

Navigating BRSR: Concerns and Opportunities

INTRODUCTION

On February 20, 2023, the Securities and Exchange Board of India (“**SEBI**”) released a consultation paper on disclosures, ratings, and investing related to Environmental, Social, and Governance (“**ESG**”) parameters for the purpose of seeking comments from the public (the “**Consultation Paper**”). According to the Consultation Paper, SEBI plans to introduce an assurance-driven reporting regime soon, based on key ESG attributes – referred to, and appended in Annexure 1 to the Consultation Paper, as “**BRSR Core**”.

As the name suggests, BRSR Core is intended to represent a focused subset of the wider Business Responsibility and Sustainability Reporting (“**BRSR**”) framework (“**BRSR Comprehensive**”), which, in turn, SEBI had introduced almost two years ago (in May 2021)¹ as an ESG-based voluntary disclosure regime in lieu of the erstwhile Business Responsibility Reporting (“**BRR**”) paradigm.² The main motivation behind introducing the BRSR Comprehensive framework was to ensure quantitative, standardized disclosures on ESG-linked parameters from large, listed companies (at least to begin with).

WHY AND HOW SHOULD YOU CARE ABOUT BRSR?

Until now, *i.e.*, until the financial year (“**FY**”) 2021-22, the top 1,000 listed companies in India by market capitalization (the “**BRSR Companies**”) could make ESG disclosures pursuant to the BRSR Comprehensive framework on a voluntary basis. However, such disclosures are now compulsory for the same BRSR Companies, *i.e.*, from FY 2022-23. Accordingly, the mandated entities need to file their BRSR reports electronically and are required to integrate those reports with other corporate filings

¹ See [here](#).

² See [here](#).

made on the ‘MCA21’ portal, *i.e.*, the website maintained by the Indian Ministry of Corporate Affairs (“**MCA**”).

Disclosures under BRSR have been divided into three parts, *viz.*: (a) general disclosures, (b) management and process disclosures, and (c) category-wise performance disclosures with respect to nine principles specified under the ‘*National Guidelines on Responsible Business Conduct*’ (“**NGRBC**”).³ Further, reporting under each NGRBC principle for BRSR may be done as per two performance levels/indicators: (i) essential – being mandatory, and (ii) leadership – being voluntary.

BENEFITS AND OPPORTUNITIES

ESG reporting under the BRSR framework reflects a company’s ability to manage and mitigate ESG-related risks, along with bolstering its business ethics and internal policies. Accordingly, companies should think of BRSR compliance as an opportunity to adopt measures which (i) address their own long-term health, (ii) align with international requirements, (iii) generate trust among their stakeholders, and (iv) build corporate resilience.

Given the rising focus on sustainability, major companies worldwide are creating specialized positions – such as that of a ‘Chief Sustainability Officer’ – or a specific group from the directorial board to manage ESG concerns.⁴ Mandatory disclosures required under Section B (*Management and Process Disclosures*) of the BRSR with regard to appointing a specific board committee or director for the purpose of assuming responsibility in respect of sustainability-related issues reflect this wider trend.

However, at present, not many listed companies in India have a Chief Sustainability Officer or an equivalent position focused on ESG initiatives at the management level. Not only are such appointments indicative of a company’s ability to influence, communicate, and deliver with respect to ESG commitments, such mandates may also be important when key investors assess a company’s commitment to sustainability.⁵ While SEBI has not yet mandated the appointment of a Chief Sustainability Officer under BRSR, companies would do well to modify their respective governance models to accommodate and/or create such positions (or board committees).

³ Available [here](#).

⁴ For instance, see [here](#).

⁵ For example, see [here](#).

LIABILITY

Nevertheless, companies need to remain attentive to potential legal risks associated with making BRSR disclosures. Although securities laws may not require the disclosure of ESG data except in limited instances (e.g., for the top 1,000 listed companies only), liability may arise from making ESG-related disclosures which are materially misleading or false.

Around the world, various stakeholders are increasingly resorting to litigation for the purpose of holding companies accountable with respect to ESG issues. In some instances, activist shareholders have used courts to hold directors personally liable for failing to address ESG-related issues appropriately. In this regard, litigants may even try to hold parent companies and private equity sponsors accountable for acts or omissions related to the latter's group, subsidiary, or portfolio companies – including foreign ones.

