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Corporate Governance and Intellectual Property Policy
Business, Regulations and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

By email: climaterelateddisclosures@mbie.govt.nz

Submission on discussion document: Adjustments to the climate-related disclosures regime

This letter sets out T&G Global Limited's ("**T&G**") comments on the Ministry of Business Innovation and Employment's ("**MBIE**") consultation on adjustments to the climate-related disclosure ("**CRDs**") regime.

T&G began business more than 127 years as Turners & Growers and today it is a vertically integrated fresh produce business, with operations spanning the commercialisation of plant varieties and the growing, importing, exporting, and sales and marketing of fresh fruit and vegetables. The Company has revenues of \$1.3 billion, employs over 1,700 people and has operations in over 13 countries. Its premium ENVY™ and JAZZ™ apple brands are sold in over 60 countries.

T&G is a listed issuer with its primary listing on the New Zealand Stock Exchange ("**NZX**"). It is a climate-reporting entity ("**CRE**") for the purposes of Part 7A of the Financial Markets Conduct Act 2013 ("**FMC Act**"). T&G is accordingly required to prepare and lodge annual climate statements (on a group basis given it has subsidiaries) and did so for the first time for the financial year ending 31 December 2023. It is currently working on preparing its climate statements for the financial year ending 31 December 2024.

T&G supports NZX listed companies taking action on climate change, including by disclosing matters relating to their climate-related risks and opportunities. However, T&G also supports making commercially sensible adjustments to the CRDs regime to ensure it is fit for its purposes, balancing the imperative for transparent disclosure of climate-related matters with the compliance burden on CREs. In particular, T&G considers that there is scope to amend the director liability settings under the FMC Act in a way that promotes (rather than detracts from) the purposes of the regime.

Below, we have set out our responses to selected questions from MBIE's consultation document. Our comments are limited to Chapter 3 (director liability) and Chapter 4 (multinational corporations).

Should you have any questions or wish to discuss our submission further please contact myself.

Yours sincerely

Adrienne Sharp
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Chapter 3: Climate reporting entity and director liability settings

15	When considering the director liability settings, which of the four options do you prefer, and why? T&G prefers option 2 or option 3. Both option 2 and option 3 involve amending the FMC Act so that section 534 no longer applies to climate-related disclosures. T&G supports this change: - While T&G supports the legislative intention behind the CRDs regime, it considers that the current regulatory settings have the potential to undermine the purposes of the CRDs regime, which include (at a high level) ensuring that CREs consider and disclose their climate-related risks and opportunities. Specifically, the deemed liability provision in the FMC Act could undermine the quality of disclosures by incentivising directors to take a risk-averse approach to climate reporting. This is a particular concern given that many of the disclosure requirements under the Aotearoa New Zealand Climate Standards relate to information which is forward-looking and/or subject to inherent uncertainty. - In addition, climate reporting is an area where the entire market (including directors, internal teams and external consultants) is continuing to upskill, with areas such as scenario analysis, financial quantification of anticipated climate-related impacts and scope 3 emissions reporting giving rise to particular challenges and evolving practices. Compliance expectations are also continuing to evolve. In these circumstances, deemed liability for directors is particularly burdensome when compared with other more traditional areas of disclosure, such as financial reporting. Under option 3, the FMC Act would also be amended so that directors can no longer be liable for aiding and abetting an unsubstantiated representation. Again, T&G considers that making this change could support the purpose of the regime by removing an incentive for directors to take a risk-oriented approach to disclosure of forward-looking information (for example, in relation to transition plans). However, this is a lesser concern than the application of s 534.
16	Do you have another proposal to amend the director liability settings? If so, please provide details. No.
17	If the director liability settings are amended do you think that will impact on investor trust in the climate statements? No – the CRE itself will still be liable for non-compliance and directors will still be liable for involvement in a contravention of Part 7A. T&G considers that these forms of liability are sufficient to ensure investor trust.

18	If you support Option 3, should this be extended so that section 23 is disapplied for both climate reporting entities and directors? If so, why?
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19	If you support Option 4 (introduce a modified liability framework, similar to Australia) what representations should be covered by the modified liability, i.e., should it cover statements about scope 3 emissions, scenario analysis or a transition plan, and/or other things?
	N/A
20	If you support the introduction of a modified liability framework, how long should the modified liability last for? And who should be covered, ie., should it prevent actions by just private litigants, or should the framework cover the FMA as well? (Criminal actions would be excluded)
	N/A

Chapter 4: Encouraging reporting by subsidiaries of multinational companies

21	Do you think that there would be value in encouraging New Zealand subsidiaries of multinational companies to file their parent company climate statements in New Zealand?
	T&G supports the disclosure of climate-related risks and opportunities by multinational corporations. However, T&G questions whether encouraging New Zealand subsidiaries of multinational companies (especially where those subsidiaries are also CREs) to file their parent company climate statements in New Zealand would provide significant benefits to investors and other stakeholders. This is because: • In T&G's case, T&G is a CRE, as well as being a subsidiary of a multinational corporation. It may be confusing for T&G's primary users if it were to file parent company climate statements alongside its own (mandatory) climate statements. • Many multinational corporations (including BayWa AG, the ultimate parent company of T&G) make detailed sustainability information freely available online. T&G considers that it would potentially be confusing for readers for a New Zealand subsidiary of a multinational corporation to file climate statements that do not relate specifically to that entity but to the parent company. As noted in the discussion document, this could also lead to confusion that the parent company climate statements are regulated under the FMC Act. • Filing parent company climate statements is unlikely to substantially promote the purposes of New Zealand's climate-related disclosures regime in s 9B of the Financial Reporting Act 1993. These purposes broadly relate to encouraging entities to consider climate-related risks and opportunities and enabling investors and other stakeholders to assess the merits of that consideration. These purposes are unlikely to be substantially advanced by encouraging a New Zealand subsidiary to file an existing parent company climate statement.

	Given the repository would be voluntary, it is likely to lead to some companies making their climate statements available and others choosing not to. This could be confusing for readers looking to find climate statements for a particular entity.
22	Do you think that, alternatively, there would be value in MBIE creating a webpage where subsidiaries of multinational companies could provide links to their parent company climate statements? No – for the same reasons as outlined above.