



Report Series

How Home Governments Can Incentivise Responsible Business Conduct of Extractive Companies Operating Abroad

5. The Role of Capital Markets



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Report Series

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March 2017

Cite as: Institute for Human Rights and Business, “How Home Governments can Incentivise Responsible Business Conduct of Extractives Companies Operating Abroad: 5. The Role of Capital Markets” (March 2017).

Attribution: The report is written by Margaret Wachenfeld and Waleria Schuele. We are grateful to both Stephanie Montano and Jakub Telicka for their research and drafts of the report.

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About this Report Series

Creating an accountable marketplace in a widely interconnected world is a necessary corollary to globalisation, in which governments, companies and civil society play important roles. In a world where business activities and value chains span across many countries, finding the right types of measures to incentivise responsible business conduct (RBC) that crosses borders can be a challenge for states. The primary duty to protect human rights is with states, but companies too have a responsibility - a responsibility to respect human rights, as set out in the UN Guiding Principles for Business and Human Rights (UN Guiding Principles).¹ The Institute for Human Rights and Business (IHRB) has examined the role of states in advancing the protection of human rights in relation to business activities in its “State of Play” report on Human Rights in the Political Economy of States which highlighted examples from 70 countries of recent action.²

This series of Reports (the Reports) build on this line of work and IHRB’s activities in East Africa³ on the extractive sector (oil, gas and mining) under the “Nairobi Process”.⁴ The newly emerging East African producer nations as “host states” to extractive activities, bear the primary responsibility for regulating business activities within their territories. Generally, there are limits on states adopting laws that will take effect on the territory of another state. Nonetheless, the principle of sovereignty does not prevent the “home states” of extractive sector companies, large and small, from exploration companies to supermajors in the oil, gas and mining sectors, from setting clear expectations and legal requirements addressing how businesses domiciled in their jurisdiction should operate abroad. Many of the home states reviewed in these Reports have extractive companies domiciled in their jurisdictions currently operating in or considering operations in East Africa. These Reports are addressed to those home states to serve as inspiration for creating clear incentives and disincentives for responsible business conduct by “their” extractive companies while operating in East Africa and in other emerging producer nations.

The extractive sector is crucial to the development of both developing and industrialised countries, but it remains a high-risk sector with often significant human rights, environmental and social impacts.⁵ Extractive companies are more likely to operate in fragile and conflict-affected situations than other businesses⁶ and states where there may be limited regulation of

1 Office of the UN High Commissioner for Human Rights, “UN Guiding Principles on Business and Human Rights: Implementing the ‘Protect, Respect, Remedy’ Framework” (2011), at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

2 IHRB, ‘State of Play 3: Human Rights in the Political Economy of States: Avenues for Application’ (2014) p. 21. Available at: https://www.ihrb.org/uploads/reports/2014-03-18%2C_Report%2C_State_of_Play_-_Human_Rights_Within_the_Political_Economy_of_States_-_Full_Report.pdf (IHRB State of Play 3)

3 In particular, Kenya, Tanzania, Uganda, Ethiopia, South Sudan.

4 <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-2-addendum-23-May-2008.pdf>

5 See Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Addendum, “Corporations and human rights: a survey of the scope and patterns –of alleged corporate-related human rights abuse” (2008) highlighting human rights impacts in the extractive sector at the start of his mandate <https://business-humanrights.org/sites/default/files/reports-and-materials/Ruggie-2-addendum-23-May-2008.pdf>, the work done since then on human rights by some of the main international industry associations – the International Council of Mining & Metals: <https://www.icmm.com/en-gb/society-and-the-economy/mining-and-communities/human-rights> and IPIECA (global oil and gas industry association for environmental and social issues): <http://www.ipieca.org/our-work/social-human-rights/> as well as the active attention by civil society in documenting and addressing human rights impacts of the oil, gas and coal sectors: <https://business-humanrights.org/en/sectors/natural-resources/oil-gas-coal> and mining sector: <https://business-humanrights.org/en/sectors/natural-resources/mining>

6 World Bank Group, ‘Investment Climate in Practice: Promoting Foreign Investment in Fragile and Conflict-

human rights, environmental or social impacts or where existing standards are not rigorously enforced. And while there has been significant developments among some of the major international extractive sector companies in developing policies and practices to implement the UN Guiding Principles, supported by work at the industry association level, these measures have been challenging to put into practice. These experiences are nonetheless important in demonstrating that these issues are relevant and are being addressed to the far wider group of extractive companies large and small that have not yet started to address these issues or are resolutely ignoring RBC developments.

In the meantime, several East African countries are working to upgrade their nascent national legal and regulatory frameworks to address these increasingly important sectors but face many challenges.⁷ Managing the extractive sector in a way that contributes to sustainable development and economic prosperity is an imperative. The African continent is all too familiar with the cost of getting it wrong.

While host states have the primary responsibility for shaping their own approach and regulation of the extractive sector, home states can play an important role in supporting a sustainable, accountable sector. The UN Working Group on Business and Human Rights has recommended that countries should set clear expectations for business and “take into account extraterritorial implications of business enterprises domiciled in their territory in accordance with the UN Guiding Principles.”⁸ This series of Reports seeks to highlight what home states are doing and what more they can do in supporting that vision.

