

CORPORATE NEWSLETTER

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NAVIGATING THE RISING NEED FOR SUSTAINABLE DEVELOPMENT WITH ESG

Introduction:

The term "ESG" stands for **Environmental, Social and Governance**, and ESG is a framework used to evaluate a company's performance and impact in these three key areas. Each of the three components represent a different aspect of a company's responsibility and sustainability practices.

One of the themes of the G20 Summit, which took place in India in September 2023 was *"to support urban development that is socially inclusive, environmentally responsible and economically sustainable"* and *"Lifestyle For Environment (LiFE)"* which reflects the basic principles behind ESG.

Understanding the need for ESG Compliance:

The need for an ESG framework arises from several interconnected factors that reflect the evolving expectations of stakeholders, changing market dynamics, and the recognition that sustainable and responsible business practices contribute to long-term value creation. Investors in particular, are increasingly considering ESG factors when making investment decisions as part of a broader effort to align their investments with their values and contribute to sustainable and responsible business practices.

Companies that prioritize ESG factors are seen as more resilient and better positioned for long-term success in a world where environmental and social issues are becoming increasingly important. As a result, ESG considerations have gained significant prominence in corporate strategy, reporting, and investment analysis.

ESG under Indian Legal Framework:

Indian legal framework, presently, does not have a one-stop code for ESG compliance. E, S and G compliances are currently spread-out across various separate specialized acts, rules and regulations.

Environment: India's various environmental laws (like the Environment Protection Act, 1986, The Air (Prevention and Control of Pollution) Act, 1981, The Water (Prevention And Control Of Pollution) Act, 1974 and the respective rules made thereunder) have traditionally specified environmental impact assessment protocols, pollution standards, compliance and disclosure requirements for industries. Various state pollution control boards have also been established and are currently functioning as the regulatory authorities across Indian states to regulate the environmental impact of working of various industries.

Social: In addition to the prevalent environment laws, various centralized and state-specific labour welfare legislations like the Equal Remuneration Act, 1976, the Bonded Labour System Abolition Act, 1976, the Trade Unions Act, 1926, Employees' Provident

ABOUT THE FIRM

AKS Partners (formerly known as A.K. Singh & Co) is a law firm based in New Delhi (India) that provides a comprehensive range of legal services and solutions to domestic and international clients. The Firm offers a unique blend of the local knowledge to apply the regulatory, economic, political and cultural context to legal issues and develop case strategies.

We regularly handle technically challenging and complex multi-jurisdictional matters. Our team is spearheaded by one of the highly recognised lawyers with extensive experience in international dispute resolution and strong government and diplomatic backgrounds. This experience gives us the deepest understanding of the key decision points that are critical in navigating complex & complicated matters and managing government regulations.

Funds & Miscellaneous Provisions Act, 1952 and the Maternity Benefit Act, 1961, amongst other laws, have been in long standing and in force to protect the interest of employees through-out the Indian territory.

Governance: The governance factor of ESG requirements have been addressed with various provisions of the Companies Act, 2013, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 the Reserve Bank of India (Know Your Customer (KYC)) Directions, 2016, etc. Various provisions of the aforementioned legislations mandate an array of disclosures and regular compliances to be made by companies in order demonstrate and maintain a productive governance structure of its working.

Statutes like the Factories Act, 1948, The Mines Act, 1952, The Shops & Commercial Establishments Act (Central & State Acts) have in their own way have effectively long addressed the requirements of all three factors of ESG.

The Companies Act, 2013 has also inculcated the responsibility of requirement of profitable companies to be socially responsible through the inclusion of Corporate Social Responsibility provisions wherein profitable companies are required to spend 2% of their profits annually on corporate social responsibility (CSR) activities which include the promotion of education, health, poverty reduction, environmental sustainability, and gender equality.

