



Consultation Paper on Enhancement of Climate-related Disclosures under the Environmental, Social and Governance Framework

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited (the “Exchange”) on 14 April 2023 issued a consultation paper on “Enhancement of Climate-related Disclosures under the Environmental, Social and Governance Framework” (“Consultation Paper”)

In response, the Law Society provides the following submissions. The same abbreviations and definitions appearing in the Consultation Paper are used in this submission.

Question 1

Do you agree to upgrade climate-related disclosures to mandatory from “comply or explain”? Please provide reasons for your views.

Law Society's response:

We agree climate-related disclosures (aligned with the ISSB climate standard) should be mandatory. The global transition towards a low-carbon economy will affect many companies and sectors, and investors are demanding consistent, comparable, and reliable disclosures on climate-related risks in order to make investment and voting decisions in line with their risk appetite and climate commitments. Hong Kong, as an international financial centre, should seek to satisfy this demand and address the current fragmented approach by aligning with the new international standard being set by the ISSB.

Given one of the key investor demands is consistency and comparability of climate disclosures across borders, we agree that the Exchange should not deviate significantly from the ISSB standard. However, we recognise the new requirements represent a significant step-up for issuers in terms of the amount and granularity of forward-looking information, some of which involve a high degree of measurement or outcome uncertainty, as well as value chain data outside of their control.

Although helpful, the transitional period proposed by the Exchange is short relative to the additional burden on listed issuers in the collection and analysis of data, which would require listed issuers to build and test the relevant processes and systems. In any event, the transitional arrangement being proposed does not provide relief to issuers who choose to make the relevant disclosures during the transitional period. We have therefore highlighted in our responses below the more challenging disclosures where we propose the Exchange gives more guidance and parameters to issuers.

We also submit the Effective Date should be at least 6 to 12 months from the issuance of the final rules by the Exchange. This is primarily to give issuers sufficient time to digest the Exchange's final rules and implementation guidance and to put in place arrangements to collect meaningful data and information from the Effective Date. Other major jurisdictions do not appear to have announced their effective dates for ISSB implementation – postponing the Effective Date would therefore also allow Hong Kong to take into account how other jurisdictions are proposing to implement the new major disclosure regime and harmonise the approach.

Finally, we submit the Exchange should consider a longer Interim Period bearing in mind many Hong Kong listed issuers face particular challenges due to data availability from their supply chains or inconsistencies in local standards where they operate. If the Exchange does not agree to an extension, it could consider building in flexibility to allow the Exchange to extend the Interim Period depending on methodologies and data available at the time (that is, closer to the time of expiry of the initial Interim Period).

Question 2

Do you agree to introduce new governance disclosures focusing on climate-related issues as set out in paragraph 1 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 3

Do you agree to require disclosure of climate-related risks as set out in paragraph 2 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard. Can the Exchange please clarify if the disclosures for paragraph 2 can be entirely qualitative, save for incorporating any applicable metrics under “Metrics and Targets” that the issuer has quantified?

Question 4

Do you agree that issuers may opt to disclose the actual and potential effects of climate-related opportunities they may have identified in response to climate-related risks disclosed as set out in paragraph 3 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree issuers should be given the discretion to decide whether to disclose climate-related opportunities, for example if the disclosure would be commercially sensitive or immaterial.

Question 5

Do you agree that an issuer shall consider the applicability of and disclose the metrics when assessing and making disclosure of climate-related risks and opportunities as set out in paragraph 4 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 6

Do you agree to require disclosure of how the issuer is responding to climate-related risks and, where an issuer chooses to, any climate-related opportunities as set out in paragraph 5 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 7

Do you agree to require disclosure of climate-related targets set by the issuer as set out in paragraph 6 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 8

Do you agree that where an issuer has yet to disclose climate-related targets, it should make alternative disclosures as set out in note 2 to paragraph 6 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree issuers who have yet to set climate-related targets should have an alternative disclosure on work plan and timetable for setting such targets.

