

ICMA GREEN BOND PRINCIPLES UNDERGO MINOR FACELIFT

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Since its first publication in 2014 by a group of banks, the Green Bond Principles (“GBPs”) have gained wide market acceptance as shown by the US\$305.3 billion in green bonds issued in 2020 and a cumulative total issuance since 2007 of more than US\$1 trillion. Although just revised in 2018, with market practice evolving and new regulatory developments occurring, such as the EU Green Bond Standard initiative, the GBPs were in need of updating. On June 10, 2021, the International Capital Market Association (“ICMA”), the body now administering the GBPs, published a revised version of the GBPs which introduces two “key recommendations” with respect to green bond frameworks and external reviews.

Green Bond Frameworks

Although already a well-established practice in the marketplace, ICMA now formally provides as a “key recommendation” that issuers explain the alignment of their green bonds or green bond program with the four core components of the GBPs, namely: (1) use of proceeds; (2) process for project evaluation and selection; (3) management of proceeds; and (4) reporting. Issuers can choose to explain their framework in a stand-alone green bond framework (which most issuers are opting for) or in their legal documentation (such as base prospectus, Annual Information Form or ESG Report). However, the statutory liability for false or misleading statements that comes with any public disclosure documents might expose issuers using the latter method to greater risks should a given green bond issuance prove to be misaligned with the framework.

This new edition of the GBPs also invites issuers to summarize in their green bond framework relevant information within the context of the issuer’s overarching sustainability strategy. This summary may (but does not need to) include a reference to the five high-level environmental objectives of the GBPs, namely, climate change mitigation, climate change adaptation, natural resource conservation, biodiversity conservation, and pollution prevention and control. For those issuers who have decided to communicate Paris Agreement-aligned transition strategies (i.e. limiting global temperature increases ideally to 1.5°C and, at the very least, to well below 2°C), the GBP also encourages the use of the [Climate Transition Finance Handbook](#) published by ICMA in June, 2020.

In addition, issuers are now encouraged to describe the alignment of their green bond selected projects with official or market-based taxonomies or classifications such as the [EU Taxonomy](#) (or the [Canadian Standards](#)

[Authority \(CSA\) taxonomy](#) when same is finalized) or other green standards or certifications such as the Climate Bonds Initiative (CBI).

External Reviews

ICMA upgraded to a “key recommendation” the existing 2018 recommendation to appoint an external review provider to assess the alignment of an issuer’s green bond framework with the four core components of the GBPs at the pre-issuance stage (the so-called “Second Party Opinion” or “SPO”). A recent example of this type of review can be seen in the May 2021 SPO issued by ISS ESG in connection with Alimentation Couche Tard Inc.’s (TSX: ATD.B) recent publication of its green bond framework.

On a post issuance basis, ICMA recommends the use of an external auditor, or other third party, to verify the internal tracking and the allocation of funds from the green bond proceeds to eligible green projects. Review by an external audit firm will take the form of a limited assurance engagement conducted in accordance with the International Standard on Assurance Engagements (“ISAE”) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* (“ISAE 3000”) and ISAE 3410, *Assurance Engagements on Greenhouse Gas Statements*. The GBPs invite issuers to make external review publicly available on their website and/or through any other accessible communication channel. Although not specifically mentioned in the 2021 version of the GBPs, issuers should undergo and publish such external review on an annual basis and until all applicable green bond proceeds have been allocated to eligible green projects.

The source of the external post issuance review will be the issuer’s annual reporting on the use of green bond proceeds and the expected and/or achieved environmental impact of green projects financed with such green bond proceeds (the so-called fourth pillar of the GBPs). In connection with this task, ICMA recommends the use of qualitative performance indicators, and, where feasible, quantitative performance measures, together with disclosure of the key underlying methodology and/or assumptions used in the quantitative analysis. To do this, the 2021 version of the GBPs recommends the use and adoption of the [Harmonized Framework for Impact Reporting Handbook](#) first published in 2019 and recently expanded to include the Circular Economy and/or Certified Eco-Efficient Products GBPs project category. This handbook unites frameworks designed for impact reporting and can be used for 9 out of the 10 project categories identified in the GBPs. It provides issuers with specific GBP project category impact reporting metrics and templates to be used when reporting on their green bond projects and associated use of proceeds.

Finally, it is important to note that the update to the GBPs was made in the context of concurrent similar revisions to the Social Bond Principles and Sustainability Bond Guidelines, both administered by ICMA. Arguably, the recent pandemic and ongoing climate crisis have highlighted the need for an expanded offering

of sustainable financial products, such as green and social bonds, which, together with these new revised principles and guidelines, will help the world transition to a just and low-carbon economy. Experts in the ESG Group at McMillan can help you achieve your green financing goals; do not hesitate to reach out to us.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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