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Corporate Communications Department
Hong Kong Exchanges and Clearing Limited (“HKEx”)
8/F, Two Exchange Square,
8 Connaught Place,
Central,
Hong Kong

By fax: (852) 2524 0149 and email: response@hkex.com.hk

Dear Sirs,

Re: Consultation Paper on Review of the ESG Reporting Guide and Related Listing Rules

We are writing to submit our feedback on the proposed amendments to the HKEx Environmental, Social and Governance Reporting Guide (“ESG Guide”) and Related Listing Rules released in May 2019 (“this Consultation”). This letter is to complement our responses to your questionnaire, a copy as attached.

Vivien Teu & Co LLP is a Hong Kong law firm and our team has been practising with a focus in the areas of asset management, investment funds and general corporate law. We believe in the urgency of climate change and sustainable finance, and since last year we have been growing our practice in relation to sustainable finance and ESG, as well as on impact investment and providing legal support to organisations working to address environmental and social needs.

Overall we applaud the general direction of the Consultation, which is to improve the quality of ESG reporting through tightening board oversight over ESG integration, elevating all social-related disclosures to “comply or explain”, and requiring disclosures to go beyond policies to cover processes as well. Having said that, we set out below some suggestions where we think HKEx and the ESG Guide could do more that could better pave the way for Hong Kong to become a centre for sustainable finance and investment.

As a law firm our role is to advise, when appropriate, investment or corporate clients who are interested in seeing how to integrate ESG factors in their investment decisions and business operations. We have also been engaging with industry participants and other stakeholders in the market on the development of ESG investments and sustainable finance. In the realm of ESG, we are definitely seeing growing interest from investment and corporate clients, but a common question is not knowing which guiding or measurement standard to use out of the numerous frameworks available in the market.

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While the HKEx ESG Guide shall provide the framework for expected ESG disclosure standard, the HKEx may at the same time allow and encourage companies to choose to report against a list of recommended international standards such as the Global Reporting Initiative (GRI) Standards, the International Integrated Report Framework and the Sustainability Accounting Standards Board (SASB) standards. We note the inherent, and global, challenge with setting up a common framework to provide more comparability on ESG disclosure, as the field of international best standards on ESG measurement, reporting and assurance continue to be fast-evolving. We note that the HKEx already has a website providing a list of ESG resources¹, but HKEx may consider providing a list of *recommended standards* for issuers to reference and adopt, and which may be updated from time to time at a more regular interval than the ESG Guide.

Both the Financial Service Development Council (FSDC) and Our Hong Kong Foundation (OHKF) have issued insightful reports in the past months making comprehensive recommendations to speed up ESG integration, many of which we agree with and we will not repeat here. As an ESG-minded corporate law firm we would like to highlight a few key trends and recommendations most relevant to our work for your consideration:

■ Emphasis on board duty

It is a step in the right direction in this Consultation to highlight the role of the board in overseeing ESG integration. This is important to emphasise that board directors are under a duty to take into account ESG factors and issues as these impact the businesses and operations of listed companies.

First, to better align the various legal and regulatory documents that currently set out the duties of directors, we suggest that the wording in the Corporate Governance Code (“the CG Code”) should also be updated to reflect the proposed changes in this Consultation, by making ESG risk management and reporting a specific item of board responsibility. At the moment the CG Code has only listed as board responsibilities on the following: financial reporting, auditing, general risk management, internal control and delegation.

HKEx may also refer to Schedule 5 of the Companies Ordinance, “Contents of Directors’ Report: Business Review” which reads as follow in Clause 2 to align the requirements of the ESG Guide (not having the force of law) with the legal requirements under the Companies Ordinance (as law) to consider ESG factors, not just environmental policies and performance:

“2. To the extent necessary for an understanding of the development, performance or position of the company’s business, a business review must include –

- (a) an analysis using financial key performance indicators;
- (b) a discussion on –
 - (i) the company’s environmental policies and performance; and
 - (ii) the company’s compliance with the relevant laws and regulations that have a significant impact on the company; and
- (c) an account of the company’s key relationships with its employees, customers and suppliers and others that have a significant impact on the company and on which the company’s success depends.”