Question 9

Do you agree to require disclosure of progress made in the most recent reporting year in respect of plans disclosed as set out in paragraph 7 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 10

Do you agree to require discussion of the issuer's climate resilience as set out in paragraph 8 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 11

Do you agree to require issuers to apply a climate-related scenario analysis that is commensurate with the issuer's circumstances, and to require disclosure of information on climate-related scenario analysis as set out in paragraph 9 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the more flexible approach for climate-related scenario analysis. However, we propose the Exchange confirm in the drafting that issuers may disclose the analysis in a *qualitative* manner, and include the following in implementation guidance: (i) examples of factors that can be taken into account (e.g. budget, resources, skills, degree of exposure to climate risks) when determining scenarios

“commensurate with the issuer’s circumstances”; and (ii) examples of off-the-shelf scenarios that may be used.

Question 12

Do you agree to require disclosure of the current financial effects of climate-related risks, and where applicable, climate-related opportunities as set out in paragraph 10 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with disclosure of the current financial effects of climate-related risks, but would like the Exchange to clarify in the drafting whether “material” in this context is referring to financial materiality (see also our response to question 27).

Question 13

Do you agree that during the Interim Period, where an issuer has yet to provide quantitative disclosures pursuant to paragraph 10(a) of Part D of the Proposed Appendix 27, it should make the interim disclosures as set out in the paragraph immediately following paragraph 10 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with this transitional relief.

Question 14

Do you agree to require disclosure of anticipated financial effects of climate-related risks and, where applicable, climate-related opportunities as set out in paragraph 11 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

The disclosure of anticipated financial effects is considered challenging even if the disclosure can be made in qualitative terms. This is an area where we suggest the Exchange should give further comfort to issuers by establishing some parameters within the drafting that the disclosure can be based on reasonable information available to the issuer at the reporting date without undue cost and effort (in line with the proposed ISSB approach and supported by implementation guidance giving details on what is considered a reasonable basis in the context of this disclosure requirement), and is not expected to be given in a level of detail that risks being price sensitive.

Question 15

Do you agree that during the Interim Period, where an issuer has yet to provide information required in paragraph 11 of Part D of the Proposed Appendix 27, it should make the interim disclosures as set out in the paragraph immediately following paragraph 11 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the transitional relief.

Question 16

Do you agree to require disclosure of the process an issuer uses to identify, assess and manage climate-related risks as set out in paragraph 12(a) of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

Question 17

Do you agree that issuers may opt to disclose the process used to identify, assess and manage climate-related opportunities as set out in paragraph 12(b) of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with this optionality for the reasons outlined in our response to question 4.

Question 18

(a) Do you agree with the proposed approach for the disclosure of scope 1 and scope 2 emissions and the related information as set out in paragraphs 13 to 14 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree and note it is aligned with the ISSB climate standard.

(b) Do you agree with the proposed approach for the disclosure of scope 3 emissions and the related information as set out in paragraphs 13 to 15 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the proposed approach on Scope 3 emissions, subject to giving appropriate comfort to issuers (beyond the interim relief) for the reasons mentioned in our response to question 1. This could take the form of specifying in the rules that the disclosure can be based on reasonable information available without undue cost and effort (in line with the proposed ISSB approach and supported by implementation guidance with details on what is considered reasonable and undue cost and effort in the context of the Scope 3 disclosure requirement, particularly in relation to reliance on data from third parties in the supply chain). We also note the draft US SEC disclosure rules propose to provide a safe harbour for disclosure of Scope 3 emissions provided it was made or reaffirmed with a reasonable basis or disclosed in good faith.

Question 19

Do you agree with the proposed approach for the interim disclosures in respect of scope 3 emissions during the Interim Period as set out in the paragraph immediately following paragraph 15 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the interim disclosures. We would be grateful for the Exchange's clarification as to what would qualify as acceptable reasons under paragraph 15(d). We would suggest that unavailability or unreliability of information be an acceptable reason.

Question 20

(a) Do you agree to require disclosure of the amount and percentage of assets or business activities vulnerable to transition risks as set out in paragraph 16 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

As this metric involves a high level of measurement uncertainty, the Exchange should consider specifying this metric is required to the extent data and methodologies allow (a concept based on the TCFD's Annex on "Implementing the Recommendations of the Task Force on Climate-related Financial Disclosures"). If the Exchange does not agree with this approach, it should allow issuers to set appropriate parameters to limit the scope of the metric (e.g. percentage of revenue from certain carbon-intensive assets), which we note is the approach taken by the ISSB in its Illustrative Guidance, and give example metrics for different industries, including those less exposed to climate-related risks.