Under the UN Guiding Principles, home states have a role to play in setting clear expectations that all businesses domiciled in their territory and/or jurisdiction respect human rights throughout their operations.⁹ In addition, in conflict-affected areas, (a characterisation that can be applied to South Sudan and parts of Uganda in the Eastern African region) in which “the ‘host’ State may be unable to protect human rights adequately due to a lack of effective control,” home states of multinationals have roles to play in assisting both the businesses and the host state in ensuring that businesses are not involved in human rights abuse, particularly gross human rights abuses. A home state’s duties vis-à-vis its often significant state owned enterprises in the extractive sector has recently been addressed by the UN Working Group on Business and Human Rights.¹⁰

Terminology

- The **“home state”** refers to the country where a company is legally registered.
- The **“host state”** refers to the country where a company operates.

Affected Situations’ (April 2014) p. 3. Available at: https://www.wbginvestmentclimate.org/advisory-services/investment-generation/investment-policy-and-promotion/upload/In_Practice_Note_No_22.pdf

⁷ See Institute for Human Rights and Business, “Human Rights in Kenya’s Extractive Sector: Exploring the Terrain” at: <https://www.ihrb.org/focus-areas/commodities/human-rights-in-kenyas-extractive-sector-exploring-the-terrain> and Institute for Human Rights and Business, “Human Rights in Tanzania’s Extractive Sector: Exploring the Terrain” at: <https://www.ihrb.org/focus-areas/commodities/human-rights-in-tanzanias-extractive-sector-exploring-the-terrain>.

⁸ UN Working Group on Business and Human Rights, “Guidance on National Action Plans on Business and Human Rights, (2015), p. 12, available at: http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance

⁹ UN Guiding Principles on Business and Human Rights, Principle 2.

¹⁰ Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, “On the duty of States to protect against human rights abuses involving those business enterprises that they own or control, which are generally referred to as State-owned enterprises,” A/HRC/32/45 (4 May 2016).

Where a company operates solely in its domestic market, the country is the home and host country at the same time. When a company operates abroad, host and home countries are distinct. Both home and host states have different tools at their disposal to incentivise RBC of companies and disincentivise irresponsible conduct.

The series of Reports is published in five parts:

1. Overview of the key international standards
2. Multi-stakeholder initiatives
3. Reporting requirements
4. Innovative tools
5. The role of capital markets

Each Report draws the spotlight to particular legislative, regulatory or engagement tools that home countries can use to incentivise RBC among extractive companies operating abroad. Each Report will also provide a direct country-by-country comparison and identify trends.

The Reports examine how a select number of home states seek to meet UN Guiding Principles expectations and incentivise the RBC of extractive companies when operating abroad. The analysis focuses on eight Organisation of Economic Cooperation and Development (OECD) countries with significant extractive sector companies (Australia, Canada, France, Germany, the Netherlands, Norway, the United Kingdom and the United States), the European Union (EU) and five BRICs countries (Brazil, Russia, India, China, and South Africa). The topics covered highlight measures available to home states to set expectations, if not legal requirements, applicable to extractive companies based in their countries and operating abroad. These examples can serve as models for other sectors that have drawn less attention but which may have increasingly significant human rights impacts when operating abroad. Also of importance, the examples discussed provide input to civil society and other stakeholders as part of the broader toolkit for promoting greater accountability, and should stimulate further debate on the efficiency and effectiveness of such measures.¹¹

There are more tools and approaches that could be highlighted in a more in-depth study. For example, the extraterritorial application of home country laws is the subject of extensive and on-going studies in the business and human rights space. Further research on the economic incentives certain home states provide to their extractive companies operating abroad would provide an interesting comparison to the efforts put into the kinds of RBC measures highlighted in this set of Reports. Further coherence between economic diplomacy and RBC diplomacy opens interesting possibilities for leveraging further action in the future.

¹¹ Given the broad scope of the task, the Reports do not attempt to evaluate the effectiveness of the measures. IHRB acknowledges that monitoring and evaluation of the various initiatives and tools discussed in this series would be important to track the impact and assess progress made, particularly at the host country-level. However it does seek to compare countries' engagement as an indicator for the relevance and range of the various incentives.

Executive Summary



This Report is the fifth and final in a series that reviews measures that “home states”¹² can use to incentivise responsible business conduct (RBC) and disincentivise irresponsible conduct of extractive companies operating abroad. It reviews measures used by stock exchanges where extractive companies typically list among the selected countries covered in this series that are members of the Organisation of Economic Cooperation and Development (OECD),¹³ or (BRICS).¹⁴ The following stock exchanges were reviewed for this Report: Australian Securities Exchange, the Sao Paulo Stock Exchange, the Toronto Stock Exchange, China Mainland Shenzhen Stock Exchange, the Hong Kong Exchange, Oslo Børs, the Johannesburg Stock Exchange, and London’s Alternative Investment Market. The analysis is based on the data set out in the Annex.¹⁵

