publication of ESG Reports

1. Do you agree with our proposal to amend Main Board Listing Rule 13.91 and GEM Listing Rule 17.103 to shorten the time required to publish an environmental, social and governance (“**ESG**”) report from three months after the publication of the annual report to within four months for Main Board issuers or three months for GEM issuers from the financial year-end date?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to shorten the time required to publish an ESG report to within four months for Main Board issuers and three months for GEM issuers, as the publication of the ESG report should correspond to the timing of the publication of the relevant annual report. This ensures that the ESG related information will not be considered in isolation and provides investors and other stakeholders with a comprehensive view of the issuer's financial and non-financial performance.

Printed Form of ESG Reports

2. Do you agree with our proposal to amend the Listing Rules and the Guide to clarify that issuers are not required to provide printed form of the ESG report to shareholders unless responding to specific requests, but are required to notify shareholders that the ESG report has been published on the Exchange’s and the issuer’s websites?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to provide issuers with the option to disseminate the ESG report digitally. Electronic documents are not only easier to distribute, more cost efficient and reduce carbon footprint.

Introducing Mandatory Disclosure Requirements

General

3. Do you agree with our proposal to amend the Guide to introduce Mandatory Disclosure Requirements (“MDR”)?

Yes

No

Please give reasons for your views.

Freshfields agrees that the guide should be amended to introduce MDR.

ESG is an increasingly important focus by investors and the general public. It is also particularly important to achieve business sustainability and to "do good" to communities and the wider world. Reporting on ESG is important as it forces companies to ask how the operation of their businesses might affect the environment, their human capital and their own management and culture.

Potential investors are increasingly concerned about management transparency, internal controls and overall corporate governance. Rise of shareholder activists in recent years has led to far greater awareness of governance issues. Companies face increasing and direct potential risks from, and questions about, environmental issues like climate change.

Therefore, it is important to disclose these risks and information which may affect the business to allow investors to make more informed decisions when picking bonds or stocks for their portfolio.

It is also in the interest of Hong Kong not to fall behind other major jurisdictions which are adopting recommendations made by the Taskforce on Climate-related Financial Disclosures.

Governance Structure

4. If your response to Question 3 is positive, do you agree with our proposal to introduce an MDR requiring a statement from the board containing the following elements:
- (a) a disclosure of the board’s oversight of ESG issues?
 - (b) the process used to identify, evaluate and manage material ESG-related issues (including risks to the issuer’s businesses); and

(c) how the board reviews progress made against ESG-related goals and targets?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to introduce an MDR requiring a statement from the board containing disclosure of the board's oversight of ESG issues, the process used to identify, evaluate and manage material ESG related issues (including risks to issuer's businesses), and how the board reviews progress made against ESG related goals and targets.

Board members have a vital role in assessing and understanding the organisation's potential environmental and social impacts and related risks on the organisation's operating model.

ESG concerns influence and are influenced by operations, finance, risk, compliance, legal, human resources and other issues, so business leaders have many opportunities to leverage ESG to enable sustainability and benefit the organisation, its stakeholders and society, which is the responsibility of both management and the board.

5. Do you agree with our proposal to set out in a note that the board statement should include information on the issuer's current ESG management approach, strategy, priorities and goals/targets and an explanation of how they relate to the issuer's businesses?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal for a board statement to include information on the issuer's current ESG management approach, strategy, priorities and goals/targets and an explanation of how they relate to the issuer's businesses as this statement would provide an overview of the ESG report and establish the issuer's position on ESG before addressing each of the environmental and social aspects in the report.

Reporting Principles

6. Do you agree with our proposal to amend the Guide to introduce an MDR requiring disclosure of an explanation on how the issuer has applied the Reporting Principles in the preparation of the ESG report?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to introduce an MDR for disclosure of an explanation on how the issuer has applied the Reporting Principles (materiality, quantitative, balance and consistency) as requiring disclosure would require management and the board to focus on what is material and important to the company, thereby allowing investors to share their insight, be provided with more material information and to understand better the strengths as well as the challenges that the company faces in an increasingly uncertain world.

