

Corpsec Hotline

August 23, 2021

ESG IN INDIAN COMPANIES: THINKING THROUGH THE SUSTAINABILITY LENS?

The emerging Environmental, Social and Governance (ESG) mandate in corporate governance presents a new challenge for companies in India. A stakeholder-driven approach, the ESG requirement facing each company is different and must be fine-tuned to suit the stakeholders with whom a company interfaces.¹ There cannot be an one-size fits all approach.

WHAT IS ESG AND ITS SIGNIFICANCE IN TODAY'S WORLD?

ESG norms require companies to be socially responsible businesses and align its wealth and value-creation activities with the interests of the larger group stakeholders, i.e. the employees, the environment, and society at large. This implies that shareholder-wealth maximization cannot externalize the larger environmental and social costs of doing business.

Though there are influential holdouts still against the trend towards ESG-focussed corporate governance², it would seem that the ESG mandate is becoming well-accepted globally. Indian companies such as Tech Mahindra, Infosys and Wipro are a part of the Dow Jones Sustainability Index (DJSI) which assesses the ESG performance of companies globally.³ Historically, the companies which have been a part of the DJSI and follow healthy ESG practices have fared well on the Indian bourses.⁴ This may be attributed to the fact that investors, both institutional and retail, wish to invest in companies which are seen to be more socially responsible.

Blue-chips stock such as Tata Consultancy Services (TCS)⁵ and Reliance Industries⁶ recently announced roadmaps towards reduction in greenhouse gas emissions towards zero. Investors too seem to have an appetite for innovative instruments to finance environmental and social initiatives. The Ghaziabad Municipal Corporation (GMC) raised INR 150 crores through the issue of green bonds and they are currently listed on the Bombay Stock Exchange.⁷ GMC is using the funds for the construction of a tertiary treatment sewage plant. JSW Hydro Energy Limited has raised USD 707 million overseas through the issuance of USD denominated green bonds which are currently listed on the Singaporean Stock Exchange.⁸

HAVE THE LAWS KEPT UP WITH THE PARADIGM SHIFT?

The stakeholder focussed approach to corporate governance has for long been a distinctive factor of Indian corporate governance norms. The Companies Act, 2013, for instance, requires that the director of a company act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment⁹. The recent ruling by the Supreme Court in the *Tata-Mstry* dispute also brings to the fore the judicial view of companies having philanthropic objects and the positive spill-over effects for a larger stakeholder group outside the shareholder group. This can also be witnessed in the case of investor apprehensions faced by Vedanta Resources Limited in lieu of the company's breach of environmental norms.¹⁰

SEBI, the Indian Capital markets watchdog, recently came out with a circular on Business Responsibility and Sustainability Reporting by listed entities.¹¹ However, it is applicable only to the top 1000 listed companies by market capitalization. This is a paradigm shift from the erstwhile Business Responsibility Reporting (BRR) regime to Business Responsibility and Sustainability Report (BRSR) reporting regime. The foundation for the same has been the MCA's Report on Business Responsibility Reporting.¹² The MCA report has touted the BRSR to serve as "a single comprehensive source of non-financial sustainability information relevant to all business stakeholders – investors, shareholders, regulators, and public at large." Placing sustainability reporting on an equal footing with financial reporting is necessary especially due to India's third position in the emission of greenhouse gases after United States and China.¹³ The key features of the circular are discussed below.

DISCLOSURE REQUIREMENTS

To adhere with the BRSR reporting requirements, the following disclosures are mandated by SEBI:

- The companies need to not only disclose the ESG risks faced by them but also the mitigation strategy for such risks. The financial implications of the same must be reported as well.
- The sustainability goals of the company and how it has performed in this regard.
- Environment related aspects such as green-house gas (GHG) emissions, waste management practices, quantum of waste generation, biodiversity, etc.
- Social related disclosures with respect to workforce of the company such as gender diversity, social diversity which is

Research Papers

Handbook on New Labour Codes

April 29, 2024

Compendium of Research Papers

April 11, 2024

Third-Party Funding for Dispute Resolution in India

April 02, 2024

Research Articles

Private Client Insights - Sustainable Success: How Family Constitutions can Shape Corporate Governance, Business Succession and Familial Legacy

January 25, 2024

Private Equity and M&A in India: What to Expect in 2024?

