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FROM DISCLOSURE TO ACCOUNTABILITY: ANALYSING THE LEGAL AND REGULATORY IMPLICATIONS OF SEBI'S MANDATORY ESG ASSURANCE FRAMEWORK FOR LISTED ENTITIES

~Priya Ray

ABSTRACT

In 2021, the Securities and Exchange Board of India introduced the Business Responsibility and Sustainability Reporting framework as a mandatory disclosure obligation for the top one thousand listed entities by market capitalisation. The BRSR framework, grounded in the nine principles of the National Guidelines on Responsible Business Conduct, represents India's most ambitious attempt to systematise environmental, social, and governance accountability within the securities regulatory architecture. In 2023, SEBI intensified this framework through the BRSR Core, a curated set of nine Key Performance Indicators required to be subject to mandatory third party reasonable assurance, a step that moves the ESG disclosure regime from mere reporting to verified accountability.

This article analyses the legal and regulatory implications of SEBI's mandatory ESG assurance framework. It examines the regulatory basis of the assurance mandate under the SEBI Act and the LODR Regulations, the scope and content of the BRSR Core KPIs, the applicable assurance standards and provider framework, and the enforcement mechanisms available against non-compliance and misrepresentation. The article undertakes a comparative analysis of analogous ESG assurance frameworks in the European Union, the United States, and the emerging global architecture of the International Sustainability Standards Board. It identifies four critical regulatory challenges: the accountability gap between disclosure and verification, the inadequacy of existing enforcement frameworks for addressing ESG greenwashing, supply side constraints in assurance provider capacity, and the risk of an assurance paradox arising

from the proliferation of competing ESG rating methodologies. The article concludes with five recommendations for strengthening India's ESG assurance ecosystem.

Keywords: ESG Assurance, BRSR Core, SEBI Regulation, Greenwashing Liability, Sustainable Finance.

I. INTRODUCTION

The relationship between corporate disclosure and legal accountability has always been mediated by verification. A disclosure requirement that lacks a robust mechanism for independent verification is, in practice, little more than an invitation for creative reporting. This tension, familiar to securities lawyers from the history of financial reporting regulation, has acquired new urgency in the context of environmental, social, and governance disclosures. As institutional investors, regulators, and civil society increasingly rely on ESG data to make decisions about capital allocation, policy design, and corporate engagement, the quality and credibility of ESG disclosures has become a matter of systemic regulatory concern.¹

India's Securities and Exchange Board of India has, over a period of three years, constructed a mandatory ESG disclosure and assurance framework of considerable ambition. Beginning with the introduction of the Business Responsibility and Sustainability Reporting framework in 2021,² which made BRSR disclosures mandatory for the top one thousand listed entities, and culminating in the 2023 BRSR Core circular,³ which mandated third party reasonable assurance of a specified set of Key Performance Indicators, SEBI has progressively tightened the accountability architecture governing ESG disclosures by Indian listed companies.

This article argues that SEBI's mandatory ESG assurance framework represents a significant and largely well-conceived regulatory intervention, but that its effectiveness depends on the resolution of four structural challenges that the current framework leaves insufficiently addressed: the accountability gap arising from the partial scope of mandatory assurance, the underdeveloped legal framework for ESG greenwashing liability, supply side constraints in

¹Securities & Exch. Bd. of India, Master Circular for Environmental, Social and Governance (ESG) Rating Providers, Circular No. SEBI/HO/DDHS/DDHS-POD-1/P/CIR/2023/162 (Oct. 12, 2023) [hereinafter SEBI ESG Master Circular 2023].

²Securities & Exch. Bd. of India, Circular on Business Responsibility and Sustainability Reporting, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 (May 10, 2021) [hereinafter BRSR Circular 2021].

