

“A Road Towards ESG Reporting and Investing: A BRSR Framework”

ABSTRACT

“Sustainable Investing is back. Is your board ready?”

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An unprecedented year of the Covid-19 pandemic had brought forth uncertainty, resulting in a massive global shutdown, which then impelled the Indian investment market to look towards more sustainable investments. With an increase of 1700 crore in investment from the last financial year till January 31, 2021, in the Indian Market, such development seems to attract more inflow of funds in sustainable investing over coming years. To protect the interests of the stakeholders and to create accountability and sustainability towards the environment and society in such uncertain times, the Security Exchange Board of India (SEBI) has revamped its disclosure requirement emerging from “National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business” later updated as “**National Guidelines for Responsible Business Conduct**”. This article brings about a legal analysis of “**Business Responsibility and Sustainability Reporting**” (BRSR) from an Environmental, Social, and Governance (ESG) perspective in India. Lastly, it brings out various global legal developments concerning ESG investment practices.

INTRODUCTION

The rising environmental and social challenges have created a paradigm shift towards the philosophy of the larger good for the long-term sustainability businesses with financial viability. Investing through sustainable means has seen a remarkable rise in the past decade and several developments have been seen globally in this context¹. Awareness among the investors/stakeholders raised several social issues concerning consumers, employees, and society which has brought a potential shift in public policy and regulation.² The Covid-19 pandemic has changed how business works and the Companies that embraced ESG’s

¹ Patturaja Murugaboopathy, *Sustainable Fund Inflows Hit Record High in Q1 Morningstar*, REUTERS (Apr 30, 2021),

<https://www.reuters.com/business/sustainable-business/sustainable-fund-inflows-hit-record-high-q1-morningstar-2021-04-30/>

² Kosmas Papadopoulos, Rodolfo Araujo and Simon Toms, *ESG Drivers and the Covid-19 Catalyst*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, (Dec 27, 2020), <https://corpgov.law.harvard.edu/2020/12/27/esg-drivers-and-the-covid-19-catalyst/>.

component came through the crisis stronger as sustainable practices attracts more customers allows better access to resources, lowers energy and water consumption, and therefore also reduce operational costs³. India has seen a rise in ESG investment since last year; among a total of nine ESG schemes, six of them were added in the investment market in the preceding Financial Year: 2020-2021.⁴ Therefore, to achieve more transparency and accountability a revamped reporting framework called BRSR has been introduced by the SEBI⁵.

Why is ESG Reporting Important?

The demand for ESG Reporting among the investors is on the rise to bring transparency on sustainable and socially responsible practices. Moreover, ESG performance reporting positively aligns with the financial performance and has directly impacted the minds of the stakeholders. Therefore, to influence the stakeholders, a company might overstate its quantitative and qualitative disclosures, which might pose a greater financial risk as it could lead to over screening of the investments. ESG Reporting can provide valuable insight to the investors as a good ESG translates into good financial performance and adds long-term value to the investors. As these practices and their disclosures can significantly impact the financial statistics of a company resulting in better-informed investment decisions and helps to determine the good practices for a company. Moreover, it is seen that companies with strong ESG performance have higher returns on their investments,⁶ and such companies have outperformed during the crisis.⁷

Global Sustainable Reporting Framework

³ Abhinav Kaul, *World Environment Day: How to Pick Funds Based on ESG Theme*, LIVEMINT, (Jun 5, 2021), <https://www.livemint.com/mutual-fund/mf-news/world-environment-day-how-to-pick-funds-based-on-esg-theme-11622882623392.html>

⁴ PTI, *SEBI Guidelines related to Environmental, Social and Corporate Governance Soon*, LIVEMINT, (Feb 25, 2021),

<https://www.livemint.com/market/stock-market-news/sebi-guidelines-related-to-environmental-social-and-corporate-governance-soon-tyagi-11614258639525.html>

⁵ PR No.: 18/2021, *Business Responsibility and Sustainability Reporting by Listed Entities* (May 10, 2021), https://www.sebi.gov.in/media/press-releases/may-2021/sebi-issues-circular-on-business-responsibility-and-sustainability-reporting-by-listed-entities-_50097.html

⁶ Yi Sun, *Increasing Risk Management & Resilience Through ESG Investing*, WBCSD (Aug 19, 2020), <https://www.wbcd.org/Overview/News-Insights/WBCSD-insights/Increasing-risk-management-resilience-through-ESG-investing>

⁷ Tom Brown, *Towards Consistent and Comparable ESG Reporting*, KPMG (May 27, 2020), <https://home.kpmg/xx/en/home/insights/2020/05/towards-consistent-and-comparable-esg-reporting.html>

