

Environmental, Social and Governance Disclosure Requirements of Listed Companies

Purpose

This note sets out the latest developments in relation to the Environmental, Social and Governance (“ESG”) disclosure requirements of the companies listed on the Stock Exchange of Hong Kong (“SEHK”).

Background

2. The SEHK’s first ESG Guide came into effect for issuers with financial years ending after 31 December 2012. This followed the publication of the *Consultation Paper on Environmental, Social and Governance Reporting Guide*¹ in December 2011 and the resulting consultation conclusions² in August 2012. The Guide was introduced as a recommended practice (i.e. reporting in accordance with the Guide was voluntary), and was intended to be the first step in an evolutionary process, with the longer term goal of achieving better and more comprehensive ESG reporting amongst issuers.

3. In July 2015, the SEHK published the *Consultation Paper on Review of the Environmental, Social and Governance Reporting Guide*³, which put forward a number of proposals to upgrade certain ESG disclosure obligations in the Guide from voluntary to “comply or explain”. In December 2015, the SEHK published the *Consultation Conclusions on Review of the Environmental, Social and Governance Reporting Guide*⁴. In view of the respondents’ strong support, the SEHK decided to adopt the consultation proposals with minor modifications.

4. When formulating its listing policies, the SEHK benchmarks its proposed Rules against those of other developed markets and assesses their potential impact on the Hong Kong market. Furthermore, the SEHK’s proposals are only adopted if supported by the results of a rigorous and transparent public consultation process. Rule amendments are made following careful analysis of all the consultation responses, and the latest consultation on

¹ Available at: <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201112.pdf>

² Available at: <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201112cc.pdf>

³ Available at: <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507.pdf>

⁴ Available at: <https://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507cc.pdf>

the review of the ESG Guide is no exception. The SEHK received a total of 203 responses from a broad range of respondents, a majority of which supported each of the consultation proposals.

Mandatory Disclosure Requirements in Companies Ordinance and Listing Rules

Companies Ordinance (Cap. 622)

5. The new Companies Ordinance⁵, which came into force in March 2014, mandates all Hong Kong incorporated companies (unless exempted) to include in the business review section of their annual directors' reports –

- (a) a discussion of their environmental policies and performance;
- (b) a discussion of their compliance with relevant laws and regulations that have a significant impact on them; and
- (c) 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.

Listing Rules

6. With a view to maintaining a level playing field for all listed companies, the SEHK published a consultation paper⁶ in August 2014 to seek views on, amongst other matters, whether the ESG disclosure requirements under the new Companies Ordinance should be incorporated into the Listing Rules to apply to all listed companies, regardless of their place of incorporation. In view of market support, the SEHK concluded that this proposal should be adopted.⁷

7. These disclosure requirements have been incorporated into the Listing Rules⁸ as mandatory disclosure requirements for all companies listed on the SEHK, regardless of their place of incorporation. The resulting Listing Rules provision came into effect for financial years ending on or after 31 December 2015.

⁵ Schedule 5 to the Companies Ordinance

⁶ Available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408.pdf>

⁷ Available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201408cc.pdf>

⁸ Appendix 16 of the Main Board Listing Rules, paragraph 28(2)(d) (GEM Listing Rule 18.07A(2)(d))

8. In addition to these disclosure requirements, Hong Kong listed companies are subject to a general obligation of disclosure under the Listing Rules;⁹ and a statutory obligation to disclose inside information under Part XIVA (Disclosure of Inside Information) of the Securities and Futures Ordinance (Cap. 571) (“SFO”).¹⁰ These provisions apply to any information, including ESG-related information, that could create a false market in the listed company’s securities and/or would be considered inside information under the SFO.

Consultation on Review of the ESG Guide in 2015 and Main Amendments

Structure of the ESG Guide and “Comply or Explain” Disclosure Requirements

9. Following the consultation on the review of the ESG Guide in 2015, the ESG Guide was re-organised into two ESG Subject Areas: “Environmental” (Subject Area A) and “Social” (Subject Area B). A table setting out the structure of the Guide, and a summary of the disclosure requirements and their level of obligation is at **Appendix**. Each Subject Area contains various ESG Aspects (e.g. emissions, use of resources, employment and labour standards, amongst others). Each ESG Aspect sets out General Disclosures (e.g. information on the issuers’ policies and compliance with relevant laws and regulations, etc.) and Key Performance Indicators (“KPIs”) (e.g. emission data, energy use efficiency initiatives, occupational health and safety measures adopted, etc.) for issuers to report on to demonstrate their performance.