However, the existing legal framework needs to be updated in order to keep up with the dynamic legal environment to keep up with the ever-changing times. In view of the same, recently, the Companies Act, 2013 introduced one of the first ESG disclosure requirements for companies. Section 134(m) read with Rule 8(3)(A) of the Companies (Accounts) Rules, 2014 mandates companies to include a report on conservation of energy by the company's Board of Directors, along with mandatory annual financial statement under the said provisions. The Indian Banks' Association (IBA) has also released the National Voluntary Guidelines for Responsible Financing, laying down broad and general principles towards 'integrating ESG risk management into Financial Institution's (FIs) business strategy, decision-making process and operations.

In May 2021, SEBI issued a sustainability disclosure norm, 'Business Responsibility and Sustainability Reporting ("BRSR") by listed companies', which mandates the reporting of ESG performance by top listed 1000 companies with the largest capitalization.

The Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 which was last amended as on 4th July 2023 and a subsequent Master Circular, dated 12th July 2023 was released highlighting the norms that the ESG Rating Providers (ERPs) have to comply with. There is no methodology mentioned in both such rules which are to be considered while computing the ESG score, the rating agencies can have their own methodology, however the disclosure norms must be complied with as mentioned in the above rules.

Recognizing climate change as one of the most critical challenges faced by the global society and economy in the 21st century, the Reserve Bank of India has also, on 11th April 2023, come up with the Framework for acceptance of Green Deposits with a view to fostering and developing green finance ecosystem in the country. The said Framework came into effect on 1st June 2023.

Challenges under the present ESG framework:

Globally it would not be incorrect to mention that the European Union Taxonomy is one of the most regarded regulations with regards to ESG. It was framed essentially to incorporate the Sustainable Development Goals (SDGs) and the Paris Agreement of 2015. One of the most tightened regulations can be attribute to Hong Kong wherein the ESG and market regulators have detailed out the specifics in an industry and sector specific manner like that of "HKEX ESG Reporting and Disclosure", Securities and Futures Commission ("SFC") ESG Disclosure, and Biodiversity Strategy and Action Plan (BSAP). The International Organization for Standardization has also issued various standards including ISO 14005:2019 (Environmental management systems), ISO 45005:2020 (Occupational health and safety), ISO 26000:2010 (Social Responsibility), to address the need of ESG.

In the Indian context, the current environmental legal landscape is being continuously reviewed and reworked to be augmented to bring in a strong climate transition plan which industries can follow, and regulators can use to regulate the carbon footprint and overall emissions. National environmental regulations is also being updated and strengthened to align with upcoming international standardization.

The standards for disclosure and sustainability reporting are still at a nascent stage in India. Over time the sustainability standards under BRSR may be made mandatory for all companies which will allow companies to be transparent with investors about their ESG practices.

However, with the absence of a unified reporting system for ESG compliance in India, investors who utilize data and metrics to make informed decisions on capital allocation and risk underwriting have had to rely on voluntary disclosures by companies, which are often incomplete, inconsistent, and subjective posing a huge inconvenience and threat to the Indian economic landscape.

RECENT CASE HIGHLIGHT

The Securities and Exchange Board of India ("SEBI") fines and restricts the Youtuber and 'fin-fluencer' Mohammad Nasiruddin Ansari ("Nasir") from acting as an investment advisor:

Pursuant to certain tweets on 'X' and Telegram, the market regulator SEBI initiated suo motu action against Nasir to examine whether he is engaged in soliciting investment advisory services in absence of SEBI license through various social media platforms. The SEBI passed an interim order on October 25, 2023¹ in the matter of unregistered investment advisory activities by Mohammad Nasiruddin Ansari/ Baap of Chart' ("**BoC**") and held that Nasir, operating under the garb of teaching courses on securities, made financial recommendations to millions of users and perpetrated fraudulent activities. It also levied a hefty penalty of INR 17.2 crores for indulging in unregistered investment advisory.

The decision comes in the backdrop of a medley of SEBI's orders restraining fin-fluencers to engage in 'pump and dump schemes' to defraud investors.