An increasing number of countries are adopting sustainability frameworks for their capital markets, as they respond to growing interest from investors.¹⁶ Included within those measures, an increasing number of stock exchanges are putting in place requirements around environmental, social and governance (ESG) issues.¹⁷ However, a number of leading stock exchanges, i.e. USA and London, have not taken similar steps to date. The Sustainable Stock Exchange Initiative¹⁸ – the leading initiative among stock exchanges addressing sustainability issue – more than tripled in size between 2014 and 2016. This, in the view of the Initiative, “can be seen as a proxy for the increasing attention exchanges are giving sustainability in their markets”.¹⁹

In 2016, stock exchanges and financial market regulators together were responsible for almost one-third of all sustainability reporting instruments identified in a 2016 survey.²⁰ The trend indicates that financial regulators and stock exchanges are increasingly playing an important leadership role in promoting sustainable business practices. Some stock exchanges are private companies, whereas others are mutual organisations, public or quasi-public institutions. Nonetheless, all are overseen by financial regulators in the countries in which the

12 “Home state” refers to the country where a company is legally registered. The “host state” refers to the country where a company operates.

13 Australia, Canada, France, Germany, Netherlands, Norway, UK, USA.

14 BRICS : Brazil, Russia, India, China and South Africa.

15 The tables were updated as of December 2016.

16 See: World Federation of Exchanges, “Exchanges and Sustainability: Results of the 2016 survey of the WFE membership,” p. 5 Available at: <https://www.world-exchanges.org/home/index.php/files/18/Studies%20-%20Reports/343/WFE%20Annual%20Sustainability%20Survey%202016.pdf>

17 Note that there is a split between stock exchanges that are non-profit or government run with those that are themselves for-profit companies. KPMG, GRI, UNEP, Center for Corporate Governance in Africa, “Carrots and Sticks” (2016), pp. 14-15. Available at: www.carrotsandsticks.net. The Briefing Paper draws on information from the Sustainable Stock Exchange Initiative (SSE), which is a voluntary peer-to-peer initiative launched in 2009 by four core organizers – UNCTAD, the UN Global Compact, the PRI, and UNEP-FI (the “Quartet”) – with the goal of enhancing corporate transparency related to ESG factors. <http://www.sseinitiative.org/about/>

18 Sustainable Stock Exchanges Initiative, “2016 Report on Progress”, p. 17. Available at: <http://www.sseinitiative.org/wp-content/uploads/2012/03/SSE-Report-on-Progress-2016.pdf>

19 See at: <http://www.sseinitiative.org/about>

20 KPMG, GRI, UNEP, Center for Corporate Governance in Africa, “Carrots and Sticks” (2016), pp. 14-15. Available at: www.carrotsandsticks.net

stock exchange is located, which includes both home and host states of extractive companies covered in this series.

Many extractive companies, large and small, list their shares on main and smaller exchanges to raise needed capital for their operations. Some, particularly smaller extractive companies, choose not to list on main stock exchanges, but instead on smaller exchanges with lesser regulatory and capital requirements such as the Alternative Investment Market in London.²¹ However, many extractive companies also list on the main market exchanges, some of which have ESG requirements.

Requirements companies must comply with to list and remain listed on an exchange represent a significant leverage point to influence extractive companies (and other companies listing on the exchanges). In particular, given the significant impacts that extractive companies can have on ESG issues, stock exchange requirements around disclosure of ESG issues are another important lever to improve transparency, if not accountability, of the sector. Some exchanges, like the Johannesburg Stock Exchange (JSE) and the Sao Paulo BM&FBOVESPA have adopted quite detailed ESG reporting requirements. These permit investors and other stakeholders potentially the only insight into how extractive companies understand and manage environmental and social issues, particularly for the smaller and medium-sized extractives that do not otherwise issue yearly sustainability reports as is more often the case among larger, international oil, gas and mining companies. As such, these reporting requirements are another tool in the home and host state toolbox for influencing the performance of extractive sector companies.

Popular Stock Exchanges for Extractive Companies

2

There are at least two publicly available sources of information on where extractive companies list their shares. The first - InfoMine.com - provides information on investing trends for mining and energy minerals. It reveals that many of the top investing markets for extractive companies are main markets, while some are smaller stock exchanges.²² The second source - Revenue Watch Institute - compiled a database of more than 2,500 publicly-traded oil, gas, and mining securities on the largest global stock exchanges for an estimated market value of €6.1 trillion on 35 exchanges. This source provides a snap-shot of information in 2012.²³ From these two sources, it appears that many extractive companies list on the following stock exchanges:

21 See at: <http://www.londonstockexchange.com/statistics/companies-and-issuers/companies-and-issuers.htm>

22 Energy Minerals Investing (<http://www.infomine.com/investment/energy/>); Silver Investing (<http://www.infomine.com/investment/silver/>); Gold Investing (<http://www.infomine.com/investment/gold/>); and Coal Investing (<http://www.infomine.com/investment/coal/>).

