



**COUNTRY
COMPARATIVE
GUIDES 2024**

The Legal 500 Country Comparative Guides

India

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

Contributor

Dentons Link Legal



Nusrat Hassan

Managing Partner | nusrat.hassan@dentonslinklegal.com

Anuj Trivedi

Partner | anuj.trivedi@dentonslinklegal.com

Prashanth Sabeshan

Partner | prashanth.sabeshan@dentonslinklegal.com

Sayantani Dutta

Partner | sayantani.dutta@dentonslinklegal.com

This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in India.

For a full list of jurisdictional Q&As visit legal500.com/guides

INDIA

ENVIRONMENTAL, SOCIAL AND GOVERNANCE



1. Climate - the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

a. Yes, the Energy Conservation Act, 2001 read with the Energy Conservation (Amendment) Act, 2022 (collectively, "Energy Conservation Act") inter alia (i) facilitates the achievement of COP-26 goals, and (ii) introduces concepts such as mandated use of non-fossil sources and carbon credit trading to ensure faster decarbonisation of the Indian economy. As per the Energy Conservation Act, consumers who utilise excess energy will be penalized for excess consumption. The Securities and Exchange Board of India ("SEBI") has released the Business Responsibility and Sustainability Report ("BRSR"), providing reporting requirements for the top 1000 listed companies (by market capitalisation), which mandates the disclosure of greenhouse gas emissions. The information needs to include an Environmental Impact Assessment ("EIA") and Social Impact Assessment ("SIA") of a company's projects and/or products. SEBI vide circular dated July 12, 2023 has notified the BRSR Core -Framework for assurance and ESG disclosures for value chain. The BRSR Core is a sub-set of the BRSR, consisting of a set of Key Performance Indicators (KPIs) /metrics under 9 ESG attributes. Keeping in view the relevance to the Indian / emerging market context, few new KPIs have been identified for assurance such as job creation in small

towns, open-ness of business, gross wages paid to women etc.

b. The Energy Conservation Act empowers the Central Government to specify a carbon credit trading scheme. In this respect, the Carbon Credit Trading Scheme, 2023 has been notified by the Government on 28 June 2023. Carbon credit trading provides an effective way for the private sector in India to contribute to climate change while maintaining significant profits. By doing business in such markets, businesses can unlock financial support, gain competitive advantage, comply with regulations, support technology and innovation, and engage in international collaborations. Export of carbon credits have also been banned from August 2022, until India's national determined contributions are met. Approximately 13 activities have been considered for trading of carbon credits under bilateral/ cooperative approaches under the Paris Agreement. The Perform Achieve Trade ("PAT") scheme under the National Mission for Enhanced Energy Efficiency, launched in 2012, as a market-based compliance mechanism to accelerate improvements in energy efficiency in energy intensive industries. Under the PAT Scheme, the energy savings achieved by notified industries is converted into a tradable instrument called Energy Saving Certificates ("EScerts") which is tradable. The Central Electricity Regulatory Commission is the market regulator for the ESCerts. Two energy exchanges, the India Energy Exchange ("IEX") and the Power Exchange of India Limited ("PXIL"), offer trading facility where non-compliant customers ("DCs") can bid for ESCerts. The PAT scheme is implemented on a 3-year cycle and provides emissions reduction targets for Consumers (DCs) each year. ESCerts will be issued by the Bureau of Energy Efficiency (BEE) or an obligation to purchase ESCerts will be imposed, as the case may be, following a performance review where a third-party will verify performance during the assessment year. Under the Electricity sector, there is a Renewable Energy Certificate Scheme, the aim of which is to promote renewable energy and facilitate the compliance of renewable purchase obligations ("RPO"). Renewable

Energy Certificates ("RECs") are regulated by the Central Electricity Regulatory Commission (Terms and Conditions for Renewable Energy Certificates for Renewable Energy Generation) Regulations, 2022. The eligible entities as per these regulations are issued RECs which can be traded on energy exchanges or through electricity traders and purchased by obligated entities to meet their RPO compliances.

