

Special issue: Apr 2024 Legal and Regulatory Update

Top Stories

HKEX consultation conclusions on climate-related disclosures

HKEX published conclusions on its consultation on the enhancement of **climate-related disclosures** under the **ESG framework**. The proposals were adopted as modified, with a **“phased”** approach. **Implementation reliefs** are also introduced for some new requirements, replacing the “interim provisions” approach as originally proposed. ([Press release](#); [full document](#), [implementation guide](#))

New Part D

Proposed climate-related disclosures are contained in a new part of the ESG Code (“New Climate Requirements”). Based on the global **ISSB’s IFRS S2 standard**, there are **4 core pillars** namely **Governance, Strategy, Risk management, Metrics and targets**.

“Phased” approach

Effective for financial years starting on or after **1 Jan 25**, **all listed companies** would be required to report on **scope 1 and 2 emissions** (*currently in Part C, subject to “comply or explain”*). **Other New Climate Requirements** will be subject to **“comply or explain”** for all Main Board listed issuers.

However, for **Hang Seng Composite LargeCap Index companies**, these would become **mandatory** for years on or after **1 Jan 2026**. (*See HKEX press release for summary table*)

Implementation reliefs

These are available for **some requirements**, e.g. **“Financial effects relief” (“F”)**: (*subject to conditions*) *allows qualitative instead of quantitative disclosure for anticipated/current financial effect*. Other reliefs are **“Reasonable information relief” (“RI”)**, **“Capabilities relief” (“C”)**, (*for disclosure of climate-related opportunities*) **“Commercial sensitivity relief” (“CS”)**. (*See P. 24 of consultation conclusions, for summary table of applicability of reliefs*)

However, reliefs are **not available** for all requirements. E.g. governance, risk management, climate targets.

HKEX has published a detailed **implementation guide** (*over 140 pages*). It contains references to the relevant general disclosure principles of **IFRS S1 standard**. Issuers are **encouraged** to refer to and use the guide when preparing disclosures.

Next Steps

HKEX explained that the New Climate Requirements form part of the wider HK roadmap for the local adoption of ISSB standards. They serve as an interim step towards the local sustainability disclosure standards for HK generally, which are being developed by HKICPA.

The purpose of requiring climate reporting on a “**comply or explain**” basis only is to provide issuers with more time to prepare to make such disclosures. It urges issuers to disclose information required under each of the “comply or explain” provisions to the extent possible. **It is vital that issuers kick start the process to identify gaps in their current systems** as soon as possible to help prepare themselves for the eventual climate reporting in accordance with the HK Standards.

We have summarised the key requirements in the Appendix.

What you need to know:

A key concept: “materiality”

- **General threshold under ESG Code unchanged:** this applies to **non-climate aspects**; being “determined by the board as sufficiently important to **investors and other stakeholders**” i.e. not only financial aspects
- **For Part D: added** that an issuer “**must disclose information about climate- related risks and opportunities that could reasonably be expected to affect its cash flows, its access to finance or cost of capital over the short, medium or long term**” i.e. **financial** aspects
- For the avoidance of doubt, issuers are **allowed** to prepare disclosures under the New Climate Requirements under the “**double materiality**” approach i.e. both financial impact and impact on the environment

What you should do:

- **Update the board** and relevant teams on the new requirement
- **Management to perform a gap analysis** for board discussions in due course

Also in this issue

Regulators

HKEX published consultation conclusions on proposed amendments to Listing Rules relating to treasury shares (“T Shares”), together with a [Guidance Letter](#) and [\(updated\) FAQ](#). ([Press release](#), [full report](#))

The new T Shares regime will **take effect from 11 June (“Effective Date”)**. The requirement to cancel repurchased shares will be removed, so that issuers may hold the repurchased shares in treasury. However, this is **subject to the laws of their places of incorporation** and their **constitutional documents**. E.g. **HK Companies Ordinance does not currently allow** treasury shares and the government is proposing amendments.

What you need to know:

Other **key Listing Rule changes** include:

- **Resale of T Shares** by an issuer generally **follows the rules** that currently apply to **an issue of new shares**
 - Plus additional **disclosure**
- **“Market protection” measures** (*e.g. mitigating the risk of stock market manipulation*)
 - E.g. a **30-day moratorium** period to restrict (i) a resale of T Shares (*whether on-market or off-market*) after a share repurchase (*subject to carve-outs, e.g. share grants under a share scheme*); (ii) an on-exchange share repurchase after an on-exchange resale of T Shares
 - **Prohibiting T Shares resale** on the exchange (i) when there is undisclosed inside information; (ii) during the **30-day** period preceding results announcement; or (iii) if knowingly made with a core connected person
 - It is **noteworthy** that the **restricted period for on-exchange share repurchases and grants of options/awards** under share schemes will **ALSO be adjusted from one month to 30 days** immediately before the date of board meeting for the approval of the issuer’s financial results
- **Issuers** (*being holders of treasury shares*) to **abstain from voting** on matters that require shareholders’ approval under Listing Rules
- T Shares **excluded from an issuer’s issued or voting shares** under various parts of the Rules (*e.g. public float and size test calculations*)

The FAQs clarify that an issuer is permitted to **obtain shareholder approval to amend its constitutional documents**, at its **AGM held before the Effective Date**.

