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Sustainability obligations and liabilities for the company director

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SGX now requires its listees to issue a sustainability report. Why is this happening? And what do directors need to know?

On the first of January 2022, the Singapore Exchange (SGX) updated listing rule 711B requiring listees to observe "climate-related disclosures consistent with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)". As a result, SGX-listed companies must issue a sustainability report no later than four months after the end of their financial year.

"The sustainability report has to contain a statement from the board of directors that they have considered sustainability issues as part of their strategic formulation, and they have determined the material ESG factors and overseen the management and monitoring of those ESG factors in the running of the business," explains **Richard Allen**, Local Principal and Solicitor Advocate at Baker & McKenzie's Dispute Resolution Group. "It's a direct responsibility that the directors undertake when they are directors of listed companies."

Allen made those remarks at the recent Climate Governance Singapore (CGS) event, "Panel Discussion: Law, Policy and Regulation & Masterclass on Sustainability Reporting" that was hosted by the SMU Sim Kee Boon Institute for Financial Economics (SKBI) where he also laid out the sources of company directors' legal obligations and potential liabilities.

Why did the SGX implement this update to a regime that was first set up in 2016?

"I think the recent trends in litigation clearly shows that law increasingly views it as a responsibility for corporations, and directors consequently, to take into account the impact that your business has on others," observes **Michael Tang**, Head of Listing Policy & Product Admission at Singapore Exchange Regulation in the following panel discussion. "The law is a reflection of the expectation of society and what constitutes acceptable behaviour. We've seen an evolution of these expectations on corporations, and how they need to be responsible for the impact on the external environment, on society."

He adds: "So from the financial systems perspective, I think the question is whether or not these risks have been adequately priced into the markets today. Do the asset valuations take into account the potential loss that might arise if and when these climate impacts materialise? Do the financial statements of companies give a true and fair view of the financial position of their performance?

"The belief is that by giving investors more information on the potential climate risks that face companies and what the companies are doing in response to these risks, investors would be in a better place to make investment decisions. And consequently, the risks of climate would be priced into the markets.”

SUSTAINABILITY IN ACTION

Tang added that the SGX is helping its listees prepare for the risks of being priced up by credit markets for not taking “enough climate action to manage...the risk of the consumers moving on to other more environmentally friendly products because they've moved on in terms of their preferences [and] the risk of disruption by new technologies, for example, of more renewable energy technologies that out there in the market”.

Jan Tan, Legal Counsel at SGX-listed agribusiness group Wilmar International Limited, told the hybrid in-person/online audience about its sustainability-linked loans as an example of companies adapting to lender and investor expectations with regard to their sustainability credentials.

“Wilmar and ING converted its bilateral loan in 2017 to the very first sustainability-linked loan, or what we call an SLL,” Tan explains, adding that Wilmar has since signed SLLs with more than 10 other banks. “I believe there's reasonable expectation that the SLLs and the sustainability-linked KPIs will actually become more mainstream with the increasing transparency...in the ESG space.

“I believe that having a credible ESG program will actually be increasingly important as green funds invest into businesses that have access to good ESG performance. In this regard, I think SGX has demonstrated foresight in ensuring that its listees report and perform to a minimum ESG expectation. This really makes Singapore attractive as a capital market for investment by green funds.”

Gautam Mukharya, HSBC Singapore’s Chief Risk Officer, had worked with Wilmar on SLLs. He says SLLs provide a pricing incentive to the bank’s clients and represent a good way to build a portfolio in this area. Mukharya adds that, on the lending side of the bank, net zero is central to its operations: “We keep reviewing our exposures in the hard to abate sectors and develop baseline financial emission standards and targets for these priority sectors.”

On the asset management side, “every investment that we make is assigned an ESG rating, and sustainability teams are reviewed by specialists before we take a decision. There are several examples on the asset management side where we've engaged with our clients to help them pivot towards the green agenda.”

GOVERNANCE MATTERS

Baker & McKenzie's Allen notes that “there is a feeling that climate change is not simply a question of environmental compliance but really a business risk issue”. As such:

> *“What it requires is for the company to have proper and adequate internal systems of monitoring compliance, as well as managing climate-related risks that are tailored to give effect to the*

> *specific interests of the company and the risks that are very attuned to the company's operations and the kinds of issues that the company is going to experience as part of its business operations."*

To facilitate compliance to the new rules, SGX has introduced a set of 27 suggested ESG metrics to help measure the effectiveness of sustainability efforts.

But at the heart of it all is governance.

"Governance is the golden thread running through sustainability," SGX's Tang points out. "Without proper governance within the company, sustainability reporting becomes a mere reporting compliance exercise instead of really an initiative to drive action within the company to properly look at these ESG risks and then put in place necessary action."

Richard Allen, Michael Tang, Jan Tan, and Gautam Mukharya were speakers at the CGS/SKBI Panel Discussion: Law, Policy and Regulation & Masterclass on Sustainability Reporting" that was held on 16 February 2022.

SMU is the knowledge partner of Climate Governance Singapore. View the CGS knowledge hub curated by us https://skbi.smu.edu.sg/cgs.