c. There are no cases for undeliverable net zero strategies as India has set the goal to achieve for net zero emissions by 2070, however, there have been cases where though net zero standards were not stipulated, companies were penalised for not following the agreed mandate or statute to reduce the carbon emissions.

d. No, only violators of environmental or pollution standards have been penalised. India has established a National Green Tribunal under the National Green Tribunal Act, 2010 for effective and expeditious disposal of cases relating to environmental protection.

e. The Reserve Bank of India ("RBI") has released a 'Framework for acceptance of Green Deposits' (Green Deposit Framework) in April 2023 (effective from 1 June 2023). Green Deposit refers to an interest-bearing deposit, received by the regulated entities for a fixed period and the proceeds of which are earmarked for being allocated towards green finance. The objective of the Green Deposit Framework will be to encourage the regulated entities to offer green deposits to customers, protect interest of the depositors, aid customers to achieve their sustainability agenda, address greenwashing concerns and help augment the flow of credit to green activities/projects.

2. Biodiversity - are new projects required to demonstrate biodiversity net gain to receive development consent?

Currently, there is no express law on biodiversity net gain in India, nor is there any regulation that requires development projects to demonstrate biodiversity net gain. There has also been no situation wherein authorities have provided development approvals conditional on biodiversity net gain objective.

3. Water - are companies required to report on water usage?

The BRSR reporting requirement introduced by SEBI includes disclosures regarding details of water withdrawn for use, along with a breakdown of water sources, water consumption and water intensity by turnover, and details of water discharges, together with

a breakdown of discharge destinations. Details on company policies for zero liquid discharge in wastewater are also required to be reported.

4. Forever chemicals - have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

No test cases have been brought in India to date. It must be noted that Per- and polyfluoroalkyl substances ("PFAS") are unregulated in India as on date. India became a party to the Stockholm Convention ("Convention") on January 13, 2006. Though, the Convention has added PFOS (Perfluorooctanesulfonic acid) to its global restriction list in 2009, in accordance with the provisions of the Convention, India has kept itself in a default "opt-out" position to the extent that amendments in various Annexes of the Convention cannot be enforced on it unless an instrument of ratification/acceptance/approval or accession is explicitly deposited with UN depositary. India has not ratified the amendment listing this substance and PFOS is unregulated, along with other PFAS.

Notwithstanding this, it must also be noted that the Indian Government has, vide a specific circular passed in this regard in 2018, ratified the ban on 7 (seven) Persistent Organic Pollutants which are considered as hazardous list under the Stockholm Convention. The 7 (seven) chemicals which have been banned are (i) Chlordecone, (ii) Hexabromobiphenyl, (iii) Hexabromodiphenyl ether and Heptabromodiphenylether (Commercial octa-BDE), (iv) Tetrabromodiphenyl ether and Pentabromodiphenyl ether (Commercial penta-BDE), (v) Pentachlorobenzene, (vi) Hexabromocyclododecane, and (vii) Hexachlorobutadiene. In line with the said ratification, the Indian Government has notified the Regulation of Persistent Organic Pollutants Rules, 2018 in March 2018 thus prohibiting the manufacture, trade, use, import and export of these 7 (seven) chemicals.

5. Circularity - the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributors or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of

recycled materials in product construction?

Set out below are the key legislations which provide for duties of the above stakeholders:

1. Plastic Waste Management Rules, 2016 ("PWM Rules") mandates that the Producers, Importers and Brand Owners (collectively, "PIBO") must fulfil the Extended Producer Responsibility ("EPR") for plastic packaging. The EPR is defined under the PWM Rules as the responsibility of a producer for the environmentally sound management of the product until the end of its life.