10. In addition to the re-organisation of the ESG Guide, all the General Disclosures of various ESG Aspects under the “Environmental” and “Social” Subject Areas as well as all the KPIs of different ESG Aspects under the “Environmental” Subject Area were upgraded from voluntary to “comply or explain”. The KPIs in the “Social” Subject Area of the Guide will remain recommended disclosures (i.e. voluntary). The Listing Rules require a listed company to publish an ESG report on an annual basis (covering the same period as its annual report), which must state whether it has complied with the “comply or explain” provisions of the ESG Guide for the relevant financial year.¹¹

⁹ Main Board Listing Rule 13.09 (GEM Listing Rule 17.10)

¹⁰ Main Board Listing Rule 13.05(2) (GEM Listing Rule 17.06(2))

¹¹ Main Board Listing Rule 13.91 (GEM Listing Rule 17.103)

Other Amendments to the Guide

11. The other amendments to the Guide resulting from the 2015 consultation include-

- (a) revising the introductory section of the Guide to provide more guidance on reporting and to bring it more in line with international standards;
- (b) revising the wording of the General Disclosures (where relevant) to be consistent with the directors' report requirements of the Companies Ordinance; and
- (c) revising the wording of the voluntary provisions of the Guide to bring it more in line with international standards of ESG reporting by incorporating disclosure of gender diversity.

Phased Implementation of the Revised ESG Guide

12. The SEHK noted that a number of respondents to the consultation expressed concern regarding the original proposed implementation date of the revised Guide (i.e. for financial years beginning on or after 1 January 2016). They commented that this would provide very little lead time for listed companies to prepare, particularly those with December financial year-ends. To address these concerns, and considering that over 70% of Hong Kong listed companies have December financial year-ends, the SEHK concluded that it would be appropriate to implement the “comply or explain” requirements in two phases –

- (a) the upgrade of the General Disclosures to “comply or explain” has already come into effect for financial years beginning on or after 1 January 2016; and
- (b) the upgrade of the KPIs in the “Environmental” Subject Area will come into effect one year later, for financial years beginning on or after 1 January 2017.

Review of Corporate Governance Code on Risk Management and Internal Control

13. Corporate governance does not form part of the ESG Guide. It is addressed separately in the SEHK's Corporate Governance Code.

14. The SEHK recently revamped the risk management and internal control aspects of the Corporate Governance Code to strengthen issuers' disclosure and directors' accountability in this area¹². With effect from 1 January 2016, the Corporate Governance Code requires, on a "comply or explain" basis, that issuers disclose in their corporate governance reports a number of risk management related matters, including (but not limited to) –

- (a) the process used to identify, evaluate and manage significant risks;
- (b) the main features of the issuer's risk management and internal control systems; and
- (c) an acknowledgement by the board that it is responsible for the issuer's risk management and internal control systems and reviewing their effectiveness.¹³

Combined Approach of Rules, "Comply or Explain" Provisions and Recommended Disclosures

15. As discussed above, the SEHK adopts a combination of measures to regulate ESG disclosure. These include mandatory Rules, as well as "comply or explain" provisions and recommended disclosures. This approach is in line with that adopted by a number of overseas jurisdictions (see paragraph 18).

16. The main advantage of the "comply or explain" approach is that it accommodates a wide variety of business models. Also, it affords companies the space to develop their practice and decide on the scope of their reporting. Not all ESG issues are material to all businesses. The "comply or explain" regime allows companies to focus on ESG issues which they consider are relevant to their investors and other stakeholders, as well as their own businesses, and decide on the ESG reporting guidelines/frameworks that best fit their own circumstances. Where an ESG issue is not material to a company, the "comply or explain" regime allows the company to explain this fact. To mandate disclosure of all ESG information or data may lead companies to disclose excessive or immaterial information, which may lead to a decrease in the value or usefulness of the ESG report.

