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ESG REPORTING REDEFINED: SEBI WIDENS ITS ESG BASED REPORTING NET FOR INDIA INC

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Businesses have come a long way since noted economist, Milton Friedman, advanced his doctrine that the social responsibility of a business is to generate profit for its shareholders. We have already discussed the shift towards a stakeholder-centric governance model, the 'triple bottom line' and ESG related developments in the Indian context in our previous Ergo which can be accessed here.

To recap, ESG refers to environmental (E), social (S) and governance (G) related parameters to monitor responsible business conduct, with a view that businesses should ultimately benefit all stakeholders (investors, consumers, employees, communities, members in their value chain etc) and not just shareholders. While the Securities and Exchange Board of India (SEBI) had mandated the top 100 companies (by market capitalisation) to include a business responsibility report (BRR) in their respective annual reports' way back in 2012 (*scope increased to the top 1000 companies (by market capitalisation) vide SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2019 w.e.f. 26.12.2019*), the extant BRR format is primarily based on a limited number of qualitative disclosures leading to concerns relating to data monitoring and standardisation. With a view to modernise the existing ESG-based reporting framework, SEBI had, on 18 August 2020, recommended the adoption of an expanded version of the BRR called the "*business responsibility and sustainability reporting framework (BRSR)*" introduced by the Ministry of Corporate Affairs (MCA) through its committee report dated 11 August 2020.

The Revised Reporting Framework

On 10 May 2021, SEBI has vide its Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (SEBI Circular) and in line with the amended Clause 34(2)(f) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Amendment), prescribed the BRSR as the new reporting format replacing the existing BRR. As per the Amendment, reporting based on the BRSR shall be mandatory for the top 1000 listed companies (by market capitalisation) from FY 2022-2023. While the existing BRR filing is mandatory for FY 2021-2022, listed entities have been given the option of filing the new BRSR for the present financial year in lieu of the BRR if they so desire.

The BRSR is structured around disclosures about the performance of eligible companies based on the nine principles laid down by the 'National Guidelines on Responsible Business Conduct' (NGBRCs) issued by the MCA. The BRSR is divided in three parts: general disclosures (mandatory to report), management and process disclosures (mandatory to report) and principle wise performance disclosures. The last category i.e. principle-wise reporting is further divided into <u>*essential indicators*</u> and <u>*leadership*</u>

indicators. Essential indicators reflect the minimum standards to be followed by the reporting company and therefore, such disclosures have been made mandatory; leadership indicators are "good to have" provisions that the reporting company should aim for and accordingly, reporting on leadership indicators is purely voluntary, though the listed entities are encouraged to report the same.

Key Observations on Principle Wise Performance Disclosures

The BRSR is a comprehensive and granular reporting framework with emphasis on measurable key performance indicators across the nine principles enshrined in the NGRBCs. A summary of the key disclosures forming part of the essential indicators are as follows:

- **Environmental**: The BRSR has placed substantial thrust on environmental compliances by mandating many quantitative and qualitative disclosures with respect to energy consumption, water withdrawal, air emissions (including for greenhouse gas emissions), waste management, sustainable sourcing as well as compliance with extended producer responsibility thereby adhering to principles 2 and 6 laid down by the NGRBC.

- **Social**: Recognizing the increased focus of investors seeking businesses to be responsible towards the society as well as in compliance with the United Nations Guiding Principles on Business and Human Rights, the BRSR lays down comprehensive reporting requirements regarding measures undertaken for the well-being of employees, quantifying gender and social diversity indicators, performance and career development policies, health and safety management, accessibility of workplaces, equal opportunity, turnover rates and welfare benefits. Further, businesses are also required to make disclosures on social impact assessments of projects, product labelling, safe disposal of products, policy on data privacy and cyber security and complaints received in respect of data privacy, advertising, restrictive trade practices etc. These disclosures are intended to persuade compliance with principles 3, 4, 5, 8 and 9 of the NGRBC.

- **Governance**: Principles 1 and 7 laid down by the NGRBC have been incorporated by prescribing mandatory disclosures regarding anti-corruption/anti-bribery policies of the entities, training and awareness programmes conducted and fines/penalties imposed on any directors/key management personnel. Additionally, the reporting entities are required to disclose their affiliations with trade and industry associations and provide details of any corrective action taken by authorities on issues related to anti-competitive conduct, if any, by concerned entities.

Generally speaking, several of the disclosures requiring quantitative reporting are spread across two financial years i.e. the applicable financial year or reporting period and the previous financial year. Further, cross references to other internationally accepted reporting frameworks (such as the GRI, SASB etc) being followed by the reporting entity (if applicable) are accepted and encouraged. Since the BRSR is not an industry specific reporting framework, SEBI expressly allows the reporting entity to identify non-applicable parameters and provide a reason for its non-relevance (for example: certain environment related disclosures may not apply to a service industry).

Conclusion

It is evident that the BRSR is a notable departure from the existing BRR format as it lays considerable emphasis on quantifiable data as opposed to qualitative data. It would be interesting to see if other regulators such as the MCA keeps the momentum going by extending the BRSR to other companies in the unlisted space, maybe with a pared down or lite version, as was recommended in its 11 August 2020 report. Integration with the MCA21 portal and creation of a bespoke Business Responsibility Sustainability Index are other key developments to watch out for.

With several new ESG themed mutual funds launched in India in the past year and a growing interest in ESG-based investments, the SEBI mandated BRSR comes at an opportune time and should be welcomed by India Inc as a step in the right direction. The present reporting will go a long way in establishing data symmetry and data monitoring thereby, enhancing ESG based decisions going forward.

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