(b) Do you agree with the proposed interim disclosures during the Interim Period in respect of the metric regarding transition risks as set out in the paragraph immediately following paragraph 16 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the interim disclosures.

Question 21

(a) Do you agree to require disclosure of the amount and percentage of assets or business activities vulnerable to physical risks as set out in paragraph 17 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

Please see our response to question 20 which we believe applies equally to this metric.

(b) Do you agree with the proposed interim disclosures during the Interim Period in respect of the metric regarding physical risks as set out in the paragraph immediately following paragraph 17 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the interim disclosures.

Question 22

(a) Do you agree to require disclosure of the amount and percentage of assets or business activities aligned with climate-related opportunities as set out in paragraph 18 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We believe this metric should not be mandatory for the reasons mentioned by the Exchange in relation to climate-related opportunities under the “Strategy” pillar, which would also align with the fact that an issuer may not have disclosed the details on climate-related opportunities under that pillar.

(b) Do you agree with the proposed interim disclosures during the Interim Period in respect of metrics regarding climate-related opportunities as set out in the paragraph immediately following paragraph 18 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the interim disclosures.

Question 23

(a) Do you agree to require disclosure of the amount of capital expenditure, financing or investment deployed towards climate-related risks and opportunities as set out in paragraph 19 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with this disclosure if it allows issuers to disclose metrics such as amount invested in low-carbon technologies or business lines, or climate adaptation measures, *during the reporting period*. Please can the Exchange clarify if this is the case (as the specific amount of future capital expenditure or investment to address climate risks may potentially be speculative and/or price sensitive and yet premature for public disclosure).

(b) Do you agree with the proposed interim disclosures during the Interim Period in respect of the metric regarding capital deployment as set out in the paragraph immediately following paragraph 19 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the interim disclosures.

Question 24

Do you agree that where an issuer maintains an internal carbon price, it should disclose the information as set out in paragraph 20 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the more flexible approach taken with this disclosure.

Question 25

Do you agree with the proposed approach for the disclosure of how climate-related considerations are factored into remuneration policy as set out in paragraph 21 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the more flexible approach taken with this disclosure. We would be grateful if the Exchange can clarify whether a negative statement is required if climate-related considerations are not factored into remuneration policy.

Question 26

Do you agree with the proposed approach for the industry-based disclosure requirements prescribed under other international ESG reporting frameworks such as the SASB Standards and the GRI Standards as set out in paragraph 22 of Part D of the Proposed Appendix 27? Please provide reasons for your views.

Law Society's response:

We agree with the more flexible approach taken with this disclosure.

Question 27

Do you have any comments regarding whether the manner in which the proposed consequential amendments are drafted will give rise to any ambiguities or unintended consequences? Please elaborate.

Law Society's response:

We believe there is some ambiguity around the application of the “materiality” principle to the new climate disclosures. Specifically:

1. whether all the proposed climate disclosures (including, for example, Scope 3 emissions) are subject to disclosure only if considered material – we believe this ought to be the case; and
2. whether materiality is intended to be assessed by reference to the existing reporting principle of “materiality” which expressly refers to “investors and *other stakeholders*”? If so, we propose it should be aligned with the concept of materiality adopted by the ISSB (which is assessed by reference to the information needs of investors) – this is on the basis the proposed rules are intended to implement a global baseline based on the ISSB standard.

Question 28

Do you have any comments regarding the topics/matters that we intend to give guidance on? Is there any particular topic/matter you consider further guidance to be helpful? Please elaborate.

Law Society's response:

Please see our response to the questions above which highlighted areas for further guidance or clarification.

Question 29

Do you have any feedback on the new developments announced by the ISSB subsequent to the publication of this paper that may impact on the proposals in this paper? Please share your views with us.

Law Society's response:

No feedback at this stage.

**The Law Society of Hong Kong
4 July 2023**