



CONSULTATION PAPER
ENVIRONMENTAL, SOCIAL AND GOVERNANCE REPORTING GUIDE

Law Society's Submissions

Questions 1

Should the ESG guide be a recommended best practice appended to the Listing Rules? If your answer is "No", please give reasons and alternative views.

Law Society's response

We expect that the ESG Guide will serve as a useful tool for many issuers, helping them to report on workplace, environmental, operational and community matters specifically. We are generally supportive of the initiative. The ESG Guide states that issuers should report on KPIs that are material and relevant to them. For some issuers, the KPIs set out in the ESG Guide will require adaptation to gain relevance in the context of their businesses or may not be relevant at all. As the overriding purpose of the ESG Guide is "to raise ESG awareness and encourage issuers to report on ESG matters", at this stage it would be more appropriate to set out the ESG Guide as a "guidance note" (separately from the Listing Rules) rather than as "recommended best practice" and appended to the Listing Rules.

Question 2

Do you agree with the proposed Main Board Listing Rule 13.91 and paragraph 53 of Appendix 16/GEM Listing Rules 17.103 and 18.84 in Appendix I? If your answer is "No", please give reasons and alternative views.

Law Society's response

As noted above, as the purpose of the ESG Guide is to raise ESG awareness and encourage issuers to report on ESG matters, rather than to require strict compliance, we would suggest broadening the proposed wording so as to encourage issuers to include information on workplace quality, environmental protection, operating practices and community involvement generally, rather than to specifically state that they should include the information contained in the ESG Guide.

We are also of the view that, in the future, it would be more user friendly to include ESG statements in the annual report.

The ESG information would be more useful if it covers the same period as the annual report - this would allow readers to have a more comprehensive understanding of the ESG policies and strategies of the company. It would also allow more meaningful comparison of the performance of a company in the areas covered by the ESG Guide with those of other companies.

In contrast, the provision that issuers are free to report “on any period” is vague and it should be noted that if reporting is not timely, it will be of limited use to stakeholders. For example, a report every 2 years could mean that the information is too out of date by the time it is published.

Given that certain disclosure under paragraph 52 of Appendix 16 overlaps with the disclosure under the ESG Guide, we suggest to remove those provisions under paragraph 52 of Appendix 16 and to place them under the ESG Guide.

Question 3

Do you agree with the Introduction section? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

We are of the view that the title of the report “Environmental, Social and Governance Reporting Guide” could be a bit confusing because separately, there are requirements in relation to the corporate governance report which are set out in Appendix 23.

It would be helpful to provide at the outset the purpose and guiding principles of this reporting. We would also add emphasis to the fact that the Guide is intended to provide guidance only. At present, the Introduction could be read as suggesting that an issuer should report on the basis set out in the ESG Guide or on higher level ESG reporting based on international guidance and standards. In contrast (and as later clarified under the General Approach section) we understand that the intention is for issuers to report on KPIs that are material and relevant to them.

Under paragraph 4, would there be a requirement to publish the report also on the Exchange’s website?

Under paragraph 5, would the Exchange provide any guidelines as to what it expects in terms of involvement of the full board in preparing the ESG report?

Under paragraph 7, it should be made clear that an issuer does not need to cover each aspect under each subject area and that an issuer could choose to report on any of the general disclosure and KPIs under each aspect (if that is the case). It should also be made clear that for any KPI, an issuer may disclose qualitative measurements instead of quantitative measurements as provided for in the ESG Guide if the circumstances suit such issuer or the industry that such issuer is in.

Question 4

Do you agree with the guidance under the General Approach section? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

We would include an acknowledgment that some issuers may wish to prepare KPIs to reflect the nature of their business.

Also, there seems to be some overlapping/inconsistency in the drafting of paragraphs 9 and 10. Paragraph 9 refers to materiality “in the context of [the issuer’s] corporate strategy” and paragraph 10 refers to materiality “in strategic, operational and financial

terms”. In our view, in deciding what to cover in the report based on materiality, issuers should consider including subjects and KPIs that reflect the issuer’s significant economic, environmental and social impacts or that which would substantially influence the assessments and decisions of stakeholders.

We suggest amending the language of the first sentence of paragraph 11 to read that “The issuers are encouraged to consult or engage the stakeholders...”

Question 5

Do you agree with the guidance under the Reporting Guidance section? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Under paragraph 15, the intention of the first sentence is not particularly clear - if the guidance section of the Guide conveys a message that an issuer *should* or *is required to* continue to report regularly once it starts reporting, this may discourage issuers from starting to report. As regards the last sentence - we do not think it is necessary to explain why some aspects and KPIs are not reported on given paragraphs 8 to 10 already set out issuers only have to report on relevant and material ESG subjects unless they cease to report on an aspect which has appeared in their last report.

There could be more guidance on the overall structure of the ESG report which issuers would be encouraged to adopt - for example, by setting out the overall strategy, followed by management approach, a discussion of material KPIs and then the risks and challenges. (We note that this is partly covered by paragraphs 16 and 17.)

