Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:
http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/May-2019-Review-of-ESG-Guide/Consultation-Paper/cp201905.pdf.

Where there is insufficient space provided for your comments, please attach additional pages.

Timeframe for Publication of ESG Reports

1. Do you agree with our proposal to amend Main Board Listing Rule 13.91 and GEM Listing Rule 17.103 to shorten the time required to publish an environmental, social and governance ("**ESG**") report from three months after the publication of the annual report to within four months for Main Board issuers or three months for GEM issuers from the financial year-end date?

   ☒ Yes

   ☐ No

   Please give reasons for your views.

We agree that it would make sense to align the timing of the publication of the ESG report with the publication of the annual report.

Printed Form of ESG Reports

2. Do you agree with our proposal to amend the Listing Rules and the Guide to clarify that issuers are not required to provide printed form of the ESG report to shareholders unless responding to specific requests, but are required to notify shareholders that the ESG report has been published on the Exchange's and the issuer's websites?

   ☒ Yes

   ☐ No

   Please give reasons for your views.

While we agree with this proposal, we would strongly recommend that the Stock Exchange go one step further by not requiring printed copies in any circumstances. It should be sufficient that shareholders and other interested parties can obtain a copy of the ESG report by downloading it from either hkexnews.hk or the company website. Failing this, each listed company would need to be prepared to incur the not insignificant costs associated with small, ad hoc print runs for its ESG reports - which would also be inconsistent with one of the inherent aims of ESG reporting (namely, to promote environmentally-friendly practices).

Introducing Mandatory Disclosure Requirements

General

3. Do you agree with our proposal to amend the Guide to introduce Mandatory Disclosure Requirements ("**MDR**")?

☒ Yes

☐ No

Please give reasons for your views.

We agree in principal with this. However, there is going to be a learning curve for the boards of many listed companies and we therefore recommend that the introduction of MDR not occur until at least one full financial year after the consultation conclusions are published to provide boards with sufficient time to educate themselves, consider what may be appropriate in their circumstances, obtain advice as required and prepare accordingly. Please also note our further comments on the MDR in response to the questions below.

Governance Structure

4. If your response to Question 3 is positive, do you agree with our proposal to introduce an MDR requiring a statement from the board containing the following elements:

   (a) a disclosure of the board's oversight of ESG issues?

   (b) the process used to identify, evaluate and manage material ESG-related issues (including risks to the issuer's businesses); and

   (c) how the board reviews progress made against ESG-related goals and targets?

☐ Yes

☒ No

Please give reasons for your views.

While we consider paragraphs (a) and (b) to be reasonable, we consider that any remaining disclosure should be left up to boards to determine in light of their particular circumstances and feedback from their shareholders, investors and other stakeholders obtained over time. The proposed MDR requirement in paragraph (c) assumes that there are, by definition, appropriate ESG-related goals and targets for every listed company, regardless of the nature and scope of their business operations, and that companies benchmarking themselves on an on-going basis against self-imposed goals and targets is meaningful to shareholders and investors. This may not be readily apparent to some boards, and it may take them time to conduct the relevant analysis - noting in particular that some (and perhaps many) boards will have limited background in ESG related matters. We therefore think that it should be up to boards to determine whether to set specific goals and targets and to disclose progress against them.

5. Do you agree with our proposal to set out in a note that the board statement should include information on the issuer's current ESG management approach, strategy, priorities and goals/targets and an explanation of how they relate to the issuer's businesses?

☐ Yes

☒ No

Please give reasons for your views.

See discussion above. We also note that the proposed changes assume that either listed companies themselves have the necessary capabilities, expertise and resources to accurately measure various ESG related data, or that there is a deep and reliable ecosystem of external advisors that is readily available to assist the several thousand companies listed on the Stock Exchange at a price that is not exorbitant. The reality is that most companies simply will not have the internal capabilities to measure data internally, and therefore must rely on external advisors. While companies with significant market capitalisations may not be overly concerned at the cost of retaining external advisors, the same may not be true for all companies - especially given the increasing compliance costs of maintaining a listing (which, we note, have gone hand in hand with increasing limitations on the ability of listed companies to raise new capital).

