



HKCGI Ethics, Bribery and Corruption Guidance Note (Tenth Issue) - Anti-corruption Policies and Ethics Training Disclosure in Environmental, Social and Governance Report (Part 1)

This guidance note refers to the Stock Exchange of Hong Kong Limited's (the Exchange's) review of issuers' environmental, social and governance (ESG) disclosures. Specifically, in relation to the new social key performance indicator (KPI) for anti-corruption training provided to directors and staff being lower-than-average reporting level. This guidance note offers guidance and governance best practice for complying with the 'comply or explain' requirement.

Introduction

In November 2022, the Stock Exchange of Hong Kong Limited (the Exchange) released the findings of its latest review of issuers' environmental, social and governance (ESG) disclosures according to requirements set out in its ESG Reporting Guide.

The review analysed reports for the financial year ended 30 June 2021, 31 December 2021 and 31 March 2022 published by a sample of 400 issuers. It shows that a vast majority of sample issuers disclosed their boards' oversight and management approach on ESG issues such as climate-related risks and mitigation measures, reporting on greenhouse gas emissions, etc., indicating a significant improvement in board's governance over ESG issues as compared to the last review in 2019.

However, regarding the new social key performance indicators (KPIs) which came into effect in July 2020, the review points out that amongst other new KPIs introduced, the one regarding anti-corruption training provided to directors and staff is among those with lower-than-average reporting level, most likely because

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the individual sample issuers might have overlooked that these newly introduced KPIs have been upgraded from voluntary disclosure to 'comply or explain'.¹

This guidance note addresses the disclosure requirements pertaining to integrity, specifically anti-corruption policies and ethics training under the latest ESG reporting requirements. It also provides practical advice to companies on enhancing their anti-corruption policies and arranging anti-corruption training for their directors and staff.

Anti-corruption in ESG reporting requirements and listing rules in Hong Kong

A robust anti-corruption system forms a vital part of good corporate governance which is essential to fostering sustainable investment, economic growth and social development. Over the years, anti-corruption elements have been implanted in the regulatory regime of listed companies in Hong Kong. In particular, with effect from the 2016 financial year, listed companies have to comply with requirements in the ESG Reporting Guide for disclosing their anti-corruption policy. With the strengthened requirement in the Corporate Governance Code, listed companies are required to adopt a structured approach to risk management and internal control. They are also required to conduct annual review of the effectiveness of the issuer's risk management and internal control systems, and the related disclosures in the Corporate Governance Report of a listed company have been upgraded from recommended best practice to 'comply or explain'.

In 2020, the Exchange adopted new requirements in the ESG Reporting Guide with a focus on board governance and oversight of ESG issues. The new requirements have upgraded the disclosure obligation of information on (i) concluded legal cases regarding

corrupt practices brought against the issuer or its employees and the outcome, (ii) corruption preventive measures and whistle-blowing procedures and (iii) anti-corruption training provided to directors and staff to a 'comply or explain' basis.² In 2022, through the introduction of the new code provision under the Corporate Governance Code, the Exchange further requires that all listed companies establish anti-corruption and whistleblowing policies and procedures,³ encouraging stakeholders to raise concern about improprieties such as bribery.

Guidance on anti-corruption policy and ethics training

Governance professionals, in particular company secretaries, serve as key advisors to the boards on corporate governance and other regulatory compliance matters. To comply with the continuous regulatory developments of corporate governance and ESG disclosures for listed companies, governance professionals must push forward the implementation of a robust anti-corruption system encompassing, among other areas, a comprehensive anti-corruption policy and holistic ethics training.

Anti-corruption policy

The anti-corruption policy states a company's commitment to ethical practices in its business operation, and its position and key measures against corruption. The policy should cover:⁴

1. *Top management commitment*⁵

A top-down approach can effectively demonstrate management's commitment to business ethics. The tone at the top sets forth the company's values and ethical climate. Along

1 2022 Analysis of ESG Practice Disclosure, https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Environmental-Social-and-Governance/Reports-on-ESGPD/esgreport_2022.pdf

2 Exchange's news release dated 18 December 2019, https://www.hkex.com.hk/News/Regulatory-Announcements/2019/191218news?sc_lang=en

3 Consultation Conclusions Review of Corporate Governance Code & Related Listing Rules, and Housekeeping Rule Amendments, https://www.hkex.com.hk/News/Regulatory-Announcements/2021/211210news?sc_lang=en

4 Anti-Corruption Programme – A Guide for Listed Companies, https://hkbedc.icac.hk/lc/res/LCToolkit_EN.pdf

5 D.2.7, Appendix 14, Listing Rules, 'The issuer should establish policy(ies) and system(s) that promote and support anti-corruption laws and regulations.'

with implementing ethical and anti-corruption business practices, enforcing the anti-corruption policy and adopting zero-tolerance towards corruption conduct, top management must lead by example by practising ethics in all business decisions and discharging their duties.

2. *Scope of the policy*

The anti-corruption policy should be applicable to all personnel of the company, including its directors and staff members at all levels. It should also cover, as appropriate, third parties having business dealings with the company such as suppliers and contractors.

3. *Statement of policy against bribery*

There should be a clear statement of the company's policy against corrupt practices, with reference to the Prevention of Bribery Ordinance and any anti-bribery laws applicable to the company. Such statement may include prohibition of illegal acceptance and offering of advantages and zero tolerance to malpractice.

4. *Integrity requirements for company's personnel*

The anti-corruption policy should set out the key integrity requirements for the company's personnel, so that any parties doing business with the company are well aware of the standard of behaviour expected from its personnel, for example:

- (i) policy and restrictions on acceptance of gifts/ advantages and entertainment from persons having business dealings with the company
- (ii) policy and restrictions on offering of gifts/ advantages and entertainment to persons having business dealings with the company and public servants, and

- (iii) prohibition of abuse of official position for personal benefits or benefits of personal associates, and requirement to avoid and declare conflict of interest, etc.

5. *Anti-corruption requirements for business partners*

Apart from the company's personnel, the company's business partners should also have strong ethical commitment. The company should inform all business partners of its anti-corruption policy. For major contracts and partnering arrangement, the company may consider including suitable probity requirements in the agreements with the partners concerned, for example:

- (i) prohibition of bribing of the company's personnel or offering of advantages not permitted by the company to them in the course of doing business with the company
- (ii) prohibition of bribery of any form in carrying out business under the contract/ partnership or on behalf of the company
- (iii) the need to make sure that all the relevant personnel are made aware of the anti-corruption requirements, such as through a code of conduct, probity guidelines and adequate training, and
- (iv) the need to apply the same anti-corruption requirements to all contractors, suppliers, subcontractors engaged for the contract/ partnership, etc.

6. *Whistle-blowing policy*

A corporate whistle-blowing policy aims at facilitating the reporting of corruption and violation of the anti-corruption policy. There should also be the requisite ethics training.

These will be the subject of the next guidance note.

Conclusion

ESG is evolving globally and so does the Hong Kong ESG regulatory landscape. Governance professionals, especially company secretaries, must stay abreast of the latest ESG developments, including the anti-corruption aspect, for building a sound and effective corporate governance framework and sustaining a probity culture in the company.