Question 6

Do you agree with the proposed ESG areas, namely: Workplace Quality, Environmental Protection, Operating Practices and Community Involvement? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

On the whole, yes. However, we would query whether the requirement to report should apply only insofar as necessary to assist investors to understand the performance or position of the business (similar to the requirement in the UK). The ESG report (and the annual report as a whole) should be a succinct, relevant document that investors, and potential investors, can read to help them assess the performance of a company. Care needs to be taken to guard against the inclusion in the report of large passages of text that are not directly relevant to a given business and which are included in order to meet reporting criteria only.

Therefore, we would prefer that the guide places emphasis on a framework for reporting that can be used by issuers of any size, sector or location instead.

Question 7

Do you agree with the following proposed aspects? If your answer is “No”, please give reasons and alternative views.

Law Society response

In general, we find the general disclosures and KPIs overly prescriptive. We would prefer that the ESG Guide places emphasis on a framework for reporting that can be used by issuers of any size, sector or location, instead of focusing on aspects and KPIs where many are, with due respect, clearly not that relevant to a significant number of issuers. It would be more appropriate to set these out as examples of areas that could be covered under each subject.

Question 8

Do you agree with the following general disclosure for Aspect A1: Working conditions? If your answer is “No”, please give reasons and alternative views.

Law Society response

By way of general comment, we note that both the general disclosure aspects and proposed KPIs in all sections are very detailed. We would encourage broadening the wording used to encourage issuers to report sensibly on material matters necessary to assist investors to understand the performance or position of the business. The KPIs should be included by way of illustration only. We suggest that the issuers are not required to provide information on “material non-compliance” but instead to provide information on “problems that are encountered” and “room for improvement” in connection with the compliance with relevant standards, rules and regulations.

Question 9

Do you agree to include KP1.1: “Total workforce by employment type, age group and geographical region”? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

As noted above, we suggest that these KPIs (and all KPIs) be presented as examples rather than requirements. For some businesses this may be a very meaningful KPI, for others it may not be.

Question 10

Do you agree to include KP1 A1.2: “Employee turnover rate by age group and geographical region”? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Please see comment under question 9 above. Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports.

Question 11

Do you have any additional KPIs for Aspect A1? Please give reasons for your proposals.

Law Society's response

No.

Question 12

Do you agree with the following general disclosure for Aspect A2: Health and safety? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 13

Do you agree to include KPI A2.1: "Fatality number and rate"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports.

Question 14

Do you agree to include KPI A2.2: "Lost days due to work injury"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports. Care should also be taken not to over-emphasize the effect of work injury on productivity or financials (instead of looking at work injury prevention from the point of view of employee welfare as a virtue in itself).

Question 15

Do you agree to include KPI A2.3: "Description of occupational health and safety measures adopted, how they are implemented and monitored"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 16

Do you have any additional KPIs for Aspect A2? Please give reasons for your proposals.

Law Society's response

No.

Question 17

Do you agree with the following general disclosures for Aspect A3: Development and training? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 18

Do you agree to include KPI A3.1: "Description of training activities provided and if relevant, the percentage of employees trained by employee category (e.g. senior management, middle management, etc.)"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 19

Do you agree to include KPI A3.2: "The average training hours completed per employee by employee category"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 20

Do you have any additional KPIs for Aspect A3? Please give reasons for your proposals.

Law Society's response

No.

Question 21

Do you agree with the following general disclosure for Aspect A4: labour standards? If your answer is "No", please give reasons and alternative views.

Law Society's response

We query whether a separate Aspect on child or forced labour is necessary given the existing guidance in Aspect A1 on working conditions generally. If necessary, we would suggest broadly incorporating these concepts into Aspect A1.

Question 22

Do you agree to include KPI A4.1: "Description of measures to review employment practices to avoid child and forced labour"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see comments above regarding child or forced labour (Question 21).

Question 23

Do you agree to include KPI A4.2: "description of steps taken to eliminate such practices when discovered"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see comments above regarding child or forced labour (Question 21).

Question 24

Do you have any additional KPIs for Aspect A4? Please give reasons for your proposals.

Law Society's response

Please see comments above regarding child or forced labour (Question 21).

Question 25

Do you agree with the following general disclosure for Aspect B1: Emissions? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). We also suggest Aspect B1 to refer to "Emissions and waste" instead of only "Emissions".

Question 26

Do you agree to include KPI B1.1: "The types of emissions and respective emissions data"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 27

Do you agree to include KPI B1.2: "Greenhouse gas emissions in total (in tonnes) and where appropriate, intensity (e.g. unit of production volume, per facility)? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 28

Do you agree to include KPI B1.3: “Total hazardous waste produced (in tonnes) and where appropriate, intensity (e.g. unit of production volume, per facility)”? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Please see general comments above (Questions 6 to 9).

Question 29

Do you agree to include KPI B1.4: “total non-hazardous waste produced (in tonnes) and where appropriate, intensity (e.g. per unit of production volume, per facility)”? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Please see general comments above (Questions 6 to 9).