- **General mandate** to issue new shares/resell T Shares: to **specifically authorise the resale of T Shares**; that it may **use** the mandate for such purpose only after the **Effective Date**
- **Share scheme rules** need to be amended, in order for share grants to be satisfied by T Shares

The **Guidance Letter** sets out useful information regarding **CCASS arrangements** to appropriately identify and segregate T Shares. E.g. **laws of Bermuda and the Cayman Islands** require repurchased shares to be held in the issuer's own name, in order to be classified as T Shares. This impacts CCASS arrangements.

Practising Governance Limited

May 2024

The Appendix Key New Climate requirements:

[Note: we focus on the “governance” aspect and only set out general principles of the other technical requirements. For detailed requirements: see proposed amendments to Listing Rules, Appendix III of consultation conclusions.]

1. Governance

- **Disclose** the governance body(s) (e.g. a **board, committee**) or individual(s) **responsible for oversight of climate-related risks and opportunities**
 - How the board/committee ensure appropriate **skills and competencies** to oversee relevant strategies
 - **How** and **how often** the board/committee is informed about **climate-related risks and opportunities**
 - How the board/committee considers climate-related risks and opportunities when overseeing the issuer’s **strategy, decisions on major transactions, and risk management policies**
 - How the board/committee oversees the setting of, and monitor progress of **targets**, including whether and how related remuneration metrics are included in **remuneration policies**
 - **Management’s roles** in the relevant governance process, controls and procedures

2. Strategy

- **Climate-related risks and opportunities (RELIEFS: RI, (for opportunities) CS)**
 - Disclose information to enable an understanding of **climate-related risks and opportunities** that **could reasonably be expected to affect the issuer’s cash flows, its access to finance or cost of capital over the short, medium or long term**
- **Business model and value chain (RELIEFS: (scope of value chain) RI)**
 - Disclose information that enables an understanding of the current and anticipated **effects** of climate-related risks and opportunities on the issuer’s **business model and value chain**
- **Strategy and decision making**
 - Disclose information that enables an understanding of the **effects** of climate-related risks and opportunities on its **strategy and decision-making**
 - E.g. any **climate-related transition plan** (or a negative statement)

- **Financial position, financial performance and cash flows (RELIEFS: F, (for anticipated effects): RI, C)**
 - Disclose qualitative and quantitative **current and anticipated financial effects** of climate-related risks and opportunities on issuer’s **financial position, financial performance and cash flows**
- **Climate resilience (RELIEFS: (for scenario analysis) RI, C)**
 - **Resilience** of its **strategy and business model** to climate-related changes, developments or uncertainties
 - Assessed using climate-related **scenario analysis**

3. Risk management

- Disclose the **processes and related policies** used to **identify, assess, prioritise and manage climate-related risks and opportunities**; how such process is **integrated** into issuer’s overall risk management process

4. Metrics and Targets (RELIEFS: (for scope 3) RI)

- **GHG emissions** (by GHG Protocol or the protocol the issuer is required to use under its local legislation): **scope 1, scope 2 and scope 3**
- **(i) Climate-related transition risks/physical risks/opportunities: amount and percentage of assets or business activities (RELIEFS: RI)**
- **(ii) capital deployment:** the amount of capital expenditure deployed
- (Where applicable) **internal carbon price**
- **Remuneration:** disclose **how climate-related considerations** are factored into **remuneration policy** (or a negative statement)
- **Industry-based metrics:** issuers are **“encouraged to consider”** industry-based disclosure requirements prescribed under international ESG reporting framework
- **Climate-based targets**

(Under “Disclosure obligations” at the beginning of Part D) It is noteworthy that, where an issuer has yet to disclose information required under any of the provisions, regardless of whether it has (a) opted to **“explain” why it has not** made a particular disclosure **under the “comply or explain”** regime or (b) chosen to **apply an applicable relief** available (whether it is required to report on a mandatory or “comply or explain” basis), **such issuer is encouraged to provide information on the work plan, progress and timetable for making the required disclosure.**