In the United States, the U.S. Securities and Exchange Commission (“**SEC**”) has already had occasion to investigate potential greenwashing by financial institutions and associated investment funds. It is possible that the powers of SEBI may be similarly invoked in India.

BRSR COMPREHENSIVE

Listed entities which already prepare and disclose sustainability reports based on internationally accepted reporting frameworks (such as Global Reporting Standards (GRI), Sustainability Accounting Standards Board (SASB), Task Force on Climate-Related Financial Disclosures (TCFD), and International Integrated Reporting Framework) are permitted to cross-refer disclosures made under such frameworks to the disclosures required under the BRSR.

A brief overview of category-wise BRSR disclosures is provided below:

General Disclosures (Section A)	Management and Process Disclosures (Section B)	Principle-Wise Performance Disclosures (Section C)
<p>Information about the reporting entity, including details with respect to:</p> <ul style="list-style-type: none"> (i) business activities, products, and services (ii) operations, contribution of exports, customers (iii) employees, including in respect of differently abled persons, representation of women, and turnover rate of employees (iv) group companies (v) corporate social responsibility (vi) complaints received from stakeholders on any of the nine NGRBC principles and grievance redressal mechanism in place (if any) <p>As part of the general disclosures, companies are also required to disclose responsible business conduct and sustainability related issues which materially pertain to</p>	<p>BRSR lays specific emphasis on the role of corporate governance in achieving sustainable goals.</p> <p>Accordingly, under Section B, companies are required to disclose information on policies and processes relating to the nine NGRBC principles concerning leadership, governance, and stakeholder engagement. The company may voluntarily disclose if it has any specific commitment, goal, or target against any of the NGRBC principles along with the expected outcome of these goals, as well as the timelines for the achievement of such goals; the entities (group companies, joint ventures, value chain partners) covered, along with nature of these goals if they are legally mandatory or voluntary.</p> <p>Furthermore, a statement from the director who is responsible for preparation of the</p>	<p>BRSR requires specific disclosures under all the nine principles of the NGRBC. Entities are required to provide quantitative data points, as well as qualitative responses (where the issues are more subjective), in the manner prescribed by SEBI.</p> <p>Disclosures under Section C have been categorized as essential indicators (mandatory) and leadership indicators (voluntary).</p> <p>Disclosures under the leadership category are expected to be transitioned into disclosures under the essential category by the next cycle of review.</p> <p>It is suggested that entities may treat voluntary disclosures as a pathway to transitioning to a more comprehensive disclosure regime in the future.</p>

General Disclosures (Section A)	Management and Process Disclosures (Section B)	Principle-Wise Performance Disclosures (Section C)
<p>environmental and social matters – especially those that present a risk or an opportunity to the business along with its positive or negative impacts. In cases of any risk, the measures taken to ensure mitigation of such risks are also required to be mandatorily disclosed.</p>	<p>report is required to be included, highlighting the relevance of sustainability to such company. In addition, the seniority or the authority of the member responsible for implementation and oversight of ESG-related policies also need to be disclosed.</p> <p>In sum, the purpose of disclosures under this section is to understand whether the company has the necessary foundation in place that will enable responsible business conduct.</p>	<p>Disclosures in respect of essential indicators broadly relate to matters of corporate governance, human resources, environment and sustainability, and stakeholders and public policy.</p>

BRSR CORE AND LITE

(a) BRSR Core

BRSR Core has been formulated on the basis of quantifiability and ‘reasonable assurance’ (similar to an audit verification). The thrust is on measurable, outcome-oriented ESG metrics, along with coherent methodologies related to data verification. Such verifications are required to be conducted by assurance providers on a ‘reasonable’ standard basis (as opposed to ‘limited’ assurance, which yields lower confidence levels). This, in turn, is expected to facilitate better comparisons, greater credibility, and reduced costs.

The structure and timeline of BRSR Core, as currently proposed by SEBI in the Consultation Paper, may apply in a staggered trajectory: for instance, it may extend to the top 250 listed companies in India (by market capitalization) from FY 2023-24, and subsequently, to the top 500 and 1,000 such companies by FY 2024-2025 and 2025-2026, respectively.