2. E-Waste (Management) Rules, 2022 ("E-Waste Rules") came into force on April 1, 2023. The E-Waste Rules require the manufacturers to collect e-waste generated during the manufacture of any electrical and electronic equipment and ensure its recycling or disposal and to use technology or methods so as to make the end product recyclable. The E-Waste Rules also provide for the responsibility on the producer to obtain and implement the EPR targets. The EPR is defined under the E-Waste Rules as the responsibility of any producer of electrical or certain electronic equipment for meeting recycling targets, only through registered recyclers of e-waste to ensure environmentally sound management of such waste. The E-Waste Rules *inter alia* provide for responsibility of the refurbisher to collect e-waste generated during the process of refurbishing and hand over the waste to registered recycler; and of bulk consumers of electrical and electronic equipment to ensure that e-waste generated by them is handed over only to the registered producer, refurbisher or recycler.

3. Solid Waste Management Rules, 2016 ("Solid Waste Rules") provides for duties of manufacturers or brand owners of disposable products. All brand owners who sell or market their products in packaging material which are non-biodegradable are mandated to put in place a system to collect back the packaging waste generated due to their production.

4. Construction and Demolition Waste Management Rules, 2016 mandates every waste generator to keep the construction and demolition waste within the premise or get the waste deposited at collection centre so made by the local body or hand it over to the authorised processing facilities of construction and demolition waste.

5. Battery Waste Management Rules, 2022 prescribe that every producer of batteries shall maintain the obligation of EPR for the battery that they introduce in the market to ensure the attainment of the recycling or refurbishing obligations. Further, battery producers are required to meet the applicable collection and recycling

and/or refurbishment targets for battery made available in the market.

6. Plastics - what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on certain plastic uses)?

The Environment Protection Act, 1986 and the PWM Rules constitute the primary legislation in India which regulates the use, reuse, recycling and end of life cycle purposes of different types of plastics in India. In August 2021, the Ministry of Environment, Forest and Climate Change, Government of India amended the PWM Rules to impose a ban on single use plastic items in India, which have low utility and a high littering potential. As per the said amendment, any kind of manufacture, import, stocking, distribution, sale, and use of single use plastic, including polystyrene and expanded polystyrene, commodities were prohibited with effect from July 1, 2022.

In February 2022, the PWM Rules were further amended to include specific guidelines on EPR for plastic packaging. The PWM Rules required PIBO to register with the concerned authority. The amendment, which was aimed to consolidate the obligations and processes in relation to EPR under the PWM Rules, went a step further and demarcated specific obligations and targets for PIBO in relation to EPR. The EPR guidelines set out distinct annual EPR targets for PIBO for different categories of plastic packaging. In case of non-compliance with the EPR targets, the PWM Rules grant the Central Pollution Control Board ("CPCB") the power to impose an environmental compensation on the parties responsible for contravention of the provisions of the PWM Rules, based on the 'polluter pays' principle.

In March 2024, the PWM Rules were further amended with an aim to strengthen the regulation and management of plastic waste in India ("2024 Amendment"). The key amendments *inter alia* include mandatory registration of sellers of plastic raw materials and intermediate materials used in plastic packaging and introduction of stricter regulations for the sale and use of plastic packaging, including provisions for labelling and marking to indicate compatibility and biodegradability. The 2024 Amendment also requires the manufacturers of commodities made from compostable or biodegradable plastics to obtain certification from the CPCB before marketing or selling compostable plastic or biodegradable plastic carry-bags or commodities. To further ensure stakeholder compliance with the PWM Rules, the 2024 Amendment casts reporting requirements on various stakeholders including

producers, importers, manufacturers of plastic with the relevant authorities.

Non-compliance of the PWM Rules may result in imposition of fine, or with imprisonment, or with both.