¹² *Consultation Conclusions on Risk Management and Internal Control: Review of the Corporate Governance Code and Corporate Governance Report*, which is available at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201406cc.pdf>

¹³ Code Provision C.2.4

17. Research indicates that the “comply or explain” approach is an effective tool to encourage ESG reporting¹⁴, as the flexibility of the approach (amongst other reasons) enables companies that are just beginning to report to develop their competency and practices through first-hand experience, with a view to cultivating their expertise and quality of reporting over time. Further, “comply or explain” does not mean that most issuers will choose to explain rather than disclose the information called for. Based on its reviews of the level of implementation of the Corporate Governance Code (in which the Code Provisions are subject to “comply or explain”), the SEHK has found that issuers generally choose to comply rather than explain.¹⁵

Overseas Practices

18. In many of the overseas jurisdictions that the SEHK has reviewed, disclosure of ESG issues by listed issuers is subject to a combination of mandatory, “comply or explain” and voluntary provisions, similar to the SEHK’s approach. In South Africa, Malaysia, Taiwan¹⁶ and Australia, the stock exchanges require ESG reporting on a “comply or explain” basis.¹⁷

¹⁴ Harvard Business School, “The Consequences of Mandatory Corporate Sustainability Reporting: Evidence from Four Countries”, Ioannou and Serafeim, 20 August 2014.

¹⁵ As illustrated in the SEHK’s latest “Analysis of Corporate Governance Practice Disclosures of 2014 Annual Reports” (published in November 2015) (http://www.hkexnews.hk/reports/corpgovpract/Documents/CG_Practices_2014_e.pdf), 98% of issuers complied with (rather than explained) 70 or more out of 75 of the Code Provisions (i.e. the “comply or explain” provisions) in the Corporate Governance Code.

¹⁶ In addition, Taiwan’s Financial Supervisory Commission requires listed companies and listing applicants to disclose ESG information in their annual reports and prospectuses, respectively: http://www.twse.com.tw/en/about/press_room/tsec_news_detail.php?id=8212; and listed companies in the food industry, in a group of specific companies with dining service revenue at over 50% of total revenue in the most recent year, in the financial service industries, in the chemical industry and companies with paid-in capital above NT\$10 billion (HK\$2.7 billion) to publish CSR reports: http://www.fsc.gov.tw/en/home.jsp?id=54&parentpath=0,2&mcustomize=multimessage_view.jsp&dataserno=201409240002&aplistdn=ou=news.ou=multisite.ou=english.ou=ap_root.o=fsc.c=tw&toolsflag=Y.

¹⁷ Under the rules of the Australian Securities Exchange, for example, issuers are required, on a “comply or explain” basis, to comply with the “principles-based” environmental and social provisions in the corporate governance code. Similarly, the rules of the Johannesburg Stock Exchange (listing rule 8.63(a)) require listed companies to include in their annual reports a narrative statement as to how they have complied with the principles of the South African corporate governance code (which calls for companies to, on a “comply or explain” basis, produce an integrated report describing financial, social and environmental factors). The Malaysian stock exchange (Bursa Malaysia) provides under its rules (appendix 9c to the listing rules, part A, paragraph 29) that listed companies must describe in their annual reports the corporate social responsibility activities or practices they have undertaken (or if there are none, a statement to that effect). The “comply or explain” requirements of the Taiwan Stock Exchange are underpinned by the mandatory requirements of the Financial Supervisory Commission (see note 16).

Some of these jurisdictions have also developed voluntary ESG reporting guides.¹⁸ Meanwhile, the Singapore Exchange is in the process of reviewing its voluntary ESG guide, with a view to upgrading it to “comply or explain”. Some markets have dealt with ESG issues by way of legislation, including the UK, the EU and Mainland China.

19. There is a suggestion that the SHEK should require ESG disclosure in accordance with the Global Reporting Initiative’s G4 Sustainability Reporting Guidelines (“GRI Guidelines”). In fact, since the introduction of the ESG Guide, the SEHK has been encouraging issuers who are capable of doing so to adopt international guidelines and standards, such as those of the GRI Guidelines, when preparing their ESG disclosures. The SEHK’s Guide also aims to be compatible with international guidelines, and as such most of the disclosure provisions in the Guide have comparable disclosure provisions in the GRI Guidelines. A further point to note is that the GRI Guidelines serve only as guidance to companies on how to present sustainability disclosures, and companies may voluntarily adopt the disclosure provisions according to what they consider to be material.

ESG disclosure requirements for new listing applicants

20. Listing applicants are required under the Listing Rules to make disclosures in the form of listing documents (including prospectuses, circulars and any equivalent documents). It is a general principle of the Listing Rules that potential investors must be given sufficient information to enable them to make a properly informed assessment of an issuer.¹⁹ As such, the information contained in a listing document must be accurate and complete in all material respects and not be misleading or deceptive.²⁰

21. Guidance provided by the SEHK to listing applicants states that listing documents must disclose material risks faced by the listing applicant (including ESG-related risks)²¹, details of material regulations directly relevant to the applicant’s current and future businesses, and how these regulations will affect the applicant’s business operations and future developments.²² Material

¹⁸ For example, Bursa Malaysia has published a voluntary sustainability reporting guide: [http://www.bursamalaysia.com/misc/system/assets/15789/BURSA%20MALAYSIA%20SUSTAINABILITY%20REPORTING%20GUIDE%20\(final\).pdf](http://www.bursamalaysia.com/misc/system/assets/15789/BURSA%20MALAYSIA%20SUSTAINABILITY%20REPORTING%20GUIDE%20(final).pdf); as has the Singapore Exchange:

http://rulebook.sgx.com/net_file_store/new_rulebooks/s/g/SGX_Sustainability_Reporting_Guide_and_Policy_Statement_2014.pdf.