In the instant matter, the preliminary question before the SEBI was whether the act of the impugned parties constitute financial advice in the first place. The SEBI examined both offline and online activities of Nasir/BoC, perusing the websites and mobile apps promoted by him and other beneficiaries (Padamati Rahul Rao and Golden Syndicate Ventures Pvt. Ltd.); screenshots of private/ whatsapp groups operated by Nasir/ BoC and the course content taught by Nasir/Boc on a training platform.

It was decided that Nasir/BoC was providing investment advisory services by luring the users with misleading claims and therefore indulged in fraudulent activity in violation of the provisions of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. Furthermore, the SEBI found that the conduct of the impugned parties is, prima facie, in contravention of Section 12(1) of the SEBI Act read with Regulation 3(1) of (Investment Advisors) Regulations, 2013.

Ultimately, the SEBI identified that an amount of INR 17,20,76,616.09 was accumulated throughout the course of two years of such fraudulent activities and considering the risk of diversion of these unlawful gains, the interim order was passed.

REGULATORY UPDATES

Ministry of Corporate Affairs ("MCA") notifies the Limited Liability Partnership Rules regarding Significant Beneficial Owners ("SBOs"):

¹https://www.sebi.gov.in/enforcement/orders/oct-2023/interim-order-cum-scn-in-the-matter-of-unregistered-investment-advisory-activities-of-mohammad-nasiruddin-ansari-baap-of-chart_78333.html

The MCA has introduced the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (“**SBO Rules**”) on November 9, 2023² in order to identify the SBOs and strengthen the reporting framework in Limited Liability Partnerships (“**LLP**”) concerning them. Besides defining an SBOs, the SBO Rules, coming into force on November 11, 2023, lay out the criteria for identification of SBOs in various types of LLPs. For instance, where the partner of a reporting LLP is a body corporate (other than an LLP and/or individual), the owner who holds not less than 10% of the contribution / voting rights/ rights on distributable profits or any other distribution in the company, will be determined as an SBOs.

Moreover, the SBO Rules put the onus on the reporting LLP to maintain a record of SBOs (Form no. LLP BEN-2) and report it to the Registrar of Companies (“**RoC**”) within a period of 30 days of receipt of declaration. The SBO Rules also provide for mandatory disclosure by every individual who is an SBO. The notification, however, clarified that the SBO Rules would not be applicable to the contribution of the reporting LLPs held by Central/State- government controlled entities. Additionally, they’re not applicable on specified trusts like Real Estate Investment Trusts, Infrastructure Investment Trust and other such entities as demarcated in the SBO Rules.

[MCA notifies major changes in Limited Liability Partnership \(Third Amendment\) Rules, 2023 pertaining to maintenance of a register of partners and the provision of declarations disclosing beneficial interest, etc.](#)

On October 27, 2023, MCA issued notification no. G.S.R. 803(E)³ introduced a significant change in the Limited Liability Partnership Rules, 2009. This amendment has brought key changes concerning the maintenance of Registers of Partners and declaration of beneficial interest. As per the amendment, every LLP is now mandated to maintain a register of partners from the date of its incorporation and already existing LLPs must comply within 30 days from the commencement of the amended rules. This register should contain various particulars including partner details, contribution nature and more. Entries in the register must be promptly updated within 7 days following any alteration in the contribution amount, partner details, or the cessation of partnership interest.

Another noteworthy alteration introduced by the amendment pertains to registered partners without a beneficial interest in the contribution. Such partners must submit a declaration, using Form 4B, within 30 days of their name being entered into the register of partners. Conversely, individuals possessing a beneficial interest but whose names are not registered in the partner register must file a declaration, using Form 4C, within 30 days of acquiring such an interest. Another key change brought by the amendment is that registered partners without beneficial interest in contribution must file a declaration to that effect in Form 4B within 30 days of his name entered in the register of partners. However, if a person who holds a beneficial interest but his name is not registered in the register of partners must file a declaration to that effect in Form 4C within 30 days of acquiring such interest. Upon receipt of a declaration in Form 4B or Form 4C, an LLP is required to record the same in the register of partners. Additionally, the LLP must submit a return in Form 4D to the RoC within 30 days from the date of receiving the declaration. Each LLP is required to designate a partner responsible for providing and cooperating in the providing information regarding beneficial interest. This information should be filed with the RoC using Form 4. Until a designated partner is specified, every partner assumes responsibility for furnishing this information.