We are also concerned that, much like the manner in which the use of "industry experts" with no apparent professional qualifications has become standard practice on new listings, if ongoing measurement of detailed ESG related data becomes mandatory without sufficient time for boards, companies and other market participants to prepare themselves, then a cottage industry of "pseudo-experts" will fill the void given that there are no mandated qualifications necessary to advise on such matters (unlike, for example, the measurement of oil or gas reserves, or property values). Much like "industry experts" (who are essentially unregulated but can now credibly argue that they have considerable experience in preparing industry reports), if advisors with no apparent qualifications are permitted to gain experience in advising on ESG related matters, then it becomes difficult not to justify permitting them to continue to do so in the future.

Therefore, we recommend that any push towards mandatory objective and measurable ESG related data beyond the current limited requirements would be premature and, if eventually adopted pursuant to a subsequent consultation process, go hand in hand with either (a) the Stock Exchange setting out rules or guidelines as to the qualifications or experience that third party advisors must possess in order to be permitted to advise on ESG related matters, or (b) the Stock Exchange requiring advisors to go through an accreditation process (either managed by the Stock Exchange or an external body). Without either of these, there is a significant risk of listed companies simply outsourcing the collation of ESG related data to third parties credibly claiming to have experience but lacking any real qualifications, which may ultimately lead to the publication of inaccurate or misleading data.

Reporting Principles

6. Do you agree with our proposal to amend the Guide to introduce an MDR requiring disclosure of an explanation on how the issuer has applied the Reporting Principles in the preparation of the ESG report?

☐ Yes

☒ No

Please give reasons for your views.

See reasons outlined above

7. Do you agree with our proposal to amend the Reporting Principle on "materiality" to make it clear that materiality of ESG issues is to be determined by the board and that the issuer must disclose a description of significant stakeholders identified, the process and results of the issuer's stakeholder engagement (if any), and the criteria for the selection of material ESG factors?

☒ Yes

☐ No

Please give reasons for your views.

8. Do you agree with our proposal to amend the Reporting Principle on "quantitative" to:

(a) require disclosure of information on the standards, methodologies, assumptions and/or calculation tools used, and source of the conversion factors used for the reporting of emissions/energy consumption (where applicable); and

(b) clarify that while key performance indicators (**"KPIs"**) for historical data must be measurable, targets may be expressed by way of directional statements or quantitative descriptions?

☐ Yes

☒ No

Please give reasons for your views.

Please see the reasons outlined above.

Reporting Boundary

9. Do you agree with our proposal to amend the Guide to include an MDR requiring an explanation of the ESG report's reporting boundary, disclosing the process used to identify the specific entities or operations that are included in the ESG report?

☒ Yes

☐ No

Please give reasons for your views.

This should not be difficult for companies to comply with, and in most cases will presumably correlate to the entities that companies consolidate in their financial statements.

Introducing Aspect on Climate Change and Revising the Environmental KPIs

Climate Change

10. Do you agree with our proposal to introduce a new Aspect A4 requiring:

    (a) disclosure of policies on measures to identify and mitigate the significant climate-related issues which have impacted, and those which may impact the issuer; and

    (b) a KPI requiring a description of the significant climate-related issues which have impacted, and those which may impact the issuer, and the actions taken to manage them?

☐ Yes

☒ No

Please give reasons for your views.

The proposed requirement is both presumptive (in that it assumes that "significant climate-related issues" have impacted companies in the past) and also vague (in that the word "may" potentially gives rise to an open-ended discussion). Moreover, it may not be clear (let alone in a manner that is measurable) whether a climate-related issue has been the sole cause of particular impact on the company. For example, a company may have experienced a lack of water supply at a facility due to any number of reasons that are not necessarily climate-related (e.g., the government built a dam upstream or a key pipeline was damaged, although general water scarcity in neighbouring regions may in part be a function of climate change). It also effectively requires companies to assume that there are significant climate-related issues that may impact them, even though that may not necessarily be the case for all companies - for example, a company that operates a stand-alone, energy self-sufficient facility in an area not known to be prone to climate-related incidents with multiple levels of redundancy may honestly hold the belief that its business will not be significantly impacted by climate change.

Targets

11. Do you agree with our proposal to amend the Environmental KPIs to require disclosure of a description of targets set regarding emissions, energy use and water efficiency, waste reduction, etc. and steps taken to achieve them?

☐ Yes

☒ No

Please give reasons for your views.