7. Do you agree with our proposal to amend the Reporting Principle on "materiality" to make it clear that materiality of ESG issues is to be determined by the board and that the issuer must disclose a description of significant stakeholders identified, the process and results of the issuer's stakeholder engagement (if any), and the criteria for the selection of material ESG factors?

Yes

No

Please give reasons for your views.

The board is responsible for oversight of the firm's risks and should play a direct role in assessing the materiality of ESG issues.

It is important to understand who the significant stakeholders are, how the stakeholders are engaged and what processes are in place to manage the issues, as well as the criteria for the selection of material ESG factors, to allow potential investors to make more informative decisions.

8. Do you agree with our proposal to amend the Reporting Principle on “quantitative” to:

- (a) require disclosure of information on the standards, methodologies, assumptions and/or calculation tools used, and source of the conversion factors used for the reporting of emissions/energy consumption (where applicable); and
- (b) clarify that while key performance indicators (“KPIs”) for historical data must be measurable, targets may be expressed by way of directional statements or quantitative descriptions?

Yes

No

Please give reasons for your views.

Freshfields in general agrees with (a) and (b) but it is important to give listed companies the flexibility to disclose what is material and relevant to them rather than to be prescriptive. We need to strongly discourgae the culture of 'box-ticking'.

Reporting Boundary

9. Do you agree with our proposal to amend the Guide to include an MDR requiring an explanation of the ESG report’s reporting boundary, disclosing the process used to identify the specific entities or operations that are included in the ESG report?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to include an MDR requiring explanation of the ESG report’s reporting boundary, as this will set out the expectations and provide information on why the scope was chosen. It is understandable that some companies may only report on a part of the business as reporting on a large business would be time consuming and costly.

Introducing Aspect on Climate Change and Revising the Environmental KPIs

Climate Change

10. Do you agree with our proposal to introduce a new Aspect A4 requiring:

- (a) disclosure of policies on measures to identify and mitigate the significant climate-related issues which have impacted, and those which may impact the issuer; and
- (b) a KPI requiring a description of the significant climate-related issues which have impacted, and those which may impact the issuer, and the actions taken to manage them?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to introduce a new Aspect A4 requiring (a) and (b). At present, Hong Kong does not have any policy or legislation and lacks leadership to deal with climate change, with no dedicated authority to tackle the issue.

It is encouraging to see the HKEX take leadership in climate change issues to allow Hong Kong to maintain its competitiveness as a leading international financial centre.

Targets

11. Do you agree with our proposal to amend the Environmental KPIs to require disclosure of a description of targets set regarding emissions, energy use and water efficiency, waste reduction, etc. and steps taken to achieve them?

Yes

No

Please give reasons for your views.

GHG Emissions

12. Do you agree with our proposal to revise an Environmental KPI to require disclosure of Scope 1 and Scope 2 greenhouse gas (“GHG”) emissions?

Yes

No

Please give reasons for your views.

Upgrading the Disclosure Obligation of the Social KPIs

13. Do you agree with our proposal to upgrade the disclosure obligation of all Social KPIs to “comply or explain”?

Yes

No

Please give reasons for your views.

Freshfields supports the upgrade of disclosure obligations of social KPIs to “comply or explain”.

Revising the Social KPIs

Employment Types

14. Do you agree with our proposal to revise a KPI to clarify “employment types” should include “full- and part-time” staff?

Yes

No

Please give reasons for your views.

Freshfields agrees but we also propose including the use of “contractors” in the disclosure (for example, disclosed in terms of the employee to contractor ratio).

With the growth of the “gig” / “on-demand” economy, there has been a huge uptick in the use of self-employed individuals. These individuals are often vulnerable as they are self-employed (or are categorised as self-employed) and are therefore not entitled to the normal protections that employees have access to, such as paid annual leave, maternity/paternity leave, severance pay, MPF contributions, etc.

Rate of Fatalities

15. Do you agree with our proposal to amend the KPI on fatalities to require disclosure of the number and rate of work-related fatalities occurred in each of the past three years including the reporting year?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to amend the KPI on fatalities to require disclosure of the number and rate of work-related fatalities occurred in each of the past three years including the reporting year. However, as fatalities are rare it may also be more practical to report on workplace accidents. It is reported by the Labour Department in Hong Kong that out of 10,000 industrial accidents that occurred each year, only about 200 were fatal. However, figures may be inaccurate as many employers are reluctant to report workplace injuries to the government for fear of losing future contracts.