[MCA introduced significant amendments regarding timelines for conversion of share warrants into dematerialized form and mandating private companies to issue securities in dematerialised forms:](#)

On October 27, 2023, the MCA vide notification no. G.S.R. 802(E)⁴, amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (“**Companies Prospectus and Allotment of Securities Rules**”). These

²<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc4MzU1MDIy&docCategory=Notifications&type=open>

³Notifications (mca.gov.in)

⁴Notifications (mca.gov.in)

amendments have far-reaching implications for both public and private companies. The primary focus of these amendments is the modification of Rule 9 of the Companies Prospectus and Allotment of Securities Rules, by introducing the specific timelines for the conversion the share warrants issued prior to the commencement of the Companies Act, 2013 (“**Act**”) into shares in dematerialised forms and also mandating private companies to issue securities in dematerialised form.

As per the amended rules, public companies that had previously issued share warrants before the commencement of the Act are required to inform the RoC about the details of such share warrants in Form PAS-7 within 3 months of the commencement of these new amendments.

Furthermore, public companies must also request the bearers of these share warrants to surrender them for dematerialization within the 6 months of the commencement of these amendments. To facilitate this process, the company must post a notice on its website and publish the same in local and English newspapers. In the event that the bearers of the share warrants do not comply with the specified timeline, the company is obligated to convert these warrants into a dematerialized form and transfer them to the Investor Education and Protection Fund.

In addition, private companies are now obligated to issue securities in a dematerialized form. It's important to note that this mandatory requirement applies to all private companies except for small companies and government companies. The implementation of this amendment is immediate, and private companies, which are not classified as small companies, have an 18-month window from the conclusion of the financial year to comply with the mandatory dematerialization requirements. Furthermore, private companies falling under these Companies Prospectus and Allotment of Securities Rules must ensure that all securities held by their promoters, directors, and key managerial personnel are dematerialized prior to making any offers for the issuance of securities, buyback of securities, or the issuance of bonus shares or rights offers. Also, every holder of securities intending to transfer or subscribe to securities must confirm that their securities are in dematerialized form.

MCA introduces the concept of ‘designated person’ for reporting beneficial shares:

On October 27, 2023, the MCA, through notification number G.S.R. 801(E)⁵, made amendments to the Companies (Management and Administration) Rules, 2014, (“**Companies Management and Administration Rules**”). The Companies Management and Administration Rules bring a significant change by introducing the concept of a ‘designated person’ in relation to beneficial shares held in a company. According to the amendment, every company must appoint a designated person responsible for providing information to the RoC or any authorized officer concerning beneficial interests in the company's shares. The company is granted the flexibility to choose a designated person, who may be a company secretary, key managerial personnel (other than the company secretary), or any director of the company. Until a designated person is officially appointed as per the amendment, certain individuals are considered to have been designated, including the company secretary, managing director, manager, or director depending on the specific circumstances of the company. This amendment also makes it mandatory for every company to include the details of the designated person in its Annual Report, ensuring transparency and compliance. Furthermore, in the event of a company opting to change its designated person, it is obligated to notify the RoC by submitting e-form GNL-2, as per the provisions of the Companies (Registration Offices and Fees) Rules, 2014.