¹⁹ Main Board Rule 2.03(2) (GEM Rule 2.06(2))

²⁰ Main Board Rule 2.13(2) (GEM Rule 17.56(2))

²¹ Guidance Letter HKEX-GL86-16, Appendix 1, Section B (“Risk Factors” section)

²² Guidance Letter HKEX-GL56-13, Table A (Disclosure requirements for AP-Vetting and AP-Publication)

regulations may include labour and employment laws and regulations, as well as other ESG-related laws and regulations.

22. Furthermore, the SEHK's guidance²³ to listing applicants provides that "Health, work safety, social and environmental matters" should be a key area of disclosure in the listing document, and should include information on:

- (a) the applicant's system of recording and handling accidents and implementation of the policies and the applicant's health and work safety compliance record;
- (b) the number of material accidents in the course of an applicant's operation, whether there were any claims for personal or property damages, and compensation paid to employees;
- (c) the applicant's occupational safety measures, staff issues and environmental protection policies; and
- (d) the applicant's environmental obligations under applicable laws and regulations or other voluntarily adopted measures.

The SEHK's Efforts to Promote ESG Reporting

23. The SEHK is keenly aware of the need for issuer education in ESG reporting and believes that it is integral to the wider adoption of ESG reporting. With this in mind, the SEHK has organised numerous ESG training events since early 2011. For example, in September and October 2013, the SEHK held 12 issuer training seminars attended by over 1 800 issuer representatives and market practitioners.

24. In view of the revised ESG Guide announced at the end of 2015, the SEHK provided a new series of 12 issuer training seminars in March 2016. The seminars featured speakers from the SEHK's Listing Department, as well as ESG specialists and issuer representatives who provided more in-depth and practical training on ESG reporting. Some 2400 issuer representatives (and a small number of market practitioners) registered for the seminars. Also, the SEHK recorded the seminars in each language (i.e. English, Cantonese and Putonghua) and posted these on the website of the Hong Kong Exchanges and Clearing Limited ("HKEX").

²³ Guidance Letter HKEX-GL86-16, Appendix 1, Section E ("Business" section)

25. Apart from these training seminars, representatives from the SEHK have given speeches in numerous ESG related events organised by various professional bodies and international non-governmental organisations.

26. Training materials and webcasts have been available on a dedicated ESG webpage on the HKEX's website since 2013. The SEHK recently revamped the ESG webpage (launched on 4 March 2016) to include updated online trainings materials and resources.²⁴ These materials include practical steps and tools to guide issuers through the process of preparing an ESG report.

27. Through issuer education and the provision of online training materials as described above, the SEHK aims to familiarise issuers with ESG matters and make the Guide as user-friendly and accessible to them as possible.

Way Forward

28. The development of the ESG Guide has been, and will continue to be, an evolutionary process, with the longer term goal of achieving better and more comprehensive ESG reporting amongst issuers. The SEHK intends to monitor the level of ESG reporting amongst issuers and review the Guide periodically going forward, particularly in the light of any future regional or international legislative and regulatory developments in this area.

29. Members are invited to note the latest developments in relation to the SEHK's ESG Guide and related disclosure requirements.

Hong Kong Exchanges and Clearing Limited
May 2016

²⁴ Available at: <https://www.hkex.com.hk/eng/rulesreg/listrules/listsptop/esg/howtoprepare.htm>