Second, we urge HKEx to include in the mandatory disclosure requirement of the board statement that there should be a clear acknowledgement that it is the board’s duty to consider ESG factors in all aspects of the business operations, in the long term interests of the company.

¹ https://www.hkex.com.hk/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/Environmental-Social-and-Governance/ESG-Resources-Hyperlinks?sc_lang=en

- Emphasis on social factors besides environment factors

There are increasing regulatory and policy developments internationally not only in relation to environment but also human rights, especially with regard to labor practices and modern slavery. For example, the UK Modern Slavery Act tackles modern slavery by requiring companies and boards to approve and publish an annual slavery and human trafficking statement; The Liechtenstein Initiative for a Financial Sector Commission on Modern Slavery and Human Trafficking is an UN-level initiative looking at how the financial sector can play a central role in combatting this heinous crime, including using the tool of company disclosure.

While we applaud the effort to make social KPIs “comply or explain” in this round of Consultation, some key social factors may be included, for example: how a company measures the impact (negative) of its operations, investments, products or services on the local community, and what a company has done to foster diversity and equal opportunities. On labor standards, the HKEx may consider introducing more concrete KPIs that will disclose how effective the company’s measures are in relation to avoiding child and forced labor at both the company and supply chain levels².

As set out in the document “Putting the ‘S’ in ESG: Measuring Human Rights Performance for Investors” (March 2017) by NYU Stern Center for Business and Human Rights, the measurement of companies’ social performance is the most challenging in the trio of ESG for a combination of factors, including a lack of good data. Perhaps HKEx could take a lead by encouraging more specific and progressive S-related KPIs.

We suggest that HKEx may make reference to the Sustainable Development Goals (SDGs), the *Ten Principles of UNGC* and the *UN Guiding Principles on Business and Human Rights* as three international frameworks for consideration by companies who wish to step up their strategy and goals, and correspondingly their disclosure, in relation to the social aspects.

- Materiality further explained

We echo OHKF’s recommendation in its report “Leading Global Capital Markets Towards a New Era” (May 2019) on the need to help companies better identify material ESG risks, potentially through adopting a sector-specific approach. As the field is fast evolving with new best practices and standards continue to emerge, we would like to urge HKEx to encourage companies to follow a list of international standards on top of the common framework set out in your ESG Guide.

- Sector-building support

To help companies enhance ESG reporting, HKEx may consider providing ongoing support on know-how and capacity building not only for companies/issuers but also the rest of the ESG ecosystem. We would like to also highlight the role of lawyers, accountants, auditors and consultants in the process of ESG reporting and development of standards and practice.

- List of international standards

We urge the HKEx to include a list of international standards for listed companies to reference as they consider how and what to disclose. This list could be included in a guidance note as supplement to the ESG Guide, and which could be updated more regularly than the ESG Guide.

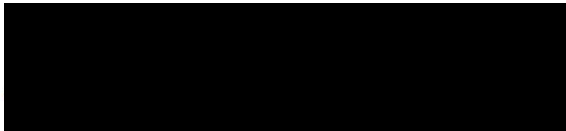
² Different civil society actors in Hong Kong are currently working on providing more concrete indicators in relation to the topic e.g. Mekong Club.

This list would help promote ESG learning for the whole field, and also make sure companies that want to do more and distinguish themselves in ESG can do so.

As pointed out in the FSDC Paper 36 “Environmental, Social and Governance (ESG) Strategy for Hong Kong”, the mainstreaming of ESG investing is a global trend. Hong Kong can do more to position itself as a sustainable finance hub. We would highlight that globally there is growing attention within the asset managers and institutional investment community on ESG investments, for example, the report “Fiduciary duty in the 21st century” published by United Nations Environment Programme Finance Initiative (UNEP FI), Principles for Responsible Investment (PRI) and the United Nations Global Compact (UNGC). As local and overseas institutional investors make up over half of Hong Kong’s total securities market turnover, if Hong Kong listed companies do not offer necessary ESG data or fail to keep up with international best standards on ESG performance they will lose out as institutional investors seek to allocate capital in line with ESG considerations.

Thank you for the consultation. We look forward to working with you and all other stakeholders in contributing towards Hong Kong becoming a leading global sustainable finance hub.