The Covid-19 pandemic further stimulated the need for ESG Reporting across the globe, making investors, consumers, and employees more conscious towards the adoption and implementation of sustainability reporting. More than 90% of the S&P 500 Index Companies are publishing Sustainability Reports.⁸ Moreover, ESG Reporting practices will create enduring effects i.e., attract investors,⁹ as ESG stocks reduce portfolio risks and are an indicator of strong leadership. A strong ESG proposition correlates with higher equity returns, from both tilt and momentum perspective which helps the investors to balance their divestment and engagement with the company. During the pandemic different jurisdictions and international institutions have adopted significant approaches towards the regulation, standardisation, guidelines, and frameworks for the corporate ESG reporting. These include, European Union's Non-Financial Reporting Directive,¹⁰ United States-based Sustainability Accounting Standards Board (SASB),¹¹ Task Force on Climate-related Financial Disclosures,¹² Global Reporting Initiatives (GRI),¹³ International Integrated Reporting Council (IIRC),¹⁴ and World Economic Forum (WEF) paper "Towards Common Metrics and Consistent Reporting of Sustainable Value Creation".¹⁵

SASB: In 2018, the SASB has come up with a set of ESG standards specific to 77 industries, which provides guidance on a range of ESG topics, and is designed in such a way that it could analysis the impact of ESG on the financial performance of the company.

⁸ Elizabeth Peterson, *90% of S&P 500 Index Companies Publish Sustainability Reports*, BUSINESSWIRE (Jul 16, 2021),

<https://www.businesswire.com/news/home/20200716005119/en/90-of-SP-500-Index-Companies-Publish-Sustainability-Reports-in-2019-GA-Announces-in-Its-Latest-Annual-2020-Flash-Report>

⁹ Andrew R. Brownstein & Ors., *The Coming Impact of ESG on M&A*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE (Feb 20, 2021),

<https://corpgov.law.harvard.edu/2020/02/20/the-coming-impact-of-esg-on-ma/>

¹⁰ Consultation, *Corporate Sustainability Reporting*, EUROPEAN COMMISSION, (Feb 20, 2021),

https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en

¹¹ Charles Tilley and Janine Guillot, *Strengthening an Integrated Report Using SASB Standards*, VALUE REPORTING FOUNDATION, (March 21, 2021),

<https://integratedreporting.org/news/strengthening-an-integrated-report-using-sasb-standards/>

¹² Final Report, *Recommendations of Task Force on Climate-related Financial Disclosures*, TCFD, (Jun 2017), <https://www.fsb-tcfd.org/publications/>

¹³ Eric, *The Reporting Landscape*, GRI, (December 2020),

<https://www.globalreporting.org/public-policy-partnerships/the-reporting-landscape>

¹⁴ Mathew Nelson, *Why it's time to take a Standard Approach to Non-Financial Reporting*, ERNST & YOUNG, (Feb 1, 2019),

https://www.ey.com/en_gl/assurance/time-to-take-a-standard-approach-to-nonfinancial-reporting

¹⁵ White Paper, *Towards Common Metrics and Consistent Reporting of Sustainable Value Creation*, WORLD ECONOMIC FORUM, (Jan 22, 2020),

<https://www.weforum.org/whitepapers/toward-common-metrics-and-consistent-reporting-of-sustainable-value-creation>

TCFD: The TCFD framework provides both general and sector-specific guidelines, but only on climate-related topics. It provides a common set of principles that can be aligned with other disclosure regimens over time. Such a framework has been incorporated into various reporting regimes by regulators in the European Union, United Kingdom, etc.

Other Frameworks: Others ESG reporting frameworks have paved the importance of the ESG practices among the various industries which lay down specific criteria considered material to investors and the society, which seems to bring transparency and the rise of sustainable practices in the Investment Market.

However, till now it appears that selecting a single framework may not be a conclusive one as there is a distinct lack of harmonized standards in various ESG Reporting Frameworks, although such disclosures depend upon the objectives and size of a company.

ESG Reporting in India – Regulatory Framework

With an increase in demand for sustainable investing in the market over the past decade, Regulatory Authorities have developed the Business Responsibility Reporting (BRR) Framework in line with the global commitments such as Sustainable Development Goals, Paris Agreement for Climate Change, and National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs).