Please refer to the reasons outlined above. Until an appropriate ecoystem has been established to ensure that any reporting is accurate and not misleading, we consider it premature to impose these objective mandatory requirements on listed companies. Without that ecosystem, there is too much scope for "false assurance" being generated by ill-qualified advisors. While we appreciate that this is somewhat of a "chicken and egg" situation and that the motivations of the Stock Exchange in pushing for greater regulation of ESG related matters are well-founded, we think that there will be a sufficiently large critical mass of companies who are compelled by investor / stakeholder demands (including shareholder voting proxy firms like ISS) to lead the way in terms of ESG reporting, and that it would be better for the Stock Exchange to take a more measured approach and continue to monitor ESG disclosures and the third party advisors involved in producing them before laying down any further detailed prescriptive requirements.

GHG Emissions

12. Do you agree with our proposal to revise an Environmental KPI to require disclosure of Scope 1 and Scope 2 greenhouse gas ("**GHG**") emissions?

☐ Yes

☒ No

Please give reasons for your views.

As noted above, while we do not disagree with the sentiment underlying these requirements, we have concerns that these requirements will have the unintended consequence of giving rise to a cottage industry of "pseudo-experts" that may or may not be qualified to assist companies in determining the relevant data and may or may not result in accurate / reliable data being generated. It would also not be fair for directors to be personally liable for such statements given that most will not have the necessary expertise or qualifications to confirm their accuracy. As noted above, we believe that these mandatory requirements only make sense if there is an appropriate lead-time to their implementation and there are corresponding rules or guidelines laying out the necessary experience / qualifications for third party advisors, or the Stock Exchange lays out an accreditation process for such advisors.

Upgrading the Disclosure Obligation of the Social KPIs

13. Do you agree with our proposal to upgrade the disclosure obligation of all Social KPIs to "comply or explain"?

☒ Yes

☐ No

Please give reasons for your views.

The collation of the necessary data should not be unduly burdensome for companies. We do, however, have some reservations as noted below.

Revising the Social KPIs

Employment Types

14. Do you agree with our proposal to revise a KPI to clarify "employment types" should include "full- and part-time" staff?

☐ Yes

☒ No

Please give reasons for your views.

The definitions of "full-time" and "part-time" may vary from jurisdiction to jurisdiction, and in some cases a jurisdiction may not have corresponding definitions. Furthermore, there may be industries (such as services industries) where it is customary to employ a material proportion of the workforce on a part-time basis, thus making any comparisons from company to company potentially meaningless.

Rate of Fatalities

15. Do you agree with our proposal to amend the KPI on fatalities to require disclosure of the number and rate of work-related fatalities occurred in each of the past three years including the reporting year?

☒ Yes

☐ No

Please give reasons for your views.

All companies should view employee safety as of paramount importance, and we can think of no compelling reason for companies not to disclose this information.

Supply Chain Management

16. Do you agree with our proposal to introduce the following new KPIs in respect of supply chain management?

(a) Description of practices used to identify environmental and social risks along the supply chain, and how they are implemented and monitored.

(b) Description of practices used to promote environmentally preferable products and services when selecting suppliers, and how they are implemented and monitored.

☒ Yes

☐ No

Please give reasons for your views.

Listed companies, and particularly those that are larger, tend to hold a relatively high degree of bargaining power when negotiating with participants in their supply chains; and this bargaining power gives them the ability to be agents for positive change. However, we have one caveat to this: in some situations listed companies may be "price takers" rather than "price setters" due to their being only one or a limited number of suppliers - in such circumstances a company may simply not be in a position to impose its environmental and social agenda on the relevant supplier (especially if that supplier is a government-controlled or mandated monopoly).

Anti-corruption

17. Do you agree with our proposal to introduce a new KPI requiring disclosure of anti-corruption training provided to directors and staff?

☒ Yes

☐ No

Please give reasons for your views.

Given the existing training requirements for boards of directors, we consider that it should be relatively easy for companies to also arrange anti-corruption related training.

Encouraging Independent Assurance

18. Do you agree with the proposal to revise the Guide's wording on independence assurance to state that the issuer may seek independent assurance to strengthen the credibility of ESG information disclosed; and where independent assurance is obtained, the issuer should describe the level, scope and processes adopted for assurance clearly in the ESG report?

☒ Yes

☐ No

Please give reasons for your views.

We believe the boards of some, if not many, listed companies will consider their own capabilities and expertise with regard to ESG related matters to be insufficient to generate accurate and reliable information sufficient to comply with the Stock Exchange's requirements, and will therefore to varying degrees rely on external parties to assist them. However, as outline above, we have concerns about the potential for these changes to have the unintended consequence of giving rise to a cottage industry of advisors / advisory firms with no apparent qualifications - which we do not think would be in the interests of the investing public.

- End -