³Securities & Exch. Bd. of India, Circular on BRSR Core Framework and ESG Disclosures for Value Chain, Circular No. SEBI/HO/CFD/PoD-2/P/CIR/2023/123 (July 12, 2023) [hereinafter BRSR Core Circular 2023].

assurance provider capacity, and the structural tension between mandatory assurance and the unresolved methodological issues in ESG rating.⁴

The article proceeds as follows. Part II traces the evolution of SEBI's ESG disclosure framework from the National Voluntary Guidelines through BRSR to the BRSR Core assurance mandate. Part III analyses the legal architecture of the assurance mandate, including its regulatory basis, scope, and applicable standards. Part IV undertakes a comparative analysis of ESG assurance frameworks in the European Union, United States, and at the international level. Part V analyses four critical regulatory challenges. Part VI offers conclusions and recommendations.

II. THE BRSR FRAMEWORK: EVOLUTION FROM VOLUNTARY TO MANDATORY ESG DISCLOSURE

2.1 FROM NVGS TO BRSR: A LEGISLATIVE AND REGULATORY TRAJECTORY

The conceptual foundations of India's mandatory ESG disclosure framework lie in the National Guidelines on Responsible Business Conduct published by the Ministry of Corporate Affairs in 2019.⁵ The NGRBC, which updated the earlier National Voluntary Guidelines of 2011, articulated nine principles of responsible business conduct covering environmental stewardship, labour rights, human rights, consumer protection, community engagement, and governance. These principles were grounded in a stakeholder rather than a shareholder model of corporate accountability, reflecting the broader international movement towards integrated reporting and sustainability disclosure.

The translation of these principles into a mandatory securities disclosure framework was accomplished through SEBI's 2021 BRSR Circular,⁶ which replaced the earlier Business Responsibility Report requirement and introduced the Business Responsibility and Sustainability Reporting format as a mandatory element of the Annual Report for the top one thousand listed entities by market capitalisation from financial year 2022–23.⁷ The BRSR format was explicitly structured around the nine NGRBC principles and required entities to disclose quantitative data on a range of environmental, social, and governance indicators,

⁴Securities & Exch. Bd. of India, Consultation Paper on ESG Disclosures, Ratings and Investing (Feb. 24, 2023) [hereinafter SEBI ESG Consultation Paper 2023].

⁵Ministry of Corp. Affs., Gov't of India, National Guidelines on Responsible Business Conduct (Mar. 2019) [hereinafter NGRBC 2019].

⁶BRSR Circular 2021, *supra* note 2.

⁷Securities & Exch. Bd. of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 34(2)(f), Gazette of India Extraordinary, pt. III, sec. 4 (May 13, 2015) [hereinafter LODR Regulations 2015].

including greenhouse gas emissions, water and energy usage, waste generation, workforce diversity, and supply chain sustainability.

The Companies Act, 2013 provided the broader legislative foundation for this disclosure architecture.⁸ Section 134(3)(m) had already established the principle of mandatory non-financial disclosure in the Board's Report. SEBI's BRSR framework extended this principle into the securities regulatory domain through the mechanism of the LODR Regulations,⁹ which govern the disclosure obligations of listed entities and provide the primary legal basis for SEBI's ESG disclosure mandates.

2.2 THE BRSR CORE FRAMEWORK AND THE ASSURANCE MANDATE

The introduction of the BRSR Core framework through SEBI's July 2023 circular¹⁰ marked the transition from a disclosure only regime to a disclosure plus assurance framework. The BRSR Core comprises nine categories of Key Performance Indicators drawn from the broader BRSR disclosure framework: greenhouse gas emissions intensity, energy usage and renewables percentage, water usage and recycling, waste generation and management, CEO pay ratio, return on equity, employee diversity metrics, job creation in small towns, and openness of business conduct.¹¹

These nine KPI categories were selected on the basis of their relevance to investment decision-making, their quantifiability, and the existence of internationally recognised measurement methodologies that would enable comparability across entities and over time.¹² The selection reflects an attempt to identify a subset of ESG indicators that are both material to investors and susceptible to objective, third party verification.

