

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.

Similar to the Corporate Governance Code in Hong Kong and the UK, the advantage of “comply or explain” is it provides companies appropriate flexibility in developing a bespoke approach to their ESG programs (which must necessarily vary between industries) and the ESG reporting. This is helpful and necessary given that there are material and legitimate variances between industries, stages of development and other characteristics that need to be accommodated via this flexibility.

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 are aware that some have suggested that ESG reporting covers various matters which by their nature take time to progress. Accordingly, a year may provide insufficient time for material results to emerge. Nonetheless, we believe that the proposed approach is sensible as it aligns with the normal reporting cycle and should be read alongside reports on the financial and commercial progress of the business.

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.

We agree with this process as a tool to support the phasing in of ESG reporting. For first time issuers the options, including the added flexibility of publishing on a website will be helpful to facilitate appropriate disclosure. However, over time we would encourage movement to integrate ESG reporting fully in the annual reporting cycle.

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.

The reorganised structure adds clarity.

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.

The concept of “materiality” is central to reporting for listed companies and there exists a body of regulations and learning in the context of insider dealing or inside / price sensitive information. It would be both difficult and unnecessary to replicate all of them in this context and to maintain total consistency over time. Accordingly, we believe there is a possibility here to create confusion without adding value. If “materiality” is to be used in this context, we must *inter alia* make explicit in the related wording the principle that “materiality” is to be judged by reference to the issuer.

Put another way, an initiative within a company could arguably create meaningful social value and be in that sense a “material initiative” within the framework of ESG reporting, but cost relatively little for the company in question and be unconnected to managing risk in that company’s core business such that it in no way approaches materiality in the traditional financial context. We are therefore concerned about the potential to confuse the concept of materiality by using it in this new context.

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.

It clarifies the nature of reporting required.

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.

The proposed changes are in line with international guidelines and the new Companies Ordinance in Hong Kong.

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.

“Workplace Quality” is a phrase which may be open to much subjective interpretation. In contrast “employment and labour standards” can, or ought to be, capable of treatment objectively in relation to specific required standards and is therefore preferred.

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.

Requiring companies on a “comply or explain basis” to disclose has the potential to improve the quality of reporting.

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.

It makes sense to maximise consistency with the Companies Ordinance in this respect.

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.

Requiring companies on a “comply or explain basis” to disclose these would enhance transparency and stakeholder communications. For issuers whose emissions do not feature as a material part of their undertakings, this should be relatively straightforward. However, even those issuers will be invited to turn their minds to the matters as outlined in the proposed amendments to the rules. For those issuers for whom the handling of emissions is material to their undertaking, more disclosures are warranted.

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 our response to Q.11.

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.

Requiring companies on a “comply or explain basis” to disclose these would again enhance transparency and stakeholder communications. For issuers in less resource intensive undertakings, this would again be relatively straightforward but they are still asked to give consideration to the relevant matters. For those issuers for whom use of resources is central to their undertaking, more detailed disclosures are warranted.

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.

The disclosure required, if any, is largely complementary to that of the other KPIs under Aspects A1 and 2 and we support a similar approach.

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.

We are supportive of diversity at all levels of our organization and indeed in our society. The requirement is consistent with best practices in developed jurisdictions.

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