23 Data on exchange information, <http://data.revenuwatch.org/listings/listings.php>, lists the leading exchanges

(1) Four of the leading stock exchanges where extractive companies list:

- Australia: Australian Securities Exchange (ASX)
- United Kingdom: London's AIM
- Norway: Oslo's Børs
- Canada: Toronto Stock Exchange (TMX)

(2) Extractive companies also list on the following exchanges, which are recognised as change makers in the development of ESG reporting regulations:

- Brazil: BM&FBOVESPA Brazil
- Hong Kong: Hong Kong Exchange (HKEx)
- South Africa: Johannesburg Stock Exchange (JSE)

(3) In addition, for completeness in covering major BRICs exchanges, the following stock market is included in this overview:

- China: Shenzhen Stock Exchange

Types of Reporting Requirements for ESG Issues

3

Stock exchanges use different types of tools to incentivise the reporting of ESG-issues among listed companies:

- Mandatory reporting of ESG-issues as a listing requirement;
- Comply or explain reporting of ESG-issues as listing requirement;
- Mandatory sector-specific reporting requirements that include ESG-issues (but not as a listing requirement);
- Voluntary sector-specific reporting requirements that include ESG-issues (usually comply or explain, but not as a listing requirement);
- Written guidance for voluntary ESG-reporting.

for mining, oil and gas by their share of global value. However, this data appears to have been last updated in 2012.

Despite the growing attention to sustainability among stock exchanges, to date only 12 exchanges worldwide have incorporated ESG-reporting into their listing rules.²⁴ Many still maintain a voluntary regime that provides only incentives, but not obligations, to report. Those incentives usually focus on public recognition of companies that report on ESG issues and increasing public awareness of companies that fail to report. It is more common for the exchanges to provide guidance rather than actual obligations.²⁵ Of the eight stock exchanges reviewed for this Report, four include ESG reporting in their listing rules (Toronto, Hong Kong, Sao Paulo and Johannesburg). Of these, only Toronto has made it mandatory to report on ESG issues.

The other three stock exchanges, which currently include ESG reporting in their listing requirements use the 'comply or explain' approach. This requires companies to either report on ESG issues or explain why reporting is not relevant. This model allows a company's board of directors to determine which ESG risks are material to its business operations and focus its time and money on assessing and reporting on these risks, without being required to report across a wider range of issues that may not be relevant. Investors are afforded a better understanding of the 'why' behind the company's decision not to report on certain factors, as it must explain how it determines which issues are viewed irrelevant to the company's business. Investors can then draw their own conclusions about relevance and whether the company has a sufficiently forward-looking approach to ESG issues.

On the basis of a review of stock markets analysed in this Report that use the comply or explain approach, there is still relatively little information as to the required form and substance of the explanations that companies must provide. The focus is rather on the substance of what should be discussed in ESG reports. In certain cases, enforcement mechanisms are still unclear or very weak. Hong Kong, for example, does not clarify whether penalties apply to companies that do not provide required information.²⁶

Four stock exchanges (Australia, Toronto, Johannesburg and Sao Paulo) have adopted sector-specific listing rules for extractive companies in line with the Committee for Mineral Reserves International Reporting Standards' (CRIRSCO)²⁷ International Reporting Template.²⁸ The reporting rules based on the CRIRSCO International Reporting Template include extensive general reporting obligations in respect of mining and/or oil and gas reserves as well as ESG-specific issues. CRIRSCO was formed in 1994 as an informal alliance of National Reporting Organisations and became a Task Force of the International Council on Mining and Metal in 2007. Its purpose is "to contribute to earning and maintaining that trust by promoting high standards of reporting of mineral deposit estimates (Mineral Resources and Mineral Reserves) and of exploration progress (Exploration Results)".²⁹

24 See: <http://www.sseinitiative.org/wp-content/uploads/2012/03/SSE-Report-on-Progress-2016.pdf>, p. 29.

25 Finding based on the data presented in the Stock Exchanges Fact Sheets by the Sustainable Stock Exchanges Initiative: <http://www.sseinitiative.org>. See overview in the Annex.

26 Main Board Listing Rules, Chapter 13.91. See: http://en-rules.hkex.com.hk/en/display/display.html?rbid=4476&element_id=2654

27 See: <http://www.crirSCO.com/welcome.asp>

28 See: <http://www.crirSCO.com/template.asp>. In fact, the Australian JORC Code (covered in the Australia section below) served as a model for the CRIRSCO International Reporting Template.

29 See: <http://www.crirSCO.com/welcome.asp>

The CRIRSCO International Reporting Template “indicates a minimum standard for public reporting and is recommended as a minimum standard for other reporting”.³⁰ The template and the national reporting codes that meet its standards adopt a broad definition of public reporting,³¹ covering the foreign operations of the reporting companies. Even though the reporting rules based on this reporting template were developed primarily as a protection for investors, the consequence is that the reported information becomes available to a wider audience.

As these are listing rules overseen by the exchange regulators with detailed requirements, compliance is required for the extractive companies to access capital markets.³² The rules, and the substantial information that must be reported pursuant to them, are then typically treated with a level of rigour and internal review that does not necessarily apply to more general sustainability reports that extractive companies issue voluntarily, and not necessarily to any particular standard.³³ This puts important ESG issues into the public domain with a level of assurance, accompanied by regulatory enforcement, that does not apply to other types of ESG/sustainability reporting. As such, the requirements constitute a significant incentive for more responsible business conduct of extractive companies as they know they will be required to report to an exacting, enforceable standard.