The assurance mandate is phased: mandatory reasonable assurance of BRSR Core KPIs applies to the top 150 listed entities from financial year 2023–24, extending to the top 250 from 2024–25 and the top 500 from 2025–26. This phased approach reflects a pragmatic acknowledgment of the capacity constraints on both the supply side and the demand side, the significant systems and data infrastructure investments required by listed entities to support a reasonable assurance engagement.

⁸Companies Act, 2013, § 134(3)(m), No. 18, Acts of Parliament, 2013 (India).

⁹LODR Regulations 2015, supra note 7, reg. 34(2)(f) read with Schedule V, pt. C.

¹⁰BRSR Core Circular 2023, supra note 3.

¹¹BRSR Core Circular 2023, supra note 3, Annex I.

¹²Securities & Exch. Bd. of India, Frequently Asked Questions on Business Responsibility and Sustainability Reporting (2023).

III. LEGAL ARCHITECTURE OF SEBI'S ESG ASSURANCE MANDATE

3.1 REGULATORY BASIS: SEBI ACT, LODR REGULATIONS, AND CIRCULAR POWER

The legal foundation of SEBI's mandatory ESG assurance framework rests on three interconnected sources of authority. First, Section 11(1) of the SEBI Act, 1992¹³ confers on SEBI the broad power to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market by such measures as it thinks fit. This open-textured grant of regulatory authority has been consistently interpreted to include the power to impose disclosure and accountability requirements on listed entities.¹⁴

Second, Regulation 34(2)(f) of the LODR Regulations, 2015¹⁵ specifically requires listed entities to include a Business Responsibility and Sustainability Report as part of their Annual Report, providing the direct regulatory hook for SEBI's BRSR and BRSR Core requirements. The LODR Regulations, issued by SEBI pursuant to its powers under the SEBI Act, constitute delegated legislation and have the force of law.¹⁶

Third, SEBI's circulars issued pursuant to the LODR Regulations represent a further layer of delegated quasi-legislative power. The BRSR Core Circular of 2023¹⁷ was issued in exercise of powers conferred under Sections 11(1), 11A, and 30 of the SEBI Act read with Regulation 101 of the LODR Regulations. As the Supreme Court affirmed in *Bombay Stock Exchange Ltd. v. SEBI*,¹⁸ SEBI circulars issued in exercise of these powers have the force of law and are binding on listed entities and market intermediaries.

3.2 SCOPE OF MANDATORY ASSURANCE: BRSR CORE KPIS

The scope of mandatory assurance under the BRSR Core framework is precisely defined by reference to the nine KPI categories set out in Annex I to the BRSR Core Circular.¹⁹ The circular specifies that the assurance engagement must be directed at the reasonable assurance of these KPIs and not at the entirety of the BRSR disclosure, which continues to be subject to management assertion for most listed entities and to limited assurance only for entities in the advanced phases of the BRSR Core phase-in schedule.

¹³Securities & Exch. Bd. of India Act § 11(1), No. 15, Acts of Parliament, 1992 (India).

¹⁴Sandeep Parekh, *Securities Law* 312–18 (3d ed., LexisNexis India 2021).

¹⁵LODR Regulations 2015, *supra* note 7, reg. 34(2)(f).

¹⁶*Id.*

¹⁷BRSR Core Circular 2023, *supra* note 3.

¹⁸*Bombay Stock Exch. Ltd. v. Sec. & Exch. Bd. of India*, (2007) 6 SCC 433 (India).

¹⁹BRSR Core Circular 2023, *supra* note 3, Annex I.