January 23, 2024

Emerging Legal Issues with use of Generative AI

October 27, 2023

Audio

Third-Party Funding: India & the World

April 27, 2024

IBC allows automatic release of ED attachments: Bombay HC reaffirms

April 15, 2024

The Midnight Clause

February 29, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Q&A 2024 Protocol to the Mauritius India Tax Treaty

April 22, 2024

Boost to India's Space Potential: India Liberalizes Foreign Direct

inclusive of measures for differently abled workers and employees, median wages, turnover rates, occupational health and safety, welfare benefits etc.

- Disclosures on social impact assessments, corporate social responsibility, rehabilitation and resettlement etc.
- Consumer related disclosures such as product labelling, product recall and consumer complaints related to data privacy, cyber security, etc.

The ESG model proposed by SEBI is in line with international standards such as Global Reporting Initiative,¹⁴ Task Force on Climate related Financial Disclosures¹⁵ and Sustainability Accounting Standards Board.¹⁶ The regulatory initiative to push Indian businesses to account for externalities is heartening.

CONCLUSION

The need to conserve the environment has always been felt due to the permeation of adverse effects of climate change in our everyday lives. However, companies are now compelled to carry out such conservation activities due to the integration of ESG requirements in the investment habits of investors. There has been a shift in the mindset of investors since they now believe in impact investing,¹⁷ i.e., not only the creation of wealth but also sustainable growth for their future generations. Therefore, it becomes pertinent for the boards of companies to take note of this and embed robust ESG practices to mitigate risks related to exploitation of workers, poor corporate governance and climate change.¹⁸

Bloomberg has forecasted global ESG assets to hit \$53 trillion by 2025.¹⁹ Thus, failure of companies to comply with ESG standards might lead to loss of their ability to attract capital in the long run.

– Eshvar Girish, Supratim Guha & Harshita Srivastava

You can direct your queries or comments to the authors

¹ <https://www.cfainstitute.org/en/research/esg-investing>

² <https://www.etftrends.com/esg-channel/buffett-berkshire-hathaway-brush-off-esg-proposals/>

³ https://portal.csa.spglobal.com/survey/documents/DJSIComponentsWorld_2020_.pdf

⁴ <https://economictimes.indiatimes.com/markets/stocks/news/top-performing-esg-companies-in-india-how-are-their-stocks-faring/articleshow/79935953.cms>

⁵ TCS recently announced that it plans to reduce its GHG to the extent of 70 percent by 2025 and eventually drive it down to zero by 2030. https://www.business-standard.com/article/companies/tcs-aims-to-reduce-emissions-by-70-in-2025-bring-down-to-zero-by-2030-121060301206_1.html

⁶ Reliance Industries announced plans to cut down on CO₂ emissions during its Annual General Meeting in 2020;

<https://www.businesstoday.in/current/corporate/mukesh-ambani-plans-to-cut-down-carbon-dioxide-emission-at-rii/story/410055.html>

⁷ <https://economictimes.indiatimes.com/markets/stocks/news/ghaziabad-municipal-corp-lists-first-green-bonds/articleshow/81974055.cms?from=mdr>

⁸ <https://www.financialexpress.com/market/jsw-hydro-energy-raises-rs-5187-crore-via-green-bonds/2250201/#:~:text=JSW%20Hydro%20Energy%20Ltd%2C%20a,oversubscribed%20more%20than%203.7%20times.>

⁹ Section 166(2) of the Companies Act, 2013.

¹⁰ https://www.business-standard.com/article/companies/vedanta-resources-anti-green-image-may-hit-brand-scare-away-investors-118060600313_1.html

¹¹ https://www.sebi.gov.in/media/press-releases/may-2021/sebi-issues-circular-on-business-responsibility-and-sustainability-reporting-by-listed-entities-_50097.html

¹² https://www.mca.gov.in/Ministry/pdf/BRR_11082020.pdf

¹³ <https://ourworldindata.org/co2/country/india>

¹⁴ <https://www.globalreporting.org/how-to-use-the-gri-standards/get-started-with-reporting/>

¹⁵ <https://www.fsb-tcfd.org/>

¹⁶ <https://www.sasb.org/>

¹⁷ http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/IMPACT_INVESTING_SIMPLIFIED_IN_INDIA.pdf

¹⁸ <https://www.natlawreview.com/article/environmental-social-and-corporate-governance-what-are-risks-really>

¹⁹ <https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.