7. Equality Diversity and Inclusion (EDI) - what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

Under the Equal Remuneration Act, 1976 ("ERA"), and the rules framed thereunder from time to time, an employer is required to ensure that there is no difference in remuneration between a man and a woman for work that is substantially similar. Further, as per the Rights of Persons with Disabilities Act, 2016 and the rules framed thereunder, all establishments in India are required to frame a policy for providing equal opportunities at the workplace. If the number of employees in the establishment exceeds 20, the equal opportunity policy for such workplace is required to specify, *inter alia*, the amenities provided to persons with disabilities to help them discharge their functions, list of posts in the organisation suitable for persons with disabilities, provisions for assistive devices and barrier free accessibility as well as the appointment of a liaison officer to look after the recruitment with persons with disabilities.

8. Workplace welfare - the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

The Minimum Wages Act, 1948, has been enacted with the objectives, *inter alia*, to (i) fix the minimum rates of wages payable to employees and revise the same every five years; (ii) secure an adequate living wage for all labourers in the interest of the public; (iii) fix the daily working hours of employees and prevent exploitation of workers by the employers; (iv) to ensure the maintenance of a decent standard of living for labourers and to provide a level of comfort to employees. The Minimum Wages Act, 1948 also penalizes employers for failing to provide minimum wages to employees and for wrongfully infringing the rights of employees. The Shops and Establishment legislations for the various states in India also mandate the maximum time for which an employee may be required to work at a stretch without rest and stipulates provisions for rest and recreation of

employees in the premises of the employers.

9. Living wage - the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

As mentioned above, the Minimum Wages Act, 1948, attempts to provide a legal framework for employees in a way as to ensure that they are able to maintain a decent standard of living. This legislation is applicable in cases where an employer employs at least 1000 workers in a particular state.

10. Human rights in the supply chain - in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

The BRSR Core refers to the value chain of the reporting company which *inter alia* includes details of the supply chains of the reporting company, the risks carried in such supply chains, the steps taken to address the risk, measures taken to remediate the risks and training to employees to ensure reduction of risk and impact.

BRSR Core is at present based on the principle of "Comply or Explain" (i.e., entities are required to disclose their ESG-related information as per the prescribed format or provide a valid reason for not doing so) and requires an assurance being provided by a third party auditor. As on date, no cases seeking penalising of specific companies for failure to comply with norms have been initiated.

11. Responsibility for host communities, environment and indigenous populations - in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

Yes, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act,

2013 ("LARR Act") was introduced by the Central Government to ensure transparency in the process of acquiring land and to provide rehabilitation measures and compensation to the affected families affected by such acquisition of land. The legislation provides for fair compensation to landowners, which is at least twice the market value of rural land and at least four times the market value of urban land. The LARR Act mandates that a SIA study is carried out in the area wherein such acquisition of land is envisioned to be completed. In *Mahanadi Coal Fields Ltd. vs Mathias Oram* (AIR/2022/SC/5723), the Supreme Court of India directed the State to allot land to displaced families and to ensure that all facilities and amenities are developed in accordance with the LARR Act within a prescribed time. The jurisprudence under this Act has been developing over time, with obligations of government officials to provide fair hearing to affected persons being crystallised and failure to provide such hearing leading to the award for acquisition being set aside.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

The Advertising Standards Council of India ("ASCI"), an independent body responsible for self-regulation in advertising, has recently issued guidelines titled 'Guidelines for Advertisements Making Environmental/Green Claims' effective from February 15, 2024 ("Greenwashing Guidelines"). The Greenwashing Guidelines not only define what greenwashing means but also proposes directives and warnings for advertisers, aiming to *inter alia* ensure, reliability, verifiability and transparency of environmental claims being advertised by businesses. As defined under the Greenwashing Guidelines, greenwashing refers to 'false, deceptive, misleading environmental claims about products, services, processes, brands or operations as a whole, or claims that omit or hide information, to give the impression they are less harmful or more beneficial to the environment than they actually are'. The Greenwashing Guidelines also define what would constitute as an environmental claim or green claim as statements that suggest or create an impression that a product (and/or its packaging) or a service as a whole (i) has a neutral or positive impact on the environment; (ii) is comparably less damaging to the environment than a previous version of the same product or service; (iii) is less damaging to the environment than competing goods or services; or (iv) has specific environmental benefits. The Greenwashing Guidelines further state that greenwashing violates Chapter I of the ASCI code on misleading advertisements and in order to not breach Chapter I of the ASCI code, advertisements must adhere

to the Greenwashing Guidelines.

