Securities Law Update

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Business Responsibility and Sustainability Reporting by Indian Listed Companies

In recent years, inclusive growth, transitioning to sustainable development and adapting to and mitigating the impacts of climate change have emerged as major issues globally. There has been a marked increase in the focus of investors and other stakeholders on responsible business practices, geared towards the environment and society. As environmental, social and governance ("**ESG**") based investing becomes more mainstream, and companies face increasing pressure from investors and other stakeholders to disclose their ESG risks, practices and impacts, disclosure requirements imposed by the Securities and Exchange Board of India ("**SEBI**") have been regularly updated to keep pace with this change.

Regulatory measures and applicability

Pursuant to a circular dated November 4, 2015, SEBI introduced the format for the Business Responsibility Report ("**BRR**") in respect of reporting on ESG parameters by listed entities. On May 5, 2021, SEBI amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**"), to introduce new reporting requirements on ESG parameters for the top 1,000 Indian listed companies by market capitalisation to publish a Business Responsibility and Sustainability Report ("**BRSR**") as part of their annual report, setting out their ESG risks and opportunities, approach to mitigate or adapt to such risks, and financial implications involved.

On May 10, 2021, SEBI issued a circular containing a reporting format and guidance note for BRSR, further discussed below. The documents from which the BRSR has evolved are the erstwhile BRR and the National Guidelines on Responsible Business Conduct ("**NGRBC**") principles issued in 2019 by the Government of India, Ministry of Corporate Affairs, which in turn flow from the United Nations' Sustainable Development Goals. The Ministry of Corporate Affairs, in its report released on August 11, 2020 ("**MCA Report**") viewed sustainability reporting formats like the BRR and BRSR as "*a single comprehensive source of non-financial, sustainability information relevant to all business stakeholders - investors, shareholders, regulators, and public at large*."

Under the LODR, the requirement to issue a BRSR as part of the annual report applies to the top 1,000 Indian listed companies as of the end of that year, from the financial year ending March 31, 2023 ("**FY23**").

The Companies Act, 2013 ("**Companies Act**"), which applies to all Indian companies (whether or not listed), does not mandate or provide a template for any ESG reporting. However, the Companies Act prescribes the timing of the annual general meeting ("**AGM**") and issuance of the annual report by Indian companies. Indian companies must hold their AGM within six months from the close of the financial year and adopt their annual accounts at such AGM. Consequently, Indian companies following a financial year ending March 31, publish the annual report by September 30. Therefore, the first time the top 1,000 Indian listed companies as of the end of FY23 are required to issue the BRSR is with their annual reports for FY23, to be published by September 30, 2023. However, filing of the BRSR was voluntary for FY22.

SEBI's expectation is that the disclosures as per the BRSR format will bring in greater standardization, enabling better measurement and comparability across companies, helping investors to make informed investment decisions. It is also expected to enable companies to engage more meaningfully with their stakeholders, by encouraging them to look beyond financials and towards their social and environmental impacts.

The MCA Report proposed two formats for ESG disclosures – a comprehensive format and a "lite" version. While SEBI has proposed the BRSR for listed entities, as a comprehensive disclosure format, the MCA Report suggested that the reporting requirement may be extended by MCA to unlisted companies above specified thresholds of turnover and/or paid-up capital. If the MCA does extend the ESG reporting requirements to unlisted companies, the BRSR "lite" version for such companies may also be notified at that point. It should be noted here that the aforesaid thresholds of turnover and/or paid-up capital have not yet been indicated by the MCA in the MCA Report or otherwise, and the "lite" version is yet to be notified.

In a press release dated May 6, 2022, SEBI announced the constitution of a committee to advise SEBI on ESG matters. This committee has been tasked with considering enhancements in the BRSR, reviewing leadership indicators that may be made essential, developing sector-specific sustainability disclosures and disclosures relevant to the Indian context, and identifying areas for assurance and a roadmap for implementation. SEBI has not yet announced any findings or recommendations of this committee.

