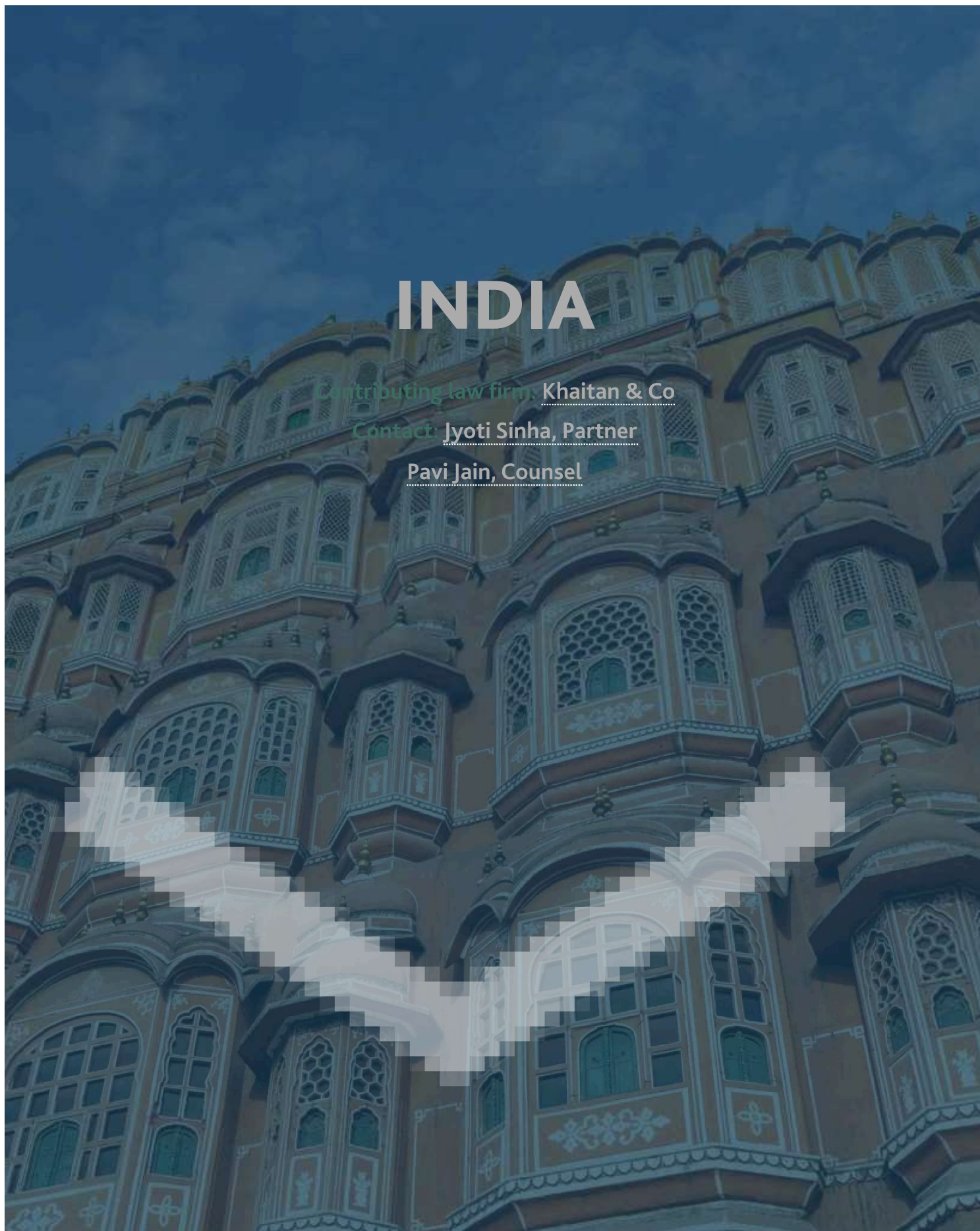


# INDIA

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## ESG in APAC - India by Khaitan & Co



Please click on the podcast above for a snapshot of the three key themes of ESG reporting, transition planning and greenwashing risks in respect of India. Scroll down for further information on each key theme.



## A. ESG REPORTING

1. Are there legal or regulatory requirements for companies to make ESG disclosures in your jurisdiction?

Yes.

## 2. What are the key legislative and regulatory sources for ESG disclosure requirements and to whom do they apply?

ESG disclosure requirements are aimed at the top 1,000 public listed companies by market capitalisation.

(a) The Indian market regulator—the Securities and Exchange Board of India (**SEBI**)—has, pursuant to an amendment to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, mandated the top 1,000 listed companies (by market capitalisation) to make mandatory ESG disclosures under the framework of Business Responsibility and Sustainability Report (**BRSR**), which is required to be reported on an annual basis. The structure of the BRSR is segregated into essential (mandatory) and leadership (voluntary) indicators. The leadership indicators in the BRSR also include disclosure related to the value chain of the listed entities.