National Stock Market Requirements for ESG Reporting

4

This section spotlights the types of requirements stock markets use to incentivise ESG-reporting. It distinguishes between general reporting requirements, which apply to all sectors, and sector-specific requirements, applicable only to extractive companies. The specific details of what must be reported are set out in the Annex. The countries examined are presented in alphabetical order.

30 See: http://www.crirSCO.com/templates/international_reporting_template_november_2013.pdf, p.4.

31 Ibid. “Public Reports include but are not limited to: company annual reports, quarterly reports and other reports to regulatory authorities, or as required by law. The Template applies to other publicly released company information in the form of postings on company web sites, press releases and briefings for shareholders, stockbrokers and investment analysts. The Template also applies to the any reports that have been prepared for the purposes described in Clause 4, such as environmental statements; Information Memoranda; Expert Reports, and technical papers referring to Exploration Results, Mineral Resources or Mineral Reserves. They may also be for the purpose of satisfying regulatory requirements.

32 Penalties for non-compliance depend on the rules of the individual stock exchanges.

33 Although many of the larger companies prepare their sustainability reports using one or more global standards, such as the Global Reporting Initiative (GRI) , or Sustainability Accounting Standards Board (SASB) or by using Integrated Reporting.

4.1 Australia: Australia Securities Exchange

General ESG Reporting

The Australia Securities Exchange does not require ESG reporting as a listing rule. However, it does recommend that companies disclose and identify how they intend to manage ESG risks.³⁴ The relevant recommendation refers to the need to report on “real possibility that the risk in question could substantively impact the listed entity’s ability to create or preserve value for security holders over the short, medium or long term”.³⁵ The Corporate Governance Council of the Exchange recognises that companies may face different challenges depending on their structures and particular economic sector.³⁶ In case a company does not follow the recommendation to report any material risks, it should explain why.³⁷

Sector-Specific ESG Reporting

The Exchange is significant for extractive industries³⁸ and especially for mining.³⁹ Chapter 5 of Listing Rules contains specific reporting requirements on mining and oil and gas and exploration activities and incorporates the reporting requirements of the *Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves* (JORC Code).⁴⁰ Chapter 5 does not focus specifically on ESG-reporting, but related information could be extracted from the reports published in line with the JORC Code. Reporting is done on a “if not, why not basis”.⁴¹ The JORC Code is incorporated into the listing rules of the Australian Securities Exchange and sets minimum standards for public reporting of exploration results, mineral resources, and ore reserves. It applies to public reports and to “other publicly released company information in the form of postings on company websites and presentation material used in briefings for shareholders, stockbrokers and investment analysts”.⁴²

Oil and gas companies report based on Section 5.25 of the Listing Rules, which enumerates the reporting requirements for entities that publicly report on petroleum reserves, contingent resources or prospective resources. Some of these are quite far reaching, for example, when a company reports estimated petroleum reserves for the first time in relation to a material oil and gas project, the entity must publish “all material economic assumptions used to calculate the estimates of petroleum reserves”. This could include ESG-related information, as environmental, social and governance factors play a role in the evaluation of oil and gas reserves and the feasibility of their development.⁴³

34 See: <http://www.asx.com.au/documents/asx-compliance/cgc-principles-and-recommendations-3rd-edn.pdf>

35 Ibid, p. 30.

36 Ibid, p 3.

37 Ibid, p. 7.

38 See: <http://data.revenuewatch.org/listings/australia/>

39 See: <http://www.asx.com.au/documents/products/asx-metals-and-mining-sector-profile.PDF>

40 See: http://www.jorc.org/docs/JORC_code_2012.pdf. The JORC Code served as a model for the International Reporting Template of the Committee for Mineral Reserves International Reporting Standards (see above, p.4).

41 Ibid, p. 4.

42 Ibid, p. 5.

43 According to Guidance Note 32 for the ASX Listing Rules, p. 2, the Petroleum Resources Management System (SPE-PRMS) underpins the reporting framework of Chapter 5 of the ASX Listing Rules. The SPE-PRMS states on p. 13 that environmental, social and governance factors play a role in the evaluation of oil and gas reserves and the feasibility

4.2 Brazil: BM&FBOVESPA S.A.

General ESG Reporting

According to Section 7.8 of the Reference Form of the Brazilian Securities Commission, listed companies are required to report whether they disclose social and environmental information, what methodology they use, whether the information is audited or reviewed by an independent body, and where it can be found. The reporting is done on a comply or explain basis and is a listing rule.⁴⁴ The first statistics on the effectiveness of this approach were available in 2012, when 45.31% of companies complied with the report or explain approach. In 2015 that number rose to 71.65%. Brazil has also issued a voluntary sustainability guide for closed capital companies.⁴⁵

Sector-Specific ESG Reporting

Mining companies that are listed on BM&FBOVESPA S.A. must report extensively based on the *CBBR Guide for Reporting Exploration and Results, Mineral Resources and Mineral Reserves*.⁴⁶ In line with the CRIRSCO International Reporting Template, the CBBR guide requires ESG reporting throughout its chapters. For example, according sec. 48, “public reports should discuss environmental, social (sustainability) and health and safety impacts that are expected during development, operations and after closure”.⁴⁷ However, there are no comparable reporting requirements for the disclosure of ESG issues for oil and gas companies.