Further, in 2018 the Ministry of Corporate Affairs (MCA) constituted a committee to revamp the framework of BRR, based on National Guidelines on Responsible Business Conduct (NGRBC)¹⁶. Therefore, to enable better reporting by the companies, the Committee released the BRSR based on ESG perspectives where it is applicable at voluntarily basis for FY 2021-2022 and on a mandatory basis from FY 2022-2023 applicable on top thousand entities which are listed.¹⁷

Structure of BRSR Framework:

The BRSR Framework is based on two formats of disclosure i.e., BRSR and BRSR Lite¹⁸, wherein these formats would be a single source of sustainable information as a non-financial

¹⁶ PIB, *MCA Releases National Guidelines on Responsible Business Conduct*, MCA, (Mar 13, 2019), <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1568750>

¹⁷ Press Release No. 15/2021, *SEBI Board Meeting*, SEBI, (Mar 25, 2021), https://www.sebi.gov.in/media/press-releases/mar-2021/sebi-board-meeting_49648.html

¹⁸ PIT, *Business Responsibility and Sustainability Reporting by Listed Entities*, SEBI, (May 10, 2021), https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

reporting/disclosure by companies in India's Corporate Governance regime. The framework of the BRSR based on the following sections¹⁹:

1. BRSR Framework (comprehensive):

The lack of proper guidelines resulted in companies making their own set of disclosure and resulting in multiple interpretations of ESG principles. Therefore, these disclosures through the BRSR framework will entail the companies to fulfil their objectives of sustainability reporting, which is a key step towards aligning the international needs towards more comparable and better data which will bring more transparency, leading towards more sustainability. A proper framework will increase the quality of ESG reports²⁰ in the long run haul.

Therefore, the comprehensive BRSR Framework has been divided into '**General Disclosure**', '**Management and Process Disclosures**' and '**Principle Wise Disclosure**'²¹ wherein these disclosures will contain basic information about the company such as Name, Incorporation, Product/Services, Exports, Operations/Manufacturing, Employees, Workmen, Subsidiaries, Associate Companies, Joint Ventures, Holding, Transparency and Disclosures Compliances, Corporate Social Responsibility and many more additional details such as the company's operation in protected areas, etc. Further, the company is required to disclose information relating to '**NGRBCs Principles**' based on Leadership, Governance, and Stakeholder Engagement to enable and ensure responsible business conduct. The Principle Wise Disclosure laid down in the report/the consultation paper²² defines the performance of the company categorized as "**Essential**" and "**Leadership**", wherein the former's questions are mandatory for the companies and the latter's questions are voluntary to the companies for providing their impacts and outcomes. The comprehensive BRSR framework implies a greater need for mandating ESG Disclosures as business practices be ethical, transparent and accountable to its investors. Such a framework will act as an umbrella under which a company has to disclose its sustainability practices and create a standardized reporting structure for such non-financial reporting.

2. BRSR Lite

¹⁹ Ibid

²⁰ Roberto Silvestri, *ESG Disclosure: Why only the Development of a Global Standard can Further Enhance Sustainability Practices in the Financial Sector*, CFA INSTITUTE, (Sep 16, 2020), <https://blogs.cfainstitute.org/marketintegrity/2020/09/16/esg-disclosure-why-only-the-development-of-a-global-standard-can-further-enhance-sustainability-practices-in-the-financial-sector/>

²¹ SupraNote18

²² Reports, *Consultation Paper on the Format for Business Responsibility and Sustainability Reporting*, SEBI, (Sep 18, 2020), https://www.sebi.gov.in/reports-and-statistics/reports/sep-2020/extension-of-timeline-for-submission-of-public-comments-on-the-formats-for-business-responsibility-and-sustainability-reporting_47581.html

BRSR Lite Framework has been proposed by the Committee, to make it easy for all the companies to begin sustainable reporting as BRR was mandatory for only the Top five-hundred listed companies²³. BRSR Lite has less disclosure to be made, which seeks certain information to make it easier for the companies and to make them familiar with sustainable reporting.

More importantly, the BRSR Lite has been developed for unlisted companies unfamiliar with the preparation of sustainability reporting. The BRSR Lite format will encourage more companies to begin ESG reporting as it is easier for all companies to adopt this format.

Further, disclosures under these frameworks are divided into voluntary and mandatory indicators which seek to better disclosure in ESG space in India. Among these essentials, indicators are required to be reported mandatorily while leadership indicators are on voluntary basis.

This structure of frameworks will help companies to identify their key stakeholder and disclose the performance based on quantitative disclosures. Though BRSR may be perceived as a compliance requirement, it has several leading benefits for businesses as it will increase market share, value creation, access to capital and reduce financial risks involved in a business thus making them ESG responsible.