Indicative summary of contents of the BRSR

The BRSR format notified for Indian listed companies by SEBI on May 10, 2021 is divided into three sections, as follows:

Section A, 'General Disclosures', requires Indian listed companies to disclose basic information pertaining to themselves, including their year of incorporation, registered office address, business activities, products sold, location and number of plants, markets served, employees and workers (including differently abled employees and workers), and an overview of corporate social responsibility ("**CSR**") and material responsible business conduct issues.
Section B, 'Management and Process Disclosures', requires demonstration of the structures, policies and processes put in place by Indian listed companies towards adopting the NGBRC principles, including policy and management processes, governance leadership and oversight, such as whether an external agency has carried out independent assessment of the working of the company's policies.
Section C, 'Principle Wise Performance Disclosure', requires disclosures by Indian listed companies on performance against the nine NGBRC principles, divided into 'essential' indicators requiring mandatory reporting, and 'leadership' indicators, involving voluntary reporting, as summarized below.

Principle Number	NGBRC Principle	Essential Indicators	Leadership Indicators
1	Businesses should conduct and govern themselves with integrity, in a manner that is ethical, transparent and accountable.	Training and awareness programmes for the board, key managerial personnel ("**KMPs**") and workers, regulatory/disciplinary actions against company personnel, anti-corruption/anti-bribery policies and complaints on conflicts of interest.	Awareness programmes conducted for value chain partners, processes to manage conflicts of interest involving board members.
2	Businesses should provide goods and services in a manner that is sustainable and safe.	Percentage investment in technologies to improve environmental and social impacts of products, procedures for sustainable sourcing, safe reclaiming of products for reuse, recycling and disposal, waste collection plans in relation to extended producer responsibility.	Life cycle assessments for products, significant social/environmental concerns and mitigating steps taken, percentage of recycled material to total material used in production, number of products reused, recycled and safely disposed of.

Principle Number	NGBRC Principle	Essential Indicators	Leadership Indicators
3	Businesses should respect and promote well-being of all employees, including those in their value chains.	Measures for well-being of employees and workers such as health insurance, accident insurance, maternity benefits, retirement benefits, workplace accessibility, health and safety management systems, safety related incidents, complaints made by workers on working conditions and health and safety.	Life insurance/compensatory packages in the event of death of employees and workers, measures undertaken to ensure statutory dues have been deposited by value chain partners, number of workers/employees (or their family members) having suffered high consequence work related injuries who have been rehabilitated and placed in suitable employment.
4	Businesses should respect interests of and be responsive to all stakeholders.	Processes for identifying key stakeholder groups and frequency of engagement, including concerns raised by said stakeholders, channels of communication.	Processes for consultation between stakeholders and the board on economic, environmental and social topics, whether stakeholder consultation is used to support identification/management of environment and social topics, engagement to address vulnerable/marginalised stakeholder groups.
5	Businesses should respect and promote human rights.	Employees and workers provided training on human rights issues and policies, minimum wages paid to employees and workers, remuneration/salary paid to the board and KMPs, internal mechanism to address and redress human rights issues/grievances, complaints made by employees and workers on sexual harassment, discrimination, child labour, human rights requirements in business agreements, corrective actions taken.	Business processes modified/introduced as a result of addressing human rights complaints, scope of human rights due diligence, accessibility of premises/offices as per the Rights of Persons with Disabilities Act, 2016, assessment of value chain partners on parameters including sexual harassment, discrimination, child labour.
6	Businesses should respect and make efforts to protect and restore the environment.	Total energy consumption and energy intensity, facilities identified as designated consumers under the Performance, Achieve and Trade scheme of the Government of India, water withdrawal, consumption and intensity, mechanisms for zero liquid discharge, air emissions, greenhouse gas emissions, waste management policies, applicable environmental approvals and impact assessments, compliance with laws including the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, and Environment Protection Act, 1986.	Break-up of total energy consumed from renewable and non-renewable sources, water discharged by destination and level of treatment, water withdrawal and discharge in areas of water stress, emissions, initiatives taken, or technology used to improve resource efficiency/reduce impact due to emissions/effluent discharge, business continuity/disaster management plans, percentage of value chain partners assessed for environmental impacts.

