



CONSULTATION PAPER ON

MANAGEMENT AND DISCLOSURE OF

CLIMATE-RELATED RISKS BY FUND MANAGERS

The Law Society's Submissions

The Securities and Futures Commission (“SFC”) issued a consultation paper on 29 October 2020 in relation to the “Management and Disclosure of Climate-related Risks by Fund Manager” (“Consultation Paper”). In response thereto, the Law Society provides the following submissions on the questions posed.

Question 1. Do you have any comments on the SFC’s proposal to focus on climate change or should a broader spectrum of sustainable finance should be considered in developing the requirements? Please explain your view.

Law Society’s response:

For the reasons given in paragraph 25 of the Consultation Paper, we support the SFC’s proposal to focus initially on climate change. To enable Hong Kong to keep pace with global regulatory developments in this area, we would encourage the SFC to prioritise the development of a broader ESG¹ regulatory framework to address other aspects of environmental risk such as loss of biodiversity, pollution and changes in land use as well as social issues such as human rights.

Question 2. Do you agree that at the initial stage, the SFC’s proposed requirements should apply to the management of CISs² but not discretionary accounts?

Law Society’s response:

¹ Environmental, social and governance

² Collective Investment Schemes

We agree that for now, the SFC's proposals should apply to the management of CISs but not discretionary accounts on the basis that CISs account for a significant proportion of the total AUM³ by SFC licensed corporations.

Question 3. Do you agree that the SFC should make reference to the TCFD⁴ Recommendations in developing the proposed requirements so as to minimise fund managers' compliance burden and foster the development of a more consistent disclosure framework? Other than the TCFD reporting framework, is there any other standard or framework which in your opinion would be appropriate for the SFC to refer to in developing the proposed requirements?

Law Society's response:

We agree the SFC should make reference to the TCFD Recommendations in developing the proposed regulatory requirements because they are principle based and widely accepted. At this stage, we do not consider it necessary for the SFC to refer to other standards because the TCFD Recommendations have been adequately covered by the SFC's proposals. As the SFC develops its green finance initiatives, we anticipate it will have regard to the frameworks and standards of a number of international bodies including the United Nations Principles for Responsible Investment and the Sustainable Finance Network of IOSCO⁵ which go beyond climate associated risks into other ESG factors.

Question 4. Do you have any comments on the proposed basis for determining the threshold for Large Fund Managers, ie, HK\$4 billion, and the basis for reporting? Please explain your view.

Law Society's response:

In our view, the HK\$4 billion threshold for Large Fund Managers ("LFMs") is sensible because it is consistent with the threshold adopted in some other major financial markets and covers the firms that have the majority of the total reported AUM in Hong Kong. We agree that LFMs should adopt a more robust approach to the management of climate change-related risks. They have the resources to implement enhanced standards which are appropriate bearing in mind the significant market share of the LFMs.

³ Assets under management

⁴ Task Force on Climate-related Financial Disclosures

⁵ International Organization of Securities Commission

Question 5. Do you have any comments on the proposed amendment to the FMCC⁶ requirements, baseline requirements and enhanced standards? Please explain your view.

Law Society's response:

The proposed amendments to the FMCC requirements and the new baseline requirements and enhanced standards appear sensible. However these measures will require explanation and amplification in the circular(s) the SFC intends to issue (see paragraph 44 of the Consultation Paper). Anecdotal evidence suggests to us that the management and disclosure of climate-related risks is new to many fund managers in Hong Kong. As a result, we consider that the SFC's guidance should be comprehensive regarding the processes and practices the SFC considers acceptable in order to reduce any uncertainty about what the SFC requires from the industry.

Question 6. To provide a clear picture to investors on whether a fund manager has integrated climate-related considerations into its investment strategies or funds, do you agree that if the fund manager considers that climate-related risks are irrelevant to certain investment strategies or funds, it should make disclosures and maintain appropriate records to explain the rationale for its assessment?

Law Society's response:

We agree that a fund manager should be required to disclose why it considers climate-related risks are irrelevant to specific strategies or funds.

Question 7. Do you agree that climate-related disclosures (except for the disclosure of WACI⁷) to investors should be made at an entity level at a minimum and supplemented with disclosures at a strategy or fund level to reduce burden on fund managers?

Law Society's response:

We agree with this proposal.

Question 8. Do you agree that disclosures of quantitative climate-related data such as WACI should only be applicable to Large Fund Managers having regard to the resources required and the size of assets covered?

⁶ Fund Manager Code of Conduct

⁷ Weighted average carbon intensity

Do you agree that at the initial stage the disclosure of the WACI should be made at the fund level instead of the entity level?

Law Society's response:

We endorse the SFC's reasoning for the disclosure of WACI by LFMs and we agree with both limbs of Question 8.

Question 9. Do you think the following transition periods are appropriate?

- a nine-month and a 12-month transition period for Large Fund Managers to comply with the baseline requirements and enhanced standards respectively; and
- a 12-month transition period for other fund managers to comply with the baseline requirements.

If not, what do you think would be an appropriate transition period? Please set out your reasons.

Law Society's response:

In putting forward these relatively short transition periods, the SFC may have underestimated the amount of work that will be required by the fund management industry in order to operationalize the governance, investment management, risk management and disclosure requirements summarized in the Consultation Paper. We would suggest that LFMs and other fund managers be given an 18-month transition period to enable systems and controls to be established, revised or harmonized (in the case of global fund managers). We note that on 8 December 2020, the Monetary Authority of Singapore agreed to extend the transition period for the implementation of its new Guidelines On Environmental Risk Management from 12 to 18 months in recognition of the implementation challenges fund managers in Singapore face.

**The Law Society of Hong Kong
22 December 2020**