Question 30

Do you agree to include KPI B1.5: “Description of measures to mitigate emissions and results achieved”? If your answer is “No”

Law Society’s response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 31

Do you agree to include KPI B1.6: “Description of how hazardous and non-hazardous wastes are handled, reduction initiatives and results achieved”? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 32

Do you have any additional KPIs for Aspect B1? Please give reasons for your proposals.

Law Society’s response

No.

Question 33

Do you agree with the following general disclosure for Aspect B2: Use of resources? If your answer is “No”, please give reasons and alternative views.

Law Society’s response

Please see general comments above (Questions 6 to 9).

Question 34

Do you agree to include KPI B2.1: "Energy consumption by type (e.g. electricity, gas or oil) in total (kwh in '000s) and intensity (e.g. per unit of production volume, per facility)"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 35

Do you agree to include KPI B2.2: "Water consumption in total and intensity (e.g. per unit of production volume, per facility)"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 36

Do you agree to include KPI B2.3: "Description of energy use efficiency initiatives and results achieved"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 37

Do you agree to include KPI B2.4: "Description of whether there is any issue in sourcing water that is fit for purpose, water efficiency initiatives and results achieved"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 38

Do you agree to include KPI B2.5: "total packaging material used (in tonnes), and if applicable, with reference to per unit produced"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 39

Do you have any additional KPIs for Aspect B2? Please give reasons for your proposals.

Law Society's response

No.

Question 40

Do you agree with the following general disclosure for Aspect B3: The environment and natural resources? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 41

Do you agree to include KPI B3.1: "Total paper used"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 42

Do you agree to include KPI B3.2: "Paper use efficiency initiatives and results achieved"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 43

Do you agree to include KPI B3.3: "Description of the significant impacts of activities on the environment and natural resources and the actions taken to manage them"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI. Also, please note that "the actions taken to manage them" under KPI B3.3 seems to be overlap with what is required under the general disclosure.

Question 44

Do you have any additional KPIs for Aspect B3? Please give reasons for your proposals.

Law Society's response

No.

Question 45

Do you agree with the following general disclosure for Aspect C1: Supply chain management? If your answer is "No", please give reasons and alternative views.

Law Society's response

It is unclear what this Aspect C1 should cover that is relevant to corporate social responsibility. Please clarify.

Question 46

Do you agree to include KPI C1.1: "Number of suppliers by geographical region"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 47

Do you agree to include KPI C1.2: "Description of practices relating to engaging suppliers, number of suppliers where the practices are being implemented, how they are implemented and monitored"? If your answer is "No", please give reasons and alternative views.

Law Society's response

It is unclear what this KPI should cover that is relevant to corporate social responsibility. Please clarify.

Question 48

Do you have any additional KPIs for Aspect C1? Please give reasons for your proposals.

Law Society's response

No.

Question 49

Do you agree with the following general disclosure for Aspect C2: Product responsibility? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please clarify whether "privacy" means "customer privacy".

Question 50

Do you agree to include KPI C2.1: "Percentage of total products sold or shipped subject to recalls for safety and health reasons"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports.

Question 51

Do you agree to include KPI C2.2 "Number of products and service related complaints received and how they are dealt with"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports.

Question 52

Do you agree to include KPI C2.3: "Description of practices relating to observing and protecting intellectual property rights"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 53

Do you agree to include KPI C2.4: "Description of quality assurance process and recall procedures"? If your answer "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 54

Do you agree to include KPI C2.5: "Description of consumer data protection and privacy policies, how they are implemented and monitored"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 55

Do you have additional KPIs for Aspect C2? Please give reasons for your proposals.

Law Society's response

No.

Question 56

Do you agree with the following general disclosure for Aspect C3: Anti-corruption? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9).

Question 57

Do you agree to include KPI C3.1: "Number of concluded legal cases regarding corrupt practices brought against the issuer or its employees during the reporting period and the outcomes of the cases"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). Some members take the view that this KPI is not necessary and may discourage the issuers to prepare the ESG reports.

Question 58

Do you agree to include KPI C3.2: "Description of preventive measures and whistle-blowing procedures, how they are implemented and monitored"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 59

Do you have any additional KPIs for Aspect C3? Please give reasons for your proposals.

Law Society's response

No.

Question 60

Do you agree with the following general disclosure for Aspect D1: Community investment? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, (i) are the words "the communities" missing after "in"; (ii) should the word "takes" be replaced by "take"; and (iii) should the word "of" be deleted?

Question 61

Do you agree to include KPI D1.1: "Focus areas of contribution (e.g. education, environmental concerns, labour needs, health, culture, sport)"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 62

Do you agree to include KPI D1.2: "Resources contributed (e.g. money or time) to the focus area"? If your answer is "No", please give reasons and alternative views.

Law Society's response

Please see general comments above (Questions 6 to 9). In addition, in our view, this is more appropriately regarded as a general disclosure requirement than a KPI.

Question 63

Do you have any additional KPIs for Aspect D1? Please give reasons for your proposals.

Law Society's response

No.

Question 64

Do you agree that we should not recommend that issuers to seek external assurance for issuers that report on ESG performance? If your answer is "No", please give reasons and alternative views.

Law Society's response

Agree.

**The Law Society of Hong Kong
Company Law Committee**

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