Principle Number	NGBRC Principle	Essential Indicators	Leadership Indicators
7	Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.	Affiliations with trade and industry associations, corrective action taken or underway on issues relating to anti-competitive conduct based on adverse regulatory orders.	Public policy positions advocated, including method used, availability of information in public domain and frequency of review by the board.
8	Businesses should promote inclusive growth and equitable development.	Social impact assessment (**'SIA'**) of projects undertaken, projects for which rehabilitation and resettlement is undertaken, mechanisms to receive and redress grievances of the community, percentage of input material (inputs to total input by value) sourced from small and medium suppliers and from directly within district/neighbouring districts.	Actions taken to mitigate negative social impacts identified in SIAs, information on CSR projects undertaken, preferential procurement policies to purchase from suppliers comprising marginalised groups, benefits derived and shares from intellectual property owned/acquired, beneficiaries of CSR projects.
9	Businesses should engage with and provide value to consumers in a responsible manner.	Mechanisms to receive and respond to consumer complaints, turnover of products as percentage of total turnover that carry information about environmental and social parameters, safe usage, recycling and disposal, consumer complaints in respect of data privacy, advertising, cyber-security, unfair trade practices, product recalls (voluntary and forced), policy on cyber security and data privacy, corrective actions taken or underway.	Channels/platforms where information of products can be accessed, steps taken to inform consumers about safe and responsible usage, product information displayed over and above details mandated by law, surveys with regard to consumer satisfaction on major products, instances of data breach and impact.

The guidance note issued by SEBI on May 10, 2021 provides guidance to Indian listed companies on how the reporting format is to be populated, for instance, requiring disclosure of whether the reporting is done on a standalone or consolidated basis, and permitting Indian listed companies which prepare and disclose sustainability reports based on internationally accepted reporting frameworks such as those of the Global Reporting Initiative, Sustainability Accounting Standards Board, Task Force on Climate-Related Financial Disclosures and Integrated Reporting to cross-reference such disclosures to the disclosures sought under the BRSR.

Observations on the BRSR

Globally, regulators have been discussing and proposing disclosure requirements for companies to report their ESG parameters in a manner which facilitates comparability for investors. The United States' Securities and Exchange Commission ("**SEC**"), on March 21, 2022, proposed rules that would require public companies to disclose extensive climate-related information in their SEC filings. Per the proposal, these disclosures could include climate-related risks that are reasonably likely to have a material impact on a listed company's business, results of operations, or financial condition, greenhouse gas emissions associated with a public company and climate-related financial metrics to be included in a company's audited financial statements. At the same time, listed companies in the US had already begun voluntary reporting on their ESG metrics, particularly in their Form 10-K and proxy statement filings.

In India, voluntary adoption of the BRSR is yet to pick up pace, arguably a result of the prescriptive, detailed and wide-ranging nature of disclosures required in the BRSR. As the compliance deadline approaches, companies will be required to put in place mechanisms to source, collate and analyse the required data to make the disclosures required by the BRSR. For companies which have multiple business units and operate multi-nationally, the implementation challenges are even greater. Given the one-size-fits-all approach currently adopted by SEBI, in terms of the sector-agnostic nature of the BRSR, the timelines for establishing systems for collecting ESG data will also vary across companies. As such, companies should put in place adequate systems and measures well in advance of the deadline, to ensure timely availability of data.

While SEBI permits voluntary early adoption of BRSR, we expect evolving market practice to inform the precise approach to and contents of the BRSR. Since the BRSR also specifically requires an overview of the listed entity's 'material' responsible business conduct issues without specifying the boundaries of materiality, we also expect market practice/regulatory guidance to help evaluate instances in which the aforesaid 'material' issues are also material events for purposes of disclosure under Regulation 30 of the LODR (on disclosure of events or information).

Although SEBI and the Indian stock exchanges have broad powers to impose fines, suspend trading or take other actions against Indian listed companies found in default of the LODR, no specific penalties or consequences have been notified for BRSR related non-compliances.

The disclosure requirements introduced by the BRSR increases transparency comparable to other developed markets, and this step taken by SEBI is well intentioned. However, given the detailed format of the BRSR, often unqualified by a materiality limitation and containing information already disclosed by companies in other filings/financial statements, we are yet to see whether investors can discern meaningful information, enabling proper comparison of the metrics that really matter. While our disclosure framework has been primarily developed with a view to enabling companies to disclose their present and expected performance to investors, in terms of the risks and opportunities the board sees, ironically, the prescriptive format of the BRSR may dampen companies' good faith efforts to integrate sustainability into their business models, if seen as just another compliance burden.

Added to this, the demand for, and scrutiny of the disclosures in the BRSR, by the ecosystem of ESG focused investors, proxy advisors, aggrieved parties and other stakeholders, coupled with the reach of social media, will throw up increased challenges for listed companies (and perhaps later large unlisted companies), with regard to their governance standards and ESG reporting systems.

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