MCA grants exemption for aircraft transactions from moratorium clause of Insolvency and Bankruptcy Code, 2016 (“IBC 2016”):

On October 3, 2023, MCA issued a notification bearing no. S.O. 4321(E)⁶ exercising the authority vested in it by Section 14 (3)(a) of the IBC 2016. This notification grants an exemption to transactions, arrangements, or agreements pertaining to aircraft, aircraft engines, airframes and helicopters from the provisions of the moratorium clause outlined in section 14(1) of the IBC 2016. The issuance of this notification aligns with India's commitments under the Cape Town Convention and the Aircraft Equipment Protocol, to which it acceded in 2008.

⁵Notifications (mca.gov.in)

⁶Notifications (mca.gov.in)

SEBI revises the manner of achieving minimum public unitholding requirements for Infrastructure Investment Trusts ("InvITs"):

SEBI has issued a circular bearing no SEBI/HO/DDHS-PoD-2/P/CIR/2023/174⁷ on October 31, 2023 impacting InvITs. This circular has provided an additional method revised the manner in achieving minimum public unitholding requirement. As per this circular, now InvITs raising money through private placement can achieve minimum unitholding requirement by issuing units through preferential allotment with a condition that only units issued to the public shall be considered for compliance with minimum unitholding requirement. Further, this circular has also modified the Master Circular for InvITs pertaining to the sale of units held by Sponsor(s)/ Investment Manager/ Project Manager and their associated/ related parties in the open market.

SEBI extended the timeline for compliance with qualifications and experience requirements for Investment Advisors:

SEBI, on October 10, 2023, issued a circular bearing no. SEBI/HO/MIRSD/MIRSD-PoD-2 /P/CIR/2023/168⁸, extending the timeline for compliance with qualification and experience prerequisites outlined in Regulation 7(1) of SEBI (Investment Advisors) Regulations, 2013 ("**SEBI Regulations 2013**"). Regulation 7 of SEBI Regulations 2013, as amended vide SEBI (Investment Advisers) (Amendment) Regulations, 2020, specifies the qualification and experience requirements for investment advisers and provides that an individual investment adviser or principal officer of a non-individual investment adviser registered under these regulations and persons associated with investment advice must adhere to the heightened qualifications and experience requirements defined in Regulation 7(1) within three years, specifically by September 30, 2023.

However, considering the representations received from stakeholders and acknowledging the evolving landscape of the investment advice domain, SEBI has now extended the timeline for compliance with enhanced qualifications and experience requirements to September 30, 2025.

INDUSTRY INSIGHT

Ministry of Chemicals and Fertilizers ("MoCF") Unveils Ambitious National Policy on Research and Development and Innovation and Scheme for promotion of Research and Innovation to Propel Innovation in India's Pharma-MedTech Sector:

On September 26, 2023⁹, the MoCF launched the National Policy on Research and Development and Innovation in Pharma-MedTech Sector in India ("**Policy**") and Scheme for promotion of Research and Innovation in Pharma MedTech Sector ("**PRIP Scheme**"). According to the officials of MoCF, the initiative aims to position India as a prominent player in the global pharmaceutical market, emphasizing both high volume and high value. The overarching goals include ensuring pharmaceutical products meet stringent standards of quality, accessibility, and affordability. Additionally, the officials highlighted that the policy is designed to foster a comprehensive ecosystem, leveraging the expertise of academia and private sectors, while also promoting the emergence of new talent among the youth through the support of start-ups.

The Department of Pharmaceuticals ("**DoP**") has been tasked with spearheading the initiatives. These initiatives aim to encourage R&D in pharmaceuticals and incentivize public and private investment in innovation, in order to transform the domestic MedTech sector.