Further, the Central Consumer Protection Authority has issued the draft 'Guidelines for the Prevention and Regulation of Greenwashing, 2024 on February 20, 2024, to protect and safeguard the consumer's interest by limiting greenwashing strategies employed by companies and service providers in order to increase the volume of sales/revenue. This is in furtherance to the Central Consumer Protection Authority's guidelines to provide for the prevention of false or misleading advertisements and making endorsements relating thereto in June of 2022.

Additionally, Indian courts have in various cases held that advertisers must make only legitimate claims and not mislead the consumers. The ASCI also requires advertisements conform to its Code for Self-Regulation.

Whilst there have been several instances of advertisements being banned in the past by ASCI for making misleading claims, we have not come across any instance of an advertisement being banned specifically for making unsubstantiated sustainability claims.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for unsubstantiated sustainability claims relating to products or services?

We have not come across any publicly reported cases where the competition or market regulatory authorities of India have prosecuted any businesses specifically in relation to sustainability claims relating to products and services offered. That said, the Competition Commission of India ("CCI") has recently indicated that the CCI may, in near future, consider accounting for sustainable development and climate change, and 'environmental friendliness' as a 'quality' dimension in competition assessment.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

There is no precedent of this kind of case in India, as yet.

15. Is there a statutory duty on directors to oversee environmental and social impacts?

Companies Act 2013 ("CA 2013"): Under CA 2013, it is a

fiduciary duty of a director 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 environment. Further, in terms of the recent amendments to the corporate social responsibility regime, board of directors of a company are now required to monitor the implementation of the ongoing project with reference to the approved timelines and year-wise allocation and make modifications, if any, for smooth implementation of the project within the overall permissible time period. The board of directors are also responsible to ensure that the corporate social responsibility funds are utilised for the approved purposes.

Reporting with SEBI: From financial year 2022-2023 onwards, top 1000 Indian companies (by market capitalisation) whose shares are listed on any Indian stock exchange have been mandated by SEBI to submit a 'business responsibility and sustainability report' containing detailed ESG disclosures. The BRSR is required to be a part of the annual report, which gets notified to the stock exchanges, is published on official company websites, and is circulated to shareholders. Additionally, The BRSR Core also provides for specific timelines by when compliance with the BRSR Core becomes mandatory for listed entities. The top 150 listed entities in India by market capitalization were required to provide reasonable assurance on ESG metrics from financial year 2023-2024. ESG related disclosures for the value chain would apply to the top 250 listed entities in India by market capitalization, on a comply-or-explain basis from financial year 2024-2025.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

We have not come across any precedent for this as yet in India.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

Yes, as discussed above, SEBI has mandated top 1000 Indian companies (by market capitalisation) whose shares are listed on any Indian stock exchange to submit a BRSR, containing detailed ESG disclosures from financial year 2022-2023 onwards as well as disclosures for value chain of such listed companies under BRSR Core from financial year 2023-2024 onwards.

Though the BRSR framework is not mandatory for smaller listed companies, unlisted public and private companies, however, such companies may choose to voluntarily adopt the BRSR framework. There are no mandatory reporting requirements specific to financial institutions in India requiring them to report against sustainable investment criteria. That said, the financial regulator of India, i.e., the RBI recently undertook a survey to ascertain the status of climate risk and sustainable finance in leading scheduled commercial banks in India. Feedback from the survey is likely to help in shaping the regulatory and supervisory approach of the RBI to climate risk and sustainable finance.