The distinction between reasonable and limited assurance is legally and practically significant.²⁰ Reasonable assurance, governed by ISAE 3000,²¹ requires the assurance provider to obtain sufficient appropriate evidence to reduce the risk of material misstatement to an acceptably low level, and to express a positive conclusion. Limited assurance involves less rigorous procedures and results in a negative assurance conclusion. The requirement of reasonable assurance for BRSR Core KPIs therefore sets a significantly higher verification bar than most existing non-financial assurance practices in India.²²

The measurement methodologies applicable to the BRSR Core KPIs draw on a combination of internationally recognised frameworks. Greenhouse gas emissions are required to be measured using the GHG Protocol methodology or an equivalent standard.²³ Other environmental KPIs draw on sector-specific measurement protocols. The governance related KPIs, including the CEO pay ratio and openness of business disclosures, are grounded in the NGRBC principles and the BRSR format prescribed by SEBI.²⁴

3.3 ASSURANCE STANDARDS AND THE ROLE OF ASSURANCE PROVIDERS

The BRSR Core Circular specifies that the assurance engagement must be conducted by a Chartered Accountant, a Cost and Management Accountant, or a professional agency with relevant expertise in the specific ESG domain.²⁵ This formulation reflects an attempt to leverage the existing regulated professional infrastructure of the accounting and auditing profession for ESG assurance, while also recognising that some ESG KPIs require domain expertise that accountants may not possess.²⁶

The applicable assurance standard is ISAE 3000 (Revised),²⁷ supplemented by the ICAI's Guidance Note on Reports or Certificates for Special Purposes²⁸ and, prospectively, by the ICAI's Sustainability Assurance Standard 1000, the exposure draft of which was published in 2024.²⁹ The ICAI's SAS 1000 is explicitly modelled on ISAE 3000 and the International

²⁰SEBI ESG Consultation Paper 2023, supra note 4, at 18–22.

²¹ISAE 3000, supra note 15.

²²SEBI ESG Consultation Paper 2023, supra note 4, at 18–22.

²³Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard (rev. ed. 2004).

²⁴BRSR Core Circular 2023, supra note 3.

²⁵BRSR Core Circular 2023, supra note 3, at 7–8.

²⁶Inst. of Chartered Accountants of India, Guidance Note on Reports or Certificates for Special Purposes (rev. 2016).

²⁷ISAE 3000, supra note 15.

²⁸Inst. of Chartered Accountants of India, Guidance Note on Reports or Certificates for Special Purposes (rev. 2016).

²⁹Inst. of Chartered Accountants of India, Exposure Draft of Sustainability Assurance Standard (SAS) 1000 (2024) [hereinafter ICAI SAS 1000 Exposure Draft].

Auditing and Assurance Standards Board's emerging ISSA 5000 standard on sustainability assurance, indicating an intention to align India's ESG assurance standards with the emerging global architecture.

IV. COMPARATIVE ANALYSIS: GLOBAL ESG ASSURANCE FRAMEWORKS

4.1 EUROPEAN UNION: CSRD AND THE ESRS ASSURANCE REGIME

The European Union's Corporate Sustainability Reporting Directive, adopted in December 2022³⁰ and applicable to large companies from financial year 2024, establishes the most comprehensive mandatory ESG assurance regime currently in force globally. The CSRD requires companies within its scope to report on sustainability matters in accordance with the European Sustainability Reporting Standards, and to subject those sustainability reports to mandatory third party limited assurance, with a phased transition to reasonable assurance as assurance capacity develops.³¹

Several features of the CSRD assurance regime are significant for comparison with India's framework. First, the CSRD confines the assurance engagement to registered statutory auditors or independent assurance service providers accredited by national competent authorities, creating a tightly regulated supply side. Second, the CSRD incorporates the principle of double materiality, requiring companies to assess both the financial materiality of sustainability risks to the company and the impact materiality of the company's activities on people and the environment, a conceptual framework that is more expansive than the primarily investor centric materiality standard implicit in SEBI's BRSR Core.³²

The EU Taxonomy Regulation³³ provides the classification framework for environmentally sustainable activities underpinning the CSRD and represents a further dimension of the EU's integrated approach to ESG regulatory architecture. ESMA's Sustainable Finance Roadmap³⁴ situates the CSRD assurance regime within a broader architecture encompassing the SFDR, the EU Taxonomy, and proposed rules on ESG rating providers, suggesting a level of regulatory integration that SEBI's framework is progressively approximating.