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Inter-Operability of Reporting

The BRSR provides for the inter-operability of reporting²⁴. Under this framework, the companies which prepare sustainability reports based on various internationally accepted reporting frameworks can cross-reference the disclosures reporting under the BRSR framework. Globally, several companies have incorporated their sustainable reporting as Integrated Reporting. As in India, various entities such as the Mahindra Group, Reliance Industries, L&T Finance, and the Bajaj Group have incorporated their reporting as the World Economic Forum-Big 4 framework.²⁵

BRSR-Annual Report

²³ Adit Bhuva, *Shift from Business Responsibility Reporting to Business Responsibility and Sustainability Reporting*, LEXOLOGY (Apr 16, 2021),

<https://www.lexology.com/library/detail.aspx?g=2708771e-3453-48c4-bb5c-4e4a80617ad5>

²⁴ *Supra*Note 18

²⁵ Shailesh Haribhakti and Thara T.K., *Decoding ESG action and reporting for India Inc.*, FORTUNE INDIA (Mar 26, 2021),

<https://www.fortuneindia.com/opinion/decoding-esg-action-and-reporting-for-india-inc/105332>.

Under Regulation 34 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015²⁶ the Top 1000 listed entities, based on market capitalization, as of March 31 of every year, are mandated to contain a BRSR based on ESG perspectives on a voluntary or mandatory basis as the case may be, with the Annual Report of the company.

BRSR Integration with Companies Act, 2013 – E-Filing

The report proposed that the BRSR be integrated with the MCA 21²⁷ portal, to leverage the technology to develop a Business Responsibility-Sustainability Index through eXtensible Business Reporting Language (XBRL) format. XBRL is a ‘standardized technology platform’ which is considered as an Integrated Reporting framework, wherein it improves the way information is created, including financial and non-financial information and is used to express business-reporting content.

ESG Reporting-Stewardship Code

Various jurisdictions have seen the emergence of the Stewardship Code during the last decade. However, there have been variations in the nature and content of these codes, as they focus on several aspects, including the stakeholder’s interests to ESG concerns to ensure sustainable long-term financial returns which benefit society. Recently, the United Kingdom brought its Stewardship Code 2020 towards the ESG parameters²⁸. India has also seen developments as, Indian regulatory bodies incorporated ESG parameters under the Stewardship Code (SEBI)²⁹ through various principles. Matters related to ESG have been incorporated under Principle 3 and 4 of the Stewardship Code (SEBI), to monitor the business of the investee company and to frame a policy on identifying intervention areas in the investee company. On the other hand, the UK’s Stewardship Code provides for undertaking signatories to take material ESG

²⁶ Regulation 34, *Securities and Exchange Board of India (Listing Obligations and Disclosure Requirement) Regulations, 2015*, SEBI (May 5, 2021),

https://www.sebi.gov.in/legal/regulations/sep-2015/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirement-regulations-2015-last-amended-on-may-5-2021-_37269.html

²⁷ Pammy Jaiswal and Megha Saraf, *Business Responsibility and Sustainability Reporting – A Challenge Ahead*, *LAW STREET INDIA*, (Aug 25, 2020),

<http://www.lawstreetindia.com/experts/column?sid=458>

²⁸ Kate Hilder & Mark Standen, *focus on outcomes not policies: UK Stewardship Code released*, *MINTER ELLISON*, (Oct 29, 2019),

<https://www.minterellison.com/articles/overview-2020-uk-stewardship-code>

²⁹ Circular, *Stewardship Code for all MF and all Categories of AIFs, in relation to their investment in listed equities*, SEBI, (Dec 24, 2019),

https://www.sebi.gov.in/legal/circulars/dec-2019/stewardship-code-for-all-mutual-funds-and-all-categories-of-aifs-in-relation-to-their-investment-in-listed-equities_45451.html

factors³⁰, including climate change and which provides a clear picture to investors for investment decision making. Principle 7 and 4 of the UK's Stewardship Code, provides the mechanism to disclose how ESG issues have been prioritised to assess investment and it not only provides for systemic risk mechanisms but also have to report how they have done so, thus providing opportunities and risk issues to the value of investments³¹. Moreover, it would not be wrong to read the UK's Stewardship Code as an ESG Code.

ESG And Corporate Social Responsibility

ESG compliance is not the same as Corporate Social Responsibility (CSR) as the two concepts can be distinguished from each other. CSR is a mandatory requirement that makes an entity accountable for its activity, whereas the ESG makes its efforts measurable in a manner in which an entity undertakes the business in the interest of the stakeholders/investors. Therefore, CSR obligations relate to the 'social' element under ESG.