Summary of the ESG Guide		
	“Comply or Explain” Provisions	Recommended Disclosures
Subject Area A. Environmental		
Aspect A1 : Emissions	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on air and greenhouse gas emissions, discharges into water and land, and generation of hazardous and non-hazardous waste.</p>	
	<p>Key Performance Indicators</p> <p>A1.1 Types of emissions and emissions data.</p> <p>A1.2 Greenhouse gas emissions in total and intensity.</p> <p>A1.3 Total hazardous waste produced and intensity.</p> <p>A1.4 Total non-hazardous waste produced and intensity.</p> <p>A1.5 Measures to mitigate emissions and results achieved.</p> <p>A1.6 Handling of hazardous and non-hazardous wastes, reduction initiatives and results achieved.</p>	
Aspect A2: Use of Resources	<p>General Disclosure</p> <p>Policies on the efficient use of resources, including energy, water and other raw materials.</p>	
	<p>Key Performance Indicators</p> <p>A2.1 Direct and/or indirect energy consumption by type in total and intensity.</p>	

Summary of the ESG Guide		
	“Comply or Explain” Provisions	Recommended Disclosures
	<p>A2.2 Water consumption in total and intensity.</p> <p>A2.3 Energy use efficiency initiatives and results achieved.</p> <p>A2.4 Issues in sourcing water, water efficiency initiatives and results achieved.</p> <p>A2.5 Total packaging material used for finished products.</p>	
Aspect A3: Environment and Natural Resources	<p>General Disclosure</p> <p>Policies on minimising the issuer’s significant impact on the environment and natural resources.</p>	
	<p>Key Performance Indicator</p> <p>A3.1 Significant impacts of activities on the environment and natural resources and actions taken to manage them.</p>	
Subject Area B. Social		
Employment and Labour Practices		
Aspect B1: Employment	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on compensation and dismissal, recruitment and promotion, working hours, rest periods, equal opportunity, diversity, anti-discrimination, and other benefits and welfare.</p>	<p>Key Performance Indicators</p> <p>B1.1 Total workforce by gender, employment type, age group and geographical region.</p> <p>B1.2 Employee turnover rate by gender, age group and geographical region.</p>

Summary of the ESG Guide		
	“Comply or Explain” Provisions	Recommended Disclosures
Aspect B2: Health and Safety	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on providing a safe working environment and protecting employees from occupational hazards.</p>	<p>Key Performance Indicators</p> <p>B2.1 Number and rate of work-related fatalities.</p> <p>B2.2 Lost days due to work injury.</p> <p>B2.3 Occupational health and safety measures adopted, how they are implemented and monitored.</p>
Aspect B3: Development and Training	<p>General Disclosure</p> <p>Policies on improving employees’ knowledge and skills for discharging duties at work. Description of training activities.</p>	<p>Key Performance Indicators</p> <p>B3.1 Percentage of employees trained by gender and employee category.</p> <p>B3.2 Average training hours completed per employee by gender and employee category.</p>
Aspect B4: Labour Standards	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on preventing child and forced labour.</p>	<p>Key Performance Indicators</p> <p>B4.1 Measures to review employment practices to avoid child and forced labour.</p> <p>B4.2 Steps taken to eliminate such practices when discovered.</p>
Operating Practices		
Aspect B5: Supply Chain Management	<p>General Disclosure</p> <p>Policies on managing environmental and social risks of the supply chain.</p>	<p>Key Performance Indicators</p> <p>B5.1 Number of suppliers by geographical region.</p> <p>B5.2 Practices relating to engaging suppliers, number of suppliers where practices implemented, how they are implemented and monitored.</p>

Summary of the ESG Guide		
	“Comply or Explain” Provisions	Recommended Disclosures
Aspect B6: Product Responsibility	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on health and safety, advertising, labelling and privacy matters relating to products and services provided and methods of redress.</p>	<p>Key Performance Indicators</p> <p>B6.1 Percentage of total products sold or shipped subject to recalls.</p> <p>B6.2 Number of complaints received and how they are dealt with.</p> <p>B6.3 Practices relating to observing and protecting intellectual property rights.</p> <p>B6.4 Quality assurance process and recall procedures.</p> <p>B6.5 Consumer data protection and privacy policies, how they are implemented and monitored.</p>
Aspect B7: Anti- corruption	<p>General Disclosure</p> <p>Information on: (a) policies; and (b) compliance with relevant laws and regulations on bribery, extortion, fraud and money laundering.</p>	<p>Key Performance Indicators</p> <p>B7.1 Number of concluded legal cases regarding corrupt practices and the outcomes.</p> <p>B7.2 Preventive measures and whistle-blowing procedures, how they are implemented and monitored.</p>
Community		
Aspect B8: Community Investment	<p>General Disclosure</p> <p>Policies on community engagement to understand the needs of communities and to ensure their interests are taken into consideration.</p>	<p>Key Performance Indicators</p> <p>B8.1 Focus areas of contribution.</p> <p>B8.2 Resources contributed.</p>