³⁰Council Directive 2022/2464, 2022 O.J. (L 322) 15 (EU) [hereinafter CSRD].

³¹CSRD, supra note 33.

³²Id.

³³Council Regulation 2020/852 of the European Parliament and of the Council on the Establishment of a Framework to Facilitate Sustainable Investment, 2020 O.J. (L 198) 13 (EU) [hereinafter EU Taxonomy Regulation].

³⁴European Sec. & Mkts. Auth., Sustainable Finance Roadmap 2022–2024 (Feb. 2022).

4.2 UNITED STATES: SEC CLIMATE DISCLOSURE AND VOLUNTARY ASSURANCE

The United States presents a contrasting model. The Securities and Exchange Commission's climate disclosure rule, adopted in March 2024³⁵ but immediately challenged in federal court, would have required registrants to include detailed climate related disclosures in their annual reports, including Scope 1 and Scope 2 GHG emissions for large accelerated filers. The rule would have required limited assurance of Scope 1 and 2 disclosures for large accelerated filers, phasing to reasonable assurance over time.³⁶

The American approach differs from both the EU and Indian frameworks in several important respects. The SEC rule focused narrowly on climate related risks rather than the full ESG spectrum addressed by the CSRD and BRSR frameworks. The legal challenges to the SEC rule, which resulted in a stay pending judicial review, illustrate the vulnerability of mandatory ESG disclosure frameworks to constitutional and administrative law challenges in jurisdictions where the scope of agency rulemaking authority is more narrowly circumscribed.

4.3 ISSB STANDARDS AND THE GLOBAL CONVERGENCE AGENDA

The publication by the International Sustainability Standards Board of IFRS S1 and IFRS S2 in June 2023³⁷ represents the most significant development in the global ESG disclosure architecture in recent years. The ISSB standards, which build on the TCFD recommendations³⁸ and consolidate the Value Reporting Foundation's SASB and IIRC frameworks,³⁹ provide a global baseline for sustainability related financial disclosures that is explicitly designed to facilitate comparability across jurisdictions.

SEBI has indicated its intention to align the BRSR framework progressively with the ISSB standards, a commitment that has significant implications for the scope and content of mandatory assurance. The ISSB standards adopt a single materiality perspective, focusing on sustainability related information that is material to investors, which is consistent with SEBI's investor centric approach but narrower than the EU's double materiality framework. The

³⁵The Enhancement and Standardization of Climate-Related Disclosures for Investors, 89 Fed. Reg. 21,668 (Mar. 28, 2024) (to be codified at 17 C.F.R. pts. 210, 229, 230, 232, 239, 240).

³⁶Id. at 21,672.

³⁷Int'l Fin. Reporting Standards Found., IFRS S1 General Requirements for Disclosure of Sustainability-Related Financial Information; IFRS S2 Climate-Related Disclosures (June 2023) [hereinafter ISSB Standards].

³⁸Task Force on Climate-Related Fin. Disclosures, Recommendations of the Task Force on Climate-Related Financial Disclosures (June 2017) [hereinafter TCFD Recommendations].

³⁹Int'l Integrated Reporting Council, The International <IR> Framework (rev. ed. 2021); Sustainability Acct. Standards Bd., SASB Standards (2018).

alignment of India's ESG assurance framework with ISSB standards would, if implemented, provide Indian listed entities with a disclosure and assurance pathway that is interoperable with the global baseline.