ESG and Investment

As the ESG investing intending to bring sustainability, after the Covid-19 pandemic global investment has seen a rapid inflow into ESG funds with more than double investment in 2020³² against the funds invested in 2019. Also, ESG investing has seen increasing trends post-pandemic as the investment has increased from Rs. 2,100 crores to Rs. 3800³³ crores till January 2021. This spike in ESG investment seeks the attention of the regulatory bodies globally, and there have been several instances where Regulators are demanding a mere transparent mechanism for reporting sustainable practices. Globally, various regulatory bodies came up with frameworks for governing ESG principles, which had left room for the investors to navigate through ever-changing ESG Principles definition. However, the Indian regulatory

³⁰ Feedback Statement, *Consulting on a revised UK Stewardship Code*, FRC, (Oct 23, 2019), [https://www.frc.org.uk/getattachment/2912476c-d183-46bd-a86e-dfb024f694ad/200206-Feedback-Statement-Consultation-on-revised-Stewardship-Code-FINAL-\(amended-timetable\).pdf](https://www.frc.org.uk/getattachment/2912476c-d183-46bd-a86e-dfb024f694ad/200206-Feedback-Statement-Consultation-on-revised-Stewardship-Code-FINAL-(amended-timetable).pdf)

³¹ Jimmie Franklin, *Primer: The UK Stewardship Code*, IFLR, (Mar 23, 2021), <https://www.iflr.com/article/b1m48f3367kf5k/primer-the-uk-stewardship-code>

³² Morning Star Manager, *Sustainable Funds U.S. Landscape Report*, MORNINGSTAR (Jun 26, 2021), <https://www.morningstar.com/lp/sustainable-funds-landscape-report>.

³³ Ashma Zaveri, *ESG Becomes Key to Sustainable Investment in Global Markets*, OUTLOOK INDIA (Apr 16, 2021), <https://www.outlookindia.com/outlookmoney/investment/esg-becomes-key-to-sustainable-investment-in-global-markets-6797>.

body i.e., SEBI has harmonized the global framework and Indian BRSR framework by bringing in inter-operability of reporting.

CONCLUSION

The Covid-19 pandemic further stimulated ESG concerns among the investors, however, there is no single globally accepted set of standards for reporting ESG information. As a result of which the regulatory frameworks regulating ESG investments are continuously evolving ensuring ESG reporting concerns. Due to such a host of reporting standards, it is hard to decide which standard to adopt as all reporting frameworks represent steps in the right direction. Moreover, the consideration of ESG practices in deal-making will majorly depend upon the company's culture, to carve out synergies from a potential combination. Various jurisdictions have incorporated sustainable disclosure to preserve the interests of investors on ESG perspectives³⁴. A growing trend³⁵ of the investment community is interested in such companies that are willing to allocate capital to firms that actively work to benefit society. It has also been seen that the companies have started applying ESG Principles as four out of five Nifty-50 companies are voluntarily making public their ESG reporting³⁶ as a part of their normal business decision-making.³⁷

India too has set a precedent towards a more sustainable reporting framework as regulatory authorities incorporate more sustainable provisions to incorporate ESG issues to contribute to investing in ESG funds. The authorities aim to align the BRSR Framework with global reporting standards by incorporating mandatory and voluntary disclosures in its reporting framework which looks towards the 2030 Agenda of sustainable development and growth. This framework will also bring out the transparency in the business practice as ESG Investment and

³⁴ OECD Business and Finance Outlook 2020, *Integrating ESG factors in the Investment Decision-Making Process of Institutional Investors*, OECDILIBRARY (May 26, 2020), <https://www.oecd-ilibrary.org/sites/b854a453-en/index.html?itemId=/content/component/b854a453-en>

³⁵ Institute for Sustainable Investing, *7 Insights from Asset Owners on the Rise of Sustainable Investing*, MORGAN STANLEY, (May 28, 2020), <https://www.morganstanley.com/ideas/sustainability-investing-institutional-asset-owners>

³⁶ Nasrin Sultana, *Companies Grow Conscious, 4 out of 5 Nifty Firms Make ESG Compliance Data Public*, MINT (May 25, 2021), <https://www.livemint.com/market/stock-market-news/companies-grow-conscious-4-out-of-5-nifty-firms-make-esg-compliance-data-public-11621949204675.html>

³⁷ Esther Whieldon and Robert Clark, *Most ESG Funds Outperformed S&P 500 in Early 2021*, S&P GLOBAL (Jun 16, 2021), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/most-esg-funds-outperformed-s-p-500-in-early-2021-as-studies-debate-why-64811634>.

is going to improve financial returns in the long run and will improve the fundamental analysis and investment choices to make.