Some key performance indicators (“**KPIs**”) proposed in the BRSR Core are already included under the BRSR Comprehensive framework. Further, SEBI has proposed that certain disclosure requirements (such as those related to intensity ratios (“**IRs**”)) should be adjusted for country-level purchasing power parity (“**PPP**”).⁶

SEBI’s proposal about PPP is a significant one – where it suggests that, in addition to ‘normal’ intensity ratios, IRs should be computed on the basis of economic value adjusted for country-level PPP for fairer (and better) global comparisons. After all, energy used per unit of gross domestic product (“**GDP**”) provides a measure of energy *efficiency*.

The use of PPP (e.g., as reported by the International Comparison Program (“**ICP**”))⁷ could be useful to ascertain linkages between the size of an economy and its impact on climate, as well as its correlation with climate-related costs and socioeconomic consequences, along with the financing of allied mitigation/adaptation efforts.

Furthermore, the Consultation Paper contemplates extending the disclosure requirements under BRSR Core to corporate supply chains as well. Since the typical supply chain in India comprises small and medium enterprises (“**SMEs**”), SEBI has proposed that ESG disclosures for supply chains could be made in a phased manner. Thus, in the first phase (FY 2024-25), the top 250 listed companies (by market

⁶ See [here](#).

⁷ See [here](#).

capitalization) may be required to provide ESG disclosures on a “comply or explain” basis, where assurance will not be mandatory. However, from FY 2025-26, such companies may be under an obligation to provide assurances in this regard. In addition, SEBI’s proposal includes 15 parameters that “have an Indian context,” which ESG rating providers need to factor in while assigning corresponding ratings to Indian companies.

(b) BRSR Lite

Pursuant to the MCA’s ‘Report of the Committee on Business Responsibility Reporting’,⁸ voluntary ESG disclosures for unlisted and smaller listed companies have also been previously prescribed, reportable in a specific format called “**BRSR Lite**”.

As global investors increasingly point to ESG non-compliance as a key metric for investment exclusion, MCA introduced BRSR Lite with the aim of encouraging Indian companies to grow sustainably and ethically, as well as to familiarize them with global standards of sustainability reporting.

BRSR Lite is a pared down version of BRSR Comprehensive, *i.e.*, with fewer disclosures. For instance, while BRSR Companies are required to declare all products that comprise 90% of their respective turnovers, BRSR Lite requires its reporting companies to only declare their top three products. Further, BRSR Lite does not mandate detailed disclosures on ESG-related corporate governance policies (unlike BRSR Comprehensive) – requiring a disclosure on general stakeholder engagement instead. Further, relative to BRSR Comprehensive, there is a reduced emphasis on bribery-related disclosures in BRSR Lite, and the latter’s principle-wise performance section contains fewer questions, with limited disclosure requirements in respect of leadership indicators.

CONCLUSION

BRSR is an evolving regime, and changes in global developments on ESG and/or sustainability may trigger corresponding changes to its reporting framework in coming years. In the Consultation Paper itself, SEBI has indicated that, once finalized, KPIs in the BRSR Core, to the extent that those are not incorporated in BRSR Comprehensive already, will be included in an updated version of the latter. While it remains a necessary and well-intentioned regime overall, in light of its innate flux as well as the potential of increased scope associated with nascency, reporting on certain

⁸ Available [here](#).

KPIs/attributes in the BRSR framework may prove daunting for Indian companies, especially with regard to supply chain monitoring – if and when those are implemented.

While the top 1,000 listed companies are obliged to mandatorily comply with BRSR Comprehensive as of now (but without assurance requirements), by FY 2025-26 such companies may be compelled to provide/secure reasonable assurance with respect to KPIs contained in the BRSR Core as well – *i.e.*, over and above their existing reporting obligations under BRSR Comprehensive. Accordingly, a guidance note which is more detailed than the one presently available on BRSR,⁹ along with nationwide training programs and workshops, could be coordinated by SEBI to raise awareness about issues and measurement/reporting paradigms on ESG.

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⁹ See [here](#).