

Nov/Dec 2022 Legal and Regulatory Update

Top stories

HKEX review: ESG reports disclosure

HKEX published a report on its review of issuers' ESG reports for 2021 year-end ([Announcement](#); [full report](#))

It focuses on new ESG requirements which came into effect in July 2020: (i) **board governance** of ESG, (ii) **climate** disclosure, (iii) **"Social"** issues, (iv) **reporting practices**.

Firstly, HKEX noted good progress in some areas. E.g. a vast majority of sample issuers disclosed their **boards' oversight and management approach** on ESG issues, and disclosures of all **new climate requirements**.

However, **reporting level** of the new **"Social KPIs"** (e.g. *supply chain management*) is **lower** than the average of other Social KPIs.

HKEX also reminds issuers that **ESG reports** for financial years commencing **on or after Jan 2022** should be **published at the same time as annual reports**.

HKEX report sets out some recommendations for further enhancement.

Secondly- **way forward, HKEX supports** the establishment of the International Sustainability Standards Board ("**ISSB**") for developing globally accepted sustainability reporting standards that build on the **TCFD framework**. ISSB standards are expected to be finalised in **early 2023**.

Some TCFD components are not currently required by HKEX. E.g. scope 3 GHG emissions ("**Scope 3**") and climate-related **scenario analysis**. In this light, it was noted that 1/3 of sample Issuers have started considering Scope 3, and around 5% adopted scenario analysis.

HKEX is reviewing its ESG Rules with a focus on enhancing climate disclosures, and will consider the findings in this review, in particular, the challenges faced by issuers around data collection and availability of technical knowledge or expertise for reporting certain items.

It observes that **issuers should get familiar with the climate disclosure** requirements under the **ISSB standards** and **identify gaps in internal policies and practices**.

What you should know:

HKEX RECOMMENDATIONS

Board governance of ESG (P.6, para 19)

- *(Review findings)* majority disclosed **ESG governance structures, designated committees/roles and ESG targets**, but fewer *(around 40%)* disclosed the **process and results of progress review**
- Information enabling better understanding of **the board's process/procedures/controls used to monitor and manage ESG**
 - E.g. relevant expertise or skills of the board
 - Frequency and form of reporting to the board
 - Alignment with business strategy
- Information on the **process or approach for ESG targets review**
 - E.g. measurement system or industry benchmark adopted
 - Comparison with the historical data and how the baseline is set
- **Results of review**
 - E.g. targets not achieved *(reasons, follow-up actions, whether adjustment)*

Climate change (P.8)

- *(Review findings)* **TCFD implementation (P.9, para 32)**
 - A majority gave **qualitative** targets *(i.e. directional)*
- **Only a few** reported on **every single line item** listed in TCFD
- **“Encourage” issuers to start setting quantitative targets** where feasible
- **Should start considering reporting on Scope 3** as soon as practicable
 - To develop a “systematic approach” for to calculate and report *data (some suggested steps and references to HKEX guides, P. 12, para 43-4)*
- **Climate scenario analysis** *(some suggested steps and reference to HKEX Guides, P.12, para 45-50)*

Social Issues (P.14)

- **Further information on “supply chain” (P.15, para 57)**
 - E.g. process for **identifying significant environmental and social risks** along the supply chain; how to **assess the impact** of such risks on issuer’s business operations
 - **Measures** taken or to be taken
 - **Measures for monitoring** supply chain risks; **green procurement practices**
- **Anti-corruption training (P.16, para 58)**
 - E.g. scope and method of training, the audience; frequency of training

What you should do:

- **Update your board**, including **HKEX expectations on board’s ESG governance process/procedures/controls**
- Note HKEX recommendations, in preparing **your forthcoming ESG report**
- **Forthcoming ISSB/climate disclosure requirements**: update the **board**; with **management’s analysis on gaps** in internal policies and procedures

Also in this issue

Regulators

(i) The Accounting and Financial Reporting Council issued its “Audit Focus” publication to remind auditors on the key audit issues they should take into consideration and pay particular attention to when performing 2022 audit work ([Press release](#), [Full document](#)).

Under the current volatile economic environment, auditors should remain alert on how the **current interest rate hike** and the **inflationary pressure** could impact **impairment assessment**, **revenue recognition**, **going concern assessment**, and potential **fraud risk**.

What you should know/do:

Impact of significant changes in costs and inflation

- E.g. revenue recognition

- May lead to more onerous contracts
- Especially for longer term contracts
- **E.g. impairment assessment**
 - Changes in underlying assumptions
 - Effective interest rate, discount rate, weighted average cost of capital
 - Cash flow projection, in light of changes of interest rates/inflation

(ii) HKEX published a consultation paper seeking public feedback on proposed expansion of its paperless listing regime ([Press release](#), [full consultation paper](#))

Consultation period will **close on 28 Feb 2023**. There are **3 main proposals**:

Firstly, to reduce the number of documents required to be submitted to HKEX and to mandate submission by electronic means. E.g. by “**codifying**” obligations currently contained in various undertakings (*e.g. directors’ undertaking in DU Form*).

Secondly, to mandate electronic dissemination of corporate communications to securities holders by listed issuers, to the extent permitted by the laws and regulations applicable to them and their constitutional documents.

(Background: currently, the “deemed consent” system for dissemination of information via website is cumbersome. Issuers still need to seek consent from each securities holder individually and send separate notifications to them each time a new corporate communication is published).

However, issuers must still **send “Actionable Corporate Communications”** to securities holders **individually** in **electronic form**, or (*where email details not provided*) by **hard copy**. **HKEX will provide further guidance** on what constitutes the same (*e.g. election form for security holders to exercise their right to participate in a “rights issue”*).

For **issuers incorporated in HK**, it should be noted that **HK Companies Ordinance does not currently permit shareholders’ consent to be “implied” for receiving communications by electronic means**. **HKEX** stated that it **will work with the relevant parties** to further consider this issue.

Thirdly, **simplification of Listing Rule appendices**. E.g. by moving fee-related appendices to HKEX website.

(iii) SFC announced that the “investor identification regime” for the securities market in Hong Kong will be launched on 20 March 2023 ([Press release](#))

After the implementation of the system, if **investors do not provide the required consent** to intermediaries, they will **only be allowed to sell existing securities holdings** but **not to buy** securities on HKEX.

Legislation

(iv) The Companies (Amendment) Bill 2022 was gazetted ([Government press release](#), [full Bill](#))

The Bill aims to provide sufficient flexibility for companies to hold general meetings in various manners.

It is proposed to amend the Companies Ordinance to **expressly enable** companies holding **general meetings virtually** or in **hybrid** mode, rather than holding meetings only at **physical locations**.

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