V. REGULATORY IMPLICATIONS AND CRITICAL ANALYSIS

5.1 THE ACCOUNTABILITY GAP: FROM DISCLOSURE TO VERIFICATION

The central regulatory achievement of SEBI's BRSR Core framework is the introduction of mandatory third party reasonable assurance as a mechanism for bridging the accountability gap between ESG disclosure and ESG verification. The history of mandatory financial disclosure regulation demonstrates that disclosure requirements without verification mechanisms produce systematic over-reporting of positive information and under-reporting of material risks, a pattern that the ESG disclosure literature has documented with particular clarity in the context of environmental claims.⁴⁰

However, the accountability gap is not fully closed by the introduction of mandatory assurance. Three residual accountability deficits are identifiable. First, the BRSR Core covers only nine KPI categories out of the significantly larger set of indicators required to be disclosed in the full BRSR, meaning that the bulk of BRSR disclosures remain unverified. Second, the phased approach to mandatory assurance means that only the top 150 to 500 listed entities are required to obtain assurance, while the remaining entities in the top one thousand are subject only to self-reporting. Third, the assurance engagement is directed at the accuracy of reported KPI data and not at the underlying strategy, governance, or risk management frameworks that determine the quality and reliability of data generation processes.⁴¹

This residual accountability deficit has practical implications for the reliability of ESG disclosures as inputs to investment decision-making. Institutional investors who rely on BRSR Core data as a basis for portfolio construction or engagement strategies may be unaware that the assurance covers only a subset of disclosed indicators and that even the assured KPIs are subject to measurement uncertainty that the reasonable assurance standard acknowledges but does not eliminate.⁴²

⁴⁰See generally Amir Amel-Zadeh & George Serafeim, Why and How Investors Use ESG Information: Evidence from a Global Survey, 74 *Fin. Analysts J.* 87 (2018).

⁴¹BRSR Core Circular 2023, *supra* note 3.

⁴²ISAE 3000, *supra* note 15.

5.2 GREENWASHING LIABILITY AND THE LEGAL FRAMEWORK FOR ENFORCEMENT

The introduction of mandatory ESG assurance transforms what was previously a reputational risk into a legal risk. A listed entity that provides a materially false or misleading BRSR Core assurance report exposes itself to regulatory enforcement action by SEBI under the SEBI Act and LODR Regulations, and potentially to criminal liability under Sections 447 and 448 of the Companies Act.⁴³

The legal framework for ESG greenwashing liability in India is, however, underdeveloped in several important respects. First, there is no specific definition of ESG greenwashing in Indian securities law, meaning that enforcement action would need to be brought under existing provisions for fraudulent or misleading disclosures.⁴⁴ Second, the standard of materiality applicable to ESG disclosures has not been specifically addressed by SEBI or by Indian courts, creating uncertainty about the threshold at which an inaccuracy in BRSR Core KPIs would attract regulatory sanction. Third, the liability of assurance providers who issue unqualified assurance opinions on materially misstated KPIs is not explicitly addressed in the BRSR Core framework, creating a gap that the proposed ICAI SAS 1000 will need to address.⁴⁵

SEBI's enforcement track record in the context of financial disclosure violations⁴⁶ demonstrates a willingness to impose substantial monetary penalties and market access sanctions for material misstatements. However, the greater complexity and subjectivity of ESG data relative to financial data is likely to create significant evidentiary challenges for SEBI in establishing that a misstatement was material and that the listed entity or its assurance provider acted with the requisite degree of knowledge or negligence.⁴⁷

5.3 SUPPLY-SIDE CONSTRAINTS: ASSURANCE PROVIDER CAPACITY

The most immediate practical challenge to the effective implementation of SEBI's mandatory ESG assurance regime is the acute shortage of qualified assurance providers in India. The SEBI consultation paper of February 2023⁴⁸ acknowledged this supply constraint explicitly, noting

⁴³Companies Act, 2013, §§ 447–448, No. 18, Acts of Parliament, 2013 (India).

⁴⁴See generally R.K. Raghavan & N.S. Sivasubramanian, *Corporate Governance in India: Law and Practice* 445–52 (Eastern Book Co. 2019).

⁴⁵ICAI SAS 1000 Exposure Draft, *supra* note 32.

⁴⁶Securities & Exch. Bd. of India, *Adjudication Order in the Matter of Disclosure Violations (2023)* (on file with SEBI).