The Policy focuses on three main areas besides setting up an Indian Council of Pharmaceuticals and Med-tech Research and Development. First, the DoP shall create a conducive regulatory environment which facilitates innovation and research in product development while enhancing the standards of safety and quality. Secondly, with the help of fiscal and non-fiscal measures, both private and public investment will be incentivized and cross-sectoral research will receive much-needed attention. In its entirety, the Policy

⁷https://www.sebi.gov.in/legal/circulars/oct-2023/revision-in-manner-of-achieving-minimum-public-unitholding-requirement-infrastructure-investment-trusts-invits-_78561.html

⁸SEBI | Extension in timeline for compliance with qualification and experience requirements under Regulation 7(1) of SEBI (Investment Advisers) Regulations, 2013

⁹<https://pib.gov.in/PressReleasePage.aspx?PRID=1960812>

is purported to help bolster the GDP contributions of the pharma sector by increasing the Indian footprint in the innovation space.

The PRIP Scheme, with the proposed budget of INR 5,000 crores, aims to “transform the Indian pharmaceuticals sector from cost based to innovation-based growth” in a twofold manner. The first component aims at strengthening the research infrastructure by establishing seven Centers of Excellence across the country for the proposed cost of INR 700 crores. On the other side, the PRIP Scheme identifies a total of six priority areas like anti-microbial resistance, stem cell therapy, etc. which will receive substantial financial assistance from the government amounting up to INR 4,250 crores. With this, the PRIP Scheme also aims to empower industry-academia linkages with increasing collaboration between Government institutes and Private sector players. Hence, this PRIP Scheme is anticipated to spur growth in the Indian pharmaceutical sector, generating increased revenue and employment opportunities and also envisions contributing to the creation of affordable and accessible solutions for primary health concerns, thereby alleviating the healthcare burden on the nation.

CORPORATE BUZZ

1. Kotak Mahindra Bank and Kotak Mahindra General Insurance Company have entered into a definite agreement with Zurich Insurance Company Ltd (“**Zurich**”). Zurich is all set to invest approximately ₹4,051 crore, securing a solid 51% stake in Kotak General Insurance. This dynamic partnership will witness Zurich's investment through a blend of fresh growth capital and strategic share purchase. Furthermore, Zurich plans to boost its stake to 70% within three years of the initial acquisition.
2. Tata Electronics Private Limited, a Tata Group company, has officially sealed momentous Share Purchase Agreement to secure a complete 100% equity stake in Wistron InfoComm Manufacturing (India) Private Limited (WMMI). The monumental agreement was formalized alongside key players SMS InfoComm (Singapore) Pte. Ltd. and Wistron Hong Kong Limited, marking a strategic alliance that propels Tata Group into an underprecedented position. This visionary deal positions Tata Group as the pioneering force behind Apple iPhones' manufacturing in India, marking a significant stride towards fostering indigenous technological prowess.
3. Competition Commission of India (“**CCI**”) has given green light for Kedaara Capital's acquisition of a 1.74% stake in Lenskart, the eyewear unicorn! This strategic move strengthens Kedaara's dedication to India's booming eyewear sector, propelling Lenskart into an even brighter future.
4. CCI has given the nod to the merger of Tata SIA Airlines into Air India. Additionally, Singapore Airlines is set to acquire specific shareholdings in Air India, pending the fulfilment of voluntary commitments by the parties involved. Vistara, established in 2015, is a joint venture between Tata Group and Singapore Airlines. Tata Group has expressed its intention to merge Vistara with Air India, and Air Asia India with Air India Express, with the ultimate goal of creating a comprehensive service carrier, Air India, and a low-cost carrier, Air India Express.
5. The CCI has recently approved the acquisition of a majority stake in Indira IVF, the country's largest fertility clinics, by Zonnebaars. Furthermore, it has also cleared the amalgamation of Spaceway Wellness into Indira IVF. This came months after the private equity firm BPEA EQT acquired a 60% stake in Indira IVF in July.
6. In a complete ownership overhaul, Quality Care India Ltd. witnessed the dilution of approx. 96.6% stake by two industry-giants, namely BCP Asia II (“**BCP**”) and Centella Mauritius Holdings Ltd. (“**Centella**”). The CCI has greenlit the acquisition of about 72.49% and 24.16% stake by BCP and Centella respectively.

AWARDS & RECOGNITIONS



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