4.3 Canada: TSX – Toronto Stock Exchange

General ESG Reporting

Canada has adopted a mandatory ESG-reporting rule, which is also a listing requirement. According to section 406 of the TSX Company Manual “any environmental or social information that is deemed ‘material’, must be immediately disclosed by a news release as required by the Exchanges’ Timely Disclosure Policies and the issuer must file a material change report on SEDAR⁴⁸ if the material information is a material change”.⁴⁹ In addition, the *Canadian Securities Administrators Guidance on environmental reporting* (Staff notice 51-333)⁵⁰

of their development. See: http://www.asx.com.au/documents/rules/gn32_reporting_on_oil_gas_activities.pdf, p. 2 and http://www.spe.org/industry/docs/Petroleum_Resources_Management_System_2007.pdf p. 13.

44 See : http://www.bmfbovespa.com.br/en_us/news/report-or-explain.htm.

45 See: <http://www.sseinitiative.org/fact-sheet/bovespa/>

46 This Guide has been adopted based on the International Reporting Template of the Committee for Mineral Reserves International Reporting Standards (see above, p.4).

47 See: http://www.criresco.com/docs/CBRR_Documents_Guide.pdf, p.23.

48 SEDAR is the electronic system for the official filing of documents by public companies and investment funds across Canada. See: http://www.osc.gov.on.ca/en/Companies_sedar_index.htm

49 See: http://tmx.complinet.com/en/display/display_viewall.html?rbid=2072&element_id=110&print=1

50 See: http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20101027_51-333_environmental-reporting.pdf

provides “guidance to reporting issuers (other than investment funds) on existing continuous disclosure requirements relating to environmental matters under securities legislation”.⁵¹ The Guidance outlines the following categories of environmental risks that merit reporting if they are considered material: litigation, physical, regulatory, reputational, and relating to business model.⁵²

Sector-Specific ESG Reporting

Canada has adopted a national instrument for the *Standards of Disclosure for Mineral Projects*⁵³ setting out rules and guidelines for reporting and displaying information related to mineral properties owned by, or explored by, companies which report these results on stock exchanges within Canada, including foreign-owned mining entities. The instrument primarily seeks to protect investors. Therefore, the disclosure requirements focus on ensuring that misleading, erroneous or fraudulent information relating to mineral properties is not published. At the same time, the instrument does require companies listing on Canadian exchanges to “discuss reasonably available information on environmental, permitting, and social or community factors related to the project”.⁵⁴ There do not seem to be similarly wide-reaching reporting requirements for oil and gas.

4.4 China: Shenzhen Stock Exchange

General ESG Reporting

According to the Sustainable Stock Exchanges Initiative, the Shenzhen stock exchange does not include requirements on ESG reporting among its listing rules. However, the exchange provides Social Responsibility Instructions to Listed Companies⁵⁵ dating from as early as 2006 which spell out detailed environmental and social welfare responsibilities of companies listed on the stock exchange. Interestingly, the Guidance includes clear instructions and detailed environmental and social responsibilities. Listed companies are expected to “perform their social responsibilities, make regular evaluation and issue voluntary disclosure on the performance”.⁵⁶

Chapter V, Article 27 states that “[c]ompanies shall formulate environmental protection policies based on their impact on the environment”. Articles 29-31 give clear guidance as to the obligation to maximise environmentally friendly use of resources and minimisation of pollution tied to reporting of activities to the relevant authorities. It also reminds companies

51 Ibid, p.3.

52 Ibid, p.8.

53 National Instrument 43-101 (the “NI 43-101” or the “NI”) is a national instrument for the Standards of Disclosure for Mineral Projects. Available at: <https://www.lautorite.qc.ca/files/pdf/reglementation/valeurs-mobilieres/43-101/2016-05-09/2016mai09-43-101-vofficielle-en.pdf>. It was adopted based on the International Reporting Template of the Committee for Mineral Reserves International Reporting Standards (see above, p.4).

54 Ibid, p.33.

55 Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies (2006). Available at: <http://www.szse.cn/main/en/RulesandRegulations/SZSERules/GeneralRules/10636.shtml>

56 Ibid, Art. 5.

of their obligations to pay fines if they exceed environmental standards. Companies are finally obliged to conduct regular monitoring of their activities.

The Social Responsibility Instructions are far-sighted, particularly considering they are already ten years old. They address not only community relations but call on listed companies to set up dedicated personnel and units to address community relations, something fewer companies were doing in 2006. Article 32 instructs companies to “pay due regard to the interests of their communities in business operation” and the Exchange “encourages that dedicated unit be set up and dedicated personnel be allocated to harmonize the relations between Companies and communities”.