⁴⁷See generally Vikramaditya S. Khanna & Umakanth Varottil, *Board Diversity in India: The Numbers Tell the Story*, 10 *Indian J.L. & Tech.* 1, 18–24 (2014).

⁴⁸SEBI ESG Consultation Paper 2023, *supra* note 4, at 14–15.

that the number of practitioners with the combination of financial assurance expertise and ESG domain knowledge required for a reasonable assurance engagement is currently insufficient to serve the phased rollout to the top five hundred listed entities.

The CII's 2023 survey of ESG readiness among Indian corporates⁴⁹ found that fewer than thirty percent of surveyed entities had engaged any form of third party ESG assurance prior to the SEBI mandate, reflecting the novelty of the assurance market in India. The NSE's guidance note on BRSR Core assurance⁵⁰ has attempted to address this readiness gap from the demand side, but the supply side constraints require more direct regulatory intervention.

Three supply side interventions are indicated. First, SEBI should expedite the publication of an approved list of accredited ESG assurance providers, as proposed in the consultation paper.⁵¹ Second, the ICAI should fast track the finalisation of its SAS 1000 standard⁵² and develop a structured training and certification programme for practitioners seeking to qualify as ESG assurance providers. Third, SEBI should consider permitting international assurance providers with recognised ESG assurance expertise to operate in the Indian market for BRSR Core assurance engagements, subject to registration and regulatory oversight.

5.4 ESG RATINGS AND THE RISK OF ASSURANCE PARADOX

A structural tension exists between SEBI's mandatory assurance framework for BRSR Core KPIs and the regulatory framework for ESG rating providers introduced through the SEBI ESG Master Circular of 2023.⁵³ ESG ratings assigned by registered ESG Rating Providers are based in part on BRSR disclosures; the introduction of mandatory assurance of BRSR Core KPIs is therefore intended to improve the quality of the data inputs to ESG ratings.

However, the relationship between assurance and rating creates a potential paradox. ESG ratings are composite assessments that integrate quantitative KPI data with qualitative judgments about governance quality, strategy coherence, and stakeholder engagement. The assurance of BRSR Core KPIs validates the accuracy of reported quantitative data but does not address the qualitative dimensions of the rating. An entity could receive a high ESG rating on

⁴⁹Confederation of Indian Indus., ESG Readiness of Indian Corporates 22–28 (2023).

⁵⁰Nat'l Stock Exch. of India, ESG Disclosure and Assurance: A Guidance Note for Listed Companies (2023).

⁵¹SEBI ESG Consultation Paper 2023, supra note 4, at 14–15.

⁵²ICAI SAS 1000 Exposure Draft, supra note 32.

⁵³SEBI ESG Master Circular 2023, supra note 1.

the basis of accurately reported but context-free KPI data that overstates its ESG performance when understood in the light of its industry, business model, or supply chain practices.⁵⁴⁵⁵

The competition law dimension of ESG ratings, which the Competition Commission of India is beginning to examine,⁵⁶ adds a further layer of complexity. The IOSCO report on ESG rating providers⁵⁷ identified conflicts of interest arising from the vertical integration of data provision, rating, and advisory services within the same entity, a concern that SEBI's ESG Rating Provider framework attempts to address through mandatory disclosure and governance requirements but has not yet fully resolved.

VI. CONCLUSION AND RECOMMENDATIONS

SEBI's mandatory ESG assurance framework for listed entities, anchored in the BRSR Core circular of 2023, represents a significant and strategically well-designed regulatory intervention. By mandating reasonable assurance of a curated set of quantifiable KPIs, SEBI has moved India's ESG disclosure regime from a disclosure only architecture to a disclosure plus verification framework, a transition that is essential for the credibility and investor utility of sustainability information in the securities market. The phased implementation approach reflects a pragmatic acknowledgment of capacity constraints, and the alignment trajectory with ISSB standards positions India to participate in the emerging global ESG disclosure architecture.