Workplace safety should be a priority and measures should be taken to prevent accidents or fatalities and to provide safe working environments to employees. The disclosure of the number of work place accidents/ injuries each year will help put pressure on issuers to improve the health and safety of the workplace.

Mental Health Policy

Another aspect which can be considered is a KPI on mental health policy. One in four people are affected by mental health issues at some point in their lives. Mental health problems such as depression, anxiety, substance abuse and stress are common and they have a direct impact on the work place through increased absenteeism, reduced productivity and increased costs. In the UK, the economic and social cost of mental health problems amount to more than £100 billion every year.

In Hong Kong, a survey by The Bauhinia Youth Chamber of Commerce in April 2019 reports that nearly 80% of working women suffer from stress (and women account for more than 55% of the local workforce) and 40% of respondents indicated that their companies do not have any measures to support employees' mental health.

Hong Kong is still at the beginning of its journey on addressing mental health issues. The government established an Advisory Committee on Mental Health in 2017. In April 2018, it was reported that the committee will launch its largest ever survey this year to understand the cause and extent of mental health issues on the younger population of the workforce. Action on promoting mental health is seen to be bottom up at an organisational level but there needs to be wider awareness.

Listed companies on HKEX are major employers in Hong Kong and we believe that tackling mental health is not only a social responsibility, it also makes business sense. We urge the HKEX to consider including guidance or recommendations on descriptions of how issuers are promoting mental well-being, as this will make a considerable difference in raising awareness and tackling this important issue.

Supply Chain Management

16. Do you agree with our proposal to introduce the following new KPIs in respect of supply chain management?

(a) Description of practices used to identify environmental and social risks along the supply chain, and how they are implemented and monitored.

(b) Description of practices used to promote environmentally preferable products and services when selecting suppliers, and how they are implemented and monitored.

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to introduce a KPI for supply chain management as environmental and social risks in the supply chain needs to be managed diligently.

In Hong Kong, many suppliers are subjected to high risks in primary supply chains including child labour, hazardous work environments, conversion of natural habitats and hazardous emissions. It is important for issuers to have policies and procedures to identify, mitigate, monitor and report risks arising from supply management.

Anti-corruption

17. Do you agree with our proposal to introduce a new KPI requiring disclosure of anti-corruption training provided to directors and staff?

Yes

No

Please give reasons for your views.

Freshfields agrees with the proposal to introduce a new KPI requiring disclosure of anti-corruption training provided to directors and staff.

Corruption erodes the level playing field and the core value of fairness and can cause significant reputational harm at an individual corporate level and can affect the efficient operation as well as the trust that investors have in our market.

According to Transparency International's People and Corruption: Asia Pacific report in 2017, governments in Hong Kong, Vietnam, Japan, Mongolia and Malaysia were perceived to be doing badly at fighting corruption by 60% of their citizens. It was reported that 75% and 46% of people interviewed in China and in Hong Kong thought the level of corruption had increased from 2016 to 2017. This is not good news.

Every listed company should do their part to maintain Hong Kong as a corruption free city. Accordingly, anti-corruption training programme is a must at all levels within an organisation.

The programme should not be a monotonous, box ticking exercise. It should be designed so that it is tailored to suit people at different levels and relevant for different business functions with relevant case studies. The legal and social consequences of corruption should also be explained.

Training should include how to spot suspicious conduct and there should be policies and procedures in place to deal with hospitality and other compliance issues, and to allow people to ask questions or raise concerns within an organisation in this area.

Encouraging Independent Assurance

18. Do you agree with the proposal to revise the Guide's wording on independence assurance to state that the issuer may seek independent assurance to strengthen the credibility of ESG information disclosed; and where independent assurance is obtained, the issuer should describe the level, scope and processes adopted for assurance clearly in the ESG report?

Yes

No

Please give reasons for your views.

- End -