4.5 Hong Kong: Hong Kong Exchanges

General ESG Reporting

Hong Kong applies the “comply or explain” approach to matters that are considered material. However, and in addition, every annual report must contain a section on ESG. The “comply or explain” provisions cover environmental, social, operating practices and community issues.⁵⁷

In addition to the above, under the Main Board Listing Rules, an issuer’s annual directors’ report for a financial year must contain a business review. That review must include a high level version of:

- The issuer’s environmental policies and performance;
- Discussion of the issuer’s compliance with the relevant legislation;
- Discussion of the company’s relationships with its employees, customers and suppliers and any other relevant stakeholders.⁵⁸

4.6 Norway: Oslo Børs

General ESG Reporting

In 2012, just under a third of all companies listed on the Oslo stock market were extractive industry companies.⁵⁹ The Oslo stock market does not set any mandatory reporting requirements or benchmarks to achieve. However, the stock market cooperated with the Norwegian Forum for Responsible and Sustainable Investment in order to develop guidance to encourage reporting on sustainability measurements and policies of the listed companies.

57 See: https://www.hkex.com.hk/eng/rulesreg/listrules/mbrules/documents/appendix_27.pdf

58 See: http://www.cr.gov.hk/en/companies_ordinance/docs/schedule5-e.pdf, Schedule 5, paragraph 2.

59 See: <http://www.resourcegovernance.org/sites/default/files/GlobalCalculatorAug12.pdf>, p. 3.

The Guidelines⁶⁰ are relatively generic. They include a recommendation to report on corporate governance risks and opportunities, provided those pass the materiality test. The risks and opportunities include climate and environment, human rights, corruption, labour rights, suppliers and customers, taxation or competition. Such analysis requires the company to identify its significant social, economic and environmental impacts as well as acts with substantive impact on stakeholders affected and the stakeholders' decisions. Similar to guidance developed by other exchanges, the Guidelines simply propose a methodology for arriving at the relevant issues to report but do not otherwise provide any specific benchmarks to measure the company's performance against.

4.7 South Africa: Johannesburg Stock Exchange

General ESG Reporting

The Johannesburg Stock Exchange (JSE) mandates disclosures from listed companies on their compliance with the King Report on Corporate Governance Code on a 'comply or explain' basis. The previous edition of the Code expressly required companies to implement the practice of reporting on sustainability as a key factor in corporate governance. The King III Code⁶¹ develops the requirements further, and requires integrated reporting as well as third party assurance. In order to produce an integrated report, companies must describe financial, social and environmental factors in a holistic manner within a single report. Significantly, the Exchange requires the Board of Directors to delegate the evaluation of the sustainability disclosures to an audit committee. Such a report should be issued annually and focus on substantial evaluation of the financial and sustainability performance of the company.⁶²

In addition, the JSE has specific penalties associated with a failure to comply with the JSE Listings Requirements. Companies not taking required steps risk incurring penalties, being censured, having the trading in their shares suspended or their listing terminated should a breach occur.⁶³

Sector-Specific ESG Reporting

The JSE has also adopted specific reporting codes for extractive companies in its listing requirements. The *South African Code for the Reporting of Exploration Results, Mineral Resources and Mineral Reserves* (SAMREC) and the *South African Code for Mineral Asset Valuation* (SAMVAL) contain reporting requirements for mineral companies and non-mineral

60 See: https://www.oslobors.no/ob_eng/Oslo-Boers/Regulations/Circulars/1-2016-Oslo-Boers-guidance-on-the-reporting-of-corporate-responsibility

61 See: http://c.yimcdn.com/sites/www.iodsa.co.za/resource/collection/94445006-4F18-4335-B7FB-7F5A8B23FB3F/King_III_Code_for_Governance_Principles_.pdf

62 See: <https://www.jse.co.za/content/JSERulesPoliciesandRegulationItems/JSE%20Listings%20Requirements.pdf>, Section 3.84 (d)

63 See: <http://www.nortonrosefulbright.com/knowledge/publications/127211/listings-on-the-jse-limited-jse>

companies with substantial mineral assets, while the *South African Code for the Reporting of Oil and Gas Resources (SAMOG)* contains reporting requirements for oil and gas assets and projects.⁶⁴ Reporting requirements for ESG-related information are included across the codes.

4.8 United Kingdom: Alternative Investment Market

General ESG Reporting

The Alternative Investment Market (AIM) is the London Stock Exchange's public market for smaller and growing companies and is the index of choice for many mining and natural resources companies. To date, AIM's *Rules for Companies*⁶⁵ as well as its *Note for Mining and Oil & Gas Companies* do not require or provide guidance for ESG reporting.

The *Note For Mining and Oil & Gas Companies*⁶⁶ focuses almost uniquely on general reporting of the financial situation of resource companies, their assets and liabilities. Its primary focus, relating to admission to the AIM, is the "Competent Person's Report setting out experience and qualifications requirements for companies".

The admission document itself should include information on all material contracts relevant to assets or liabilities of the company and a nominated advisor should conduct full due diligence on the applicant and its assets. In case of assets located abroad, a report provided from a legal advisor from the relevant jurisdiction should address issues such as the proper incorporation and title to or validity and enforceability of any assets.