At the same time, the analysis in this article has identified four structural challenges that, if unaddressed, risk limiting the effectiveness of the mandatory assurance framework: the residual accountability gap arising from the partial scope of mandatory assurance, the underdeveloped legal framework for ESG greenwashing liability, the acute supply side constraints in assurance provider capacity, and the structural tension between mandatory assurance and the unresolved methodological issues in ESG rating.

The following five recommendations are offered to address these challenges:

First, SEBI should progressively expand the scope of mandatory reasonable assurance to cover the full set of quantifiable BRSR disclosures, on a phased basis consistent with the development

⁵⁴Int'l Org. of Sec. Comm'ns, Environmental, Social and Governance (ESG) Ratings and Data Products Providers: Final Report (Nov. 2021) [hereinafter IOSCO ESG Ratings Report 2021].

⁵⁵IOSCO ESG Ratings Report 2021, *supra* note 59.

⁵⁶Competition Comm'n of India, Market Study on ESG and Competition (forthcoming 2024).

⁵⁷Int'l Org. of Sec. Comm'ns, Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management: Final Report (Nov. 2021).

of assurance provider capacity. The current limitation of mandatory assurance to nine BRSR Core KPI categories creates a fragmented accountability architecture in which the majority of sustainability disclosures remain unverified.⁵⁸

Second, SEBI should publish, in consultation with the Ministry of Corporate Affairs, a specific regulatory guidance on ESG greenwashing, defining the standard of materiality applicable to ESG disclosures, identifying the legal consequences of material misstatement in BRSR Core assurance reports, and clarifying the liability of assurance providers who issue unqualified opinions on materially misstated KPIs. This guidance should draw on the enforcement frameworks developed by ESMA and the SEC in the analogous context of financial disclosure.⁵⁹

Third, SEBI should expedite the publication of an approved list of accredited ESG assurance providers and should work with ICAI to fast track the finalisation of Sustainability Assurance Standard 1000, which will provide the technical standard needed to support high quality assurance engagements across the listed entity universe.⁶⁰

Fourth, SEBI should establish a dedicated ESG data infrastructure initiative, in coordination with the Ministry of Environment, Forest and Climate Change and the Bureau of Energy Efficiency, to develop standardised measurement and reporting protocols for the environmental KPIs in the BRSR Core framework. The current reliance on GHG Protocol and equivalent methodologies, while internationally recognised, creates measurement uncertainty that is difficult to resolve through assurance alone.⁶¹

Fifth, SEBI should convene a multi-stakeholder consultative process on the interaction between BRSR Core assurance and ESG rating methodologies, with a view to developing guidelines on the appropriate use of assured BRSR Core data by ESG Rating Providers and on the disclosure obligations of ESG Rating Providers in respect of the weight assigned to assured versus unassured data in their rating methodologies.⁶²

The transition from disclosure to accountability in ESG governance is not achieved by the introduction of mandatory assurance alone. It requires a coherent ecosystem of standardised measurement methodologies, qualified assurance providers, robust enforcement mechanisms,

⁵⁸BRSR Core Circular 2023, *supra* note 3, Annex I.

⁵⁹European Sec. & Mkts. Auth., Sustainable Finance Roadmap 2022–2024, *supra* note 37.

⁶⁰BRSR Core Circular 2023, *supra* note 3, at 7–8.

⁶¹Greenhouse Gas Protocol, *supra* note 26.

⁶²Securities & Exch. Bd. of India, Consultation Paper on Introducing a Regulatory Framework for ESG Rating Providers in the Securities Market, at 12–16 (Jan. 24, 2022).

and investor education. SEBI's BRSR Core framework has laid the institutional foundation for this ecosystem. The task now is to build on that foundation with the regulatory precision and practical resolve that the urgency of the sustainability challenge demands.⁶³

⁶³Securities & Exch. Bd. of India, Annual Report 2022–23, *supra* note 9, at 78–82.