Additionally, on February 28, 2024, with an aim to implement robust climate-related financial risk management policies and processes to effectively counter the impact of climate-related financial risks, the RBI issued draft guidelines on 'disclosure framework on climate-related financial risks, 2024', mandating disclosure by regulated entities ("RE(s)") on four key areas of governance, strategy, risk management and metric and targets. Once enforced, these guidelines will apply to all scheduled commercial banks (excluding local area banks, payments banks and regional rural banks), tier-IV primary (urban) co-operative banks (UCBs), All-India Financial Institutions and top and upper layer non-banking financial companies.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

As discussed above, the BRSR and BRSR Core reporting is mandatory for the top 1000 listed companies in India (by market capitalisation), and part of such reporting pertains to managing climate change related financial risks of the listed company as well as the value chain of such listed companies. The reporting requirements in relation to environment under the BRSR inter alia include (a) the percentage of R&D and capital expenditure investments; (b) procedure for sustainable sourcing; (c) processes in place for reusing, recycling, and disposing at the end of life, for plastics (including packaging), e-waste, hazardous waste, and other waste; (d) applicability of EPR (Waste Collection); (e) life cycle perspective / assessments for any products and risks associated, if any; (f) details of total energy consumption; (g) disclosures with respect to water consumption; (h) air emissions (other than green-house gasses emissions); (i) intensity of greenhouse gas emissions and projects related to reducing them; (k) operations in/around ecologically sensitive areas where environmental approvals/clearances are required; and (l) compliance with the applicable environmental law/

regulations/ guidelines in India etc.

19. Is there a statutory responsibility on businesses to report on energy consumption?

Yes, companies in India are required to report their energy consumption. In addition to reporting of energy consumption under the BRSR, CA-2013 also requires companies to include a report by the board on conservation of energy as part of their financial statements. Such report should inter alia include steps taken or impact on conservation of energy; steps taken by the company for utilising source of energy; capital investment on energy conservation equipment's etc. Further, under the Energy Conservation Act, the Central Government may direct any designated consumer to furnish to the designated agency, the information with regard to the energy consumed and action taken on the recommendation of the accredited energy auditor. This report is required to be submitted by companies/industries which are energy intensive such as those engaged in the production of aluminium, fertilizers, iron and steel, cement, pulp and paper, and fall within the definition of 'designated consumer'.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

Whilst there is no specific statutory requirement at

present in India to report on EDI and/or gender pay gaps, however there are Indian laws which safeguard against pay disparity.

As discussed above, the ERA prohibits differential pay to men and women workers for performing the 'same work or work of similar nature'. The ERA also prohibits any discrimination between men and women workers for the same work or work of similar nature on the grounds of recruitment including promotions, training, or transfer. It is also pertinent to mention that CA 2013 provides that certain prescribed class of companies should have at least one woman director on their board. Further, SEBI also mandates boards of listed entities to have at least 1 woman director and the board of top 1000 listed entities (by market capitalisation) to have at least one independent woman director.

21. Is there a statutory responsibility to report on modern day slavery in the supply chain?

The Constitution of India and the Indian Penal Code prohibit and penalise acts of slavery and human trafficking in India in all forms and not just in supply chain. Any incidence of slavery or human trafficking may attract immediate penal action. The National Guidelines on Responsible Business Conduct 2019, issued by the Ministry of Corporate Affairs also encourage companies to respect human rights and prevent forced labour, child labour, and human trafficking in their operations and supply chains.

Contributors

Nusrat Hassan
Managing Partner

nusrat.hassan@dentonslinklegal.com



Anuj Trivedi
Partner

anuj.trivedi@dentonslinklegal.com



Prashanth Sabeshan
Partner

prashanth.sabeshan@dentonslinklegal.com



Sayantani Dutta
Partner

sayantani.dutta@dentonslinklegal.com