Sincerely yours,



Vivien Teu & Co LLP

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 support this amendment requiring ESG report to be made available within the same timeframe for the issue of annual reports, as we support integrated reporting of ESG in the long run. We urge that HKEX considers expressly stating that ESG report should be issued within the same timeframe the annual report is required to be issued, and encourage issuers to issue ESG report at the same time as the annual report. This would allow financial information and other non-financial material information of the issuers to be available at the same time.

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.

We support this as a measure to reduce unnecessary printing.

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 support the introduction of MDR beyond the current "comply or explain" requirements on certain Aspects and/or KPIs, importantly on the board's oversight and process on ESG materiality assessments, ESG strategy, and review of ESG-related goals and targets.

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.

We support making mandatory a statement from the board on its ESG oversight. However, we urge HKEx to consider including an acknowledgement in the statement that it is the board's duty to consider, evaluate and manage ESG-related issues and factors within all aspects of the issuer's business operations, in the long-term interests of the company.

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.

In particular we consider the statement should include information on the board's process and assessment on the specific ESG issues and risks identified as relevant and material for the issuer's businesses and how they are addressed by the issuer in terms of strategy, goals and targets. We suggest it may be emphasised this is not a box-ticking exercise.

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.

This is confusing because the Reporting Principles are the fundamental principles and approach expected of ESG reports. HKEX may consider clarifying that the explanations of the assessments of "materiality" and the choice of "quantitative" data approach for setting and review of goals/targets (ie. applying these two Reporting Principles) should be included within the board statement (as part of the above para 5 MDR on board statement). However, overall we support the proposal that issuer should better explain how they are complying with the Reporting Principles, especially as "materiality" remains the big challenge in ESG disclosure and a requirement for the board to disclose materiality assessment is important for the field to grow, and likewise, on the "quantitative" principle, it would be important for comparability and field development to know what tools the companies have used for their disclosure.

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.

See above.

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.

We support (a) - reasons see above. For (b) we agree certain issuers may not be in a position or able to provide a concrete figure for future targets, but nevertheless HKEx should encourage companies to give as concrete targets as possible - to show measurable results of managing ESG issues (whether quantitative or qualitative) is key for clarity and transparency of ESG information and data under the ESG reporting framework.

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.

Besides an explanation of specific entities or operations being included, to also require disclosure and explanation on the group entities or operations that are excluded

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.

Further, we suggest that HKEx encourage issuers to use certain specified and widely accepted measurements or standards (such as the TCFD framework) to assess and disclose climate-related risks, towards more consistency and comparability of data across companies. For the next round of reform HKEX may consider setting targets.

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.

As above, we urge the HKEx to recommend international standards to provide more stringent framework or targets for companies to reference.

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.

We support this as a specific requirement on climate-related disclosure. However, as not all companies in the relevant sectors may be used to measuring such data, perhaps HKEx can provide workshops and connect service providers for such data to be better captured, and for policies to be better improved.

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.

We applaud the HKEX proposal to require all Social KPIs to “comply or explain”, to provide better disclosure of specific information and data on how issuers are implementing policies and compliance on Social Aspects (beyond box-ticking policy or compliance statements). This would also encourage issuers to better take into account social factors and issues in business operations, and pave the way towards providing available information and data set for investors who are investing on ESG factors (and who consider S as key besides E or G).

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.

We agree that employment should include both full and part-time staff, and to also require disclosure on the company's policy on working with contractors. We urge HKEx to consider recommended disclosure on workforce by employment type as well as any other work relationships (e.g. contractors, interns, volunteers).

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.

We support the inclusion of specific data, as explained above. HKEX may consider also to recommend or require disclosure on how such incidents were handled.

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.

We support these new KPIs, but urge the HKEx to also include a section (c) on practices used to select suppliers with good labor records and that are committed to fighting modern slavery, to keep in line with international developments. International initiatives such as the Liechtenstein Initiative is working on disclosure framework similar to TCFD but in the field of modern slavery.

Anti-

We suggest a new section (c):

Description of practices used to promote a commitment to good labor practices when selecting suppliers, and how they are implemented and monitored.

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.

We agree that anti-corruption is an important aspect of ESG reporting. We suggest HKEx to also require disclosure of the percentage of workforce who received this 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 support the promotion of independent assurance, and urge the HKEx to also provide international standards for companies to reference.

- End -