AIM received much scrutiny a number of years back when its reporting requirements failed to catch a transaction that took place in the war-torn DRC and involved questionable owners and acquisitions of extractive rights of an already registered AIM company. In 2011, Rights and Accountability in Development ("RAID"), issued a report on possible breaches of listing regulations on the AIM involving the Central African Mining & Exploration Company plc ("CAMEC"). There was disputed ownership of its mining concessions and close affiliation of its key manager and a significant shareholder who eventually became listed on the EU and US sanctions lists as well as having alleged ties to the Mugabe regime in Zimbabwe. RAID also raised the matter with the United Kingdom's Financial Services Authority in respect of alleged inadequate due diligence, conflicts of interest, the absence of reliable financial information, the disputed ownership of assets, the conduct and reputation of key managers and business associates, and the withholding of information material to the attractiveness of CAMEC's shares. CAMEC has since been acquired by a third party and the AIM never publicly made a determination of CAMEC's compliance with its rules.

64 See: https://www.jse.co.za/content/JSERulesPoliciesandRegulationItems/JSE_Listings_Requirements.pdf

65 See: http://www.lseg.com/sites/default/files/content/documents/aim/AIM_Rules_for_Companies_July16.pdf

66 See: <http://www.londonstockexchange.com/companies-and-advisors/aim/publications/rules-regulations/guidance-note.pdf>

Annex - Overview of ESG Reporting Regulations at Selected Stock Exchanges



The table below provides a snapshot (as of December 2016) of the above-mentioned stock exchanges and their ESG reporting requirements. This information was compiled from the exchange specific 'Fact Sheets' provided on the Sustainable Stock Exchange website where available,¹ the Sustainable Stock Exchanges Initiative's progress report 2016² and additional research.

Exchange	SSE Partner Exchange	ESG Reporting Requirements			
		Type	Name	Listing Requirement	Mandatory / Comply-or-Explain / Voluntary
Australia Australian Securities Exchange (ASX) (2083 companies listed)	No	General (all sectors)	No	n/a	n/a
		Specific to extractive companies	Mining Companies: Chapter 5 ASX Listing Rules in conjunction with Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (JORC Code, Appendix 5) Oil and Gas: Chapter 5 ASX Listing Rules in conjunction with the Petroleum Resources Management System	Yes	Mining: Comply or Explain Oil and Gas: Mandatory
		Written guidance on ESG-reporting	ESG reporting guide for Australian companies	No	Voluntary
Brazil BM&FBOVES-PA (359 companies listed)	Yes	General (all sectors)	Section 7.8 of the Reference Form of the Brazilian Securities Commission (CVM) covers the publication of socio-environmental information	Yes	Comply or Explain
		Specific to extractive companies	Mining: The CBBR Guide for Reporting Exploration Results, Mineral Resources and Mineral Reserves	No	Voluntary
		Guidance on ESG-reporting	Sustainability guide for closed capital companies	No	Voluntary

1 See: <http://www.sseinitiative.org/data/fact-sheets/>

2 See: http://unctad.org/en/PublicationsLibrary/unctad_sse_2016d1.pdf

Exchange	SSE Partner Exchange	ESG Reporting Requirements			
		Type	Name	Listing Requirement	Mandatory / Comply-or-Explain / Voluntary
Canada Toronto Stock Exchange (TMX) (3,590 companies listed)	No	General (all sectors)	Sec. 406 et seq. of the TMX Company Manual (Part IV, Maintaining a Listing) and the Canadian Securities Administrators Staff Notice 51-333	Yes	Mandatory
		Specific to extractive companies	Mining: National Instrument 43-101 Standards of disclosure for mineral projects Oil and Gas: n/a	Yes	Mandatory
		Guidance on ESG-reporting	A Primer for Environmental and Social Disclosure	No	Voluntary
China Mainland China Shenzhen Stock Exchange (SHSE) (1,761 companies listed)	No	General (all sectors)	No	n/a	n/a
		Specific to extractive companies	n/a	n/a	n/a
		Guidance on ESG-reporting	Shenzhen Stock Exchange Social Responsibility Instructions to Listed Companies (2006)		Voluntary
Hong Kong HKEx (1,830 companies listed)	No	General (all sectors)	Environmental, Social and Governance Reporting Guide	Yes	Comply or Explain and recommended provisions
		Specific to extractive companies	n/a	n/a	n/a
		Guidance on ESG-reporting	No	n/a	n/a
Norway Oslo Børs (213 companies listed)	Yes	General (all sectors)	No	n/a	n/a
		Specific to extractive companies	No	n/a	n/a
		Guidance on ESG-reporting	Guidance on the reporting of corporate responsibility	No	Voluntary

5. The Role of Capital Markets

How Home Governments Can Incentivise Responsible Business Conduct of Extractives Companies Operating Abroad

Exchange	SSE Partner Exchange	ESG Reporting Requirements			
		Type	Name	Listing Requirement	Mandatory / Comply-or-Explain / Voluntary
South Africa Johannesburg Stock (JSE) (397 companies listed)	Yes	General (all sectors)	King Code III	Yes	Comply or Explain
		Specific to extractive companies	Mining: SAMREC, SAMVAL Codes Oil and Gas: SAMOG Code	Yes	Mandatory
		Guidance on ESG-reporting	JSE Listing Rules – Guidance letter: Guidance on corporate governance.	No	Voluntary
United Kingdom London AIM (973 companies listed)	No	General (all sectors)	No	n/a	n/a
		Specific to extractive companies	No	n/a	n/a
		Guidance on ESG-reporting	Guidance for issuers on the integration of ESG into investor reporting and communication	No	Voluntary