SEBI also introduced an additional subset of BRSR disclosures, namely the BRSR Core (as defined below) consisting of nine key ESG reporting parameters such as greenhouse gas footprint, water footprint, energy footprint, embracing circularity, enhancing employee wellbeing and safety, enabling gender diversity in business, enabling inclusive development, fairness in engaging with customers and suppliers and openness of business (**BRSR Core**). The detailed nuances of BRSR Core are set out in section A.3 below.

(b) The issuance and listing of green bonds is governed by SEBI (Issue and Listing of Non-Convertible Securities)



Regulations 2021, read with [SEBI's Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper](#), dated 10 August 2021, pursuant to which SEBI has mandated issuers of green bonds to: (i) disclose environmental objectives of the issue under the offer documents; (ii) indulge in continual disclosure of performance; and (iii) verify utilisation of proceeds.

(c) SEBI has mandated mutual funds to disclose their ESG policies and practices under offer documents.

(d) For private companies, public unlisted companies, limited liability partnerships, partnership firms and other types of entities, ESG disclosures have not yet been mandated by law in India.

### **3. Are the requirements mandatory or do they apply on a comply-or-explain basis?**

The disclosure requirements under the BRSR (save for the voluntary leadership indicators) are mandatory for the top 1,000 listed companies by market capitalisation.

Per SEBI's recent framework ["BRSR Core – Framework for Assurance and ESG Disclosures for Value Chain"](#) dated 12 July 2023 (**BRSR Core Circular**), SEBI has introduced BRSR Core, which is a subset of BRSR and provides nine key performance indicators. Per the BRSR Core Circular, the top 250 listed companies by market capitalisation are required to: (a) disclose Scope 3 GHG

emissions on a comply-or-explain basis from financial year 2024-2025; and (b) meet assurance requirements for Scope 3 GHG emissions on a comply-or-explain basis from 2025-2026, each in relation to the BRSR Core indicators.

For financial institutions issuing green bonds, there is a requirement for appointing a third-party reviewer/certifier to certify project evaluation and selection criteria, which is applicable on a comply-or-explain basis for a period of 2 years.

#### **4. Which aspects of ESG do the requirements focus upon?**

The BRSR-mandated disclosures focus on all ESG tenets, including energy and water consumption, GHG emissions, waste management, extended producer responsibility, environmental impact assessments undertaken by the reporting companies and general disclosures relating to the environmental impact of the respective companies' operations.

The nine key ESG reporting parameters under BRSR Core have been mentioned above.

#### **5. Are the disclosure requirements based on international standards? If so, which one(s)?**

BRSR and BRSR Core have evolved in accordance with global best practices and several disclosure requirements have been mapped

with global reporting frameworks, such as GRI, the UN Sustainable Development Goals, TCFD, Carbon Disclosure Project (**CDP**) and SASB.

**6. How do the disclosure requirements approach materiality (e.g. single or double materiality)?**

The BRSR and BRSR Core frameworks by SEBI adopt a double materiality approach, requiring disclosures on both the financial impact of ESG issues on the company and the company's impact on the environment and society. The BRSR and BRSR Core frameworks mandate detailed reporting on ESG risks, opportunities, and their financial implications, as well as the company's broader environmental and social impacts, such as GHG emissions, resource usage, labour practices, and community engagement.

**7. Are there requirements for the disclosure of GHG emissions? If so, please specify the scope (e.g. Scope 1, Scope 2 and/or Scope 3), to whom they apply and whether there are requirements on the measurement methodology.**

Based on SEBI's guidance on BRSR for listed companies, there are requirements for the disclosure of GHG emissions encompassing Scope 1, Scope 2 and Scope 3 emissions (of which the Scope 3 disclosures have to be made on a voluntary (leadership indicator)

basis by all in-scope listed entities). These requirements apply to all eligible listed entities mandated to submit BRSR.

The BRSR Core framework stipulates that the GHG emissions may be measured in accordance with the Greenhouse Gas Protocol (though this is not a strict requirement). For BRSR Core indicators, the top 250 listed companies by market capitalisation are required to disclose (from financial year 2024-2025) Scope 3 GHG emissions on a comply-or-explain basis.

**8. Are there requirements to obtain independent assurance of any ESG disclosures? If so, what is the scope of such requirements?**

The top 250 listed companies by market capitalisation are required to meet assurance requirements for Scope 3 emissions on a comply-or-explain basis from 2025-2026.

The assurance requirement and the Scope 3 emissions related disclosure were introduced recently by the SEBI (under SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations 2023, dated 14 June 2023) and the [BRSR Core Circular](#).

**9. For companies not subject to mandatory or comply-or-explain ESG reporting, are voluntary ESG disclosures customary?**



Yes. In our experience, we see companies aligning their disclosures under international reporting frameworks and making voluntary ESG disclosures.

Several listed companies that are not mandatorily required to make ESG disclosures are opting to voluntarily make such disclosures. Similarly, many unlisted companies and multinational companies also make such disclosures on a voluntary basis given investor sentiment and stakeholder expectations. Companies are making voluntary ESG disclosures as customary practice owing to increasing requirements from investors, lenders etc. Such requirements are now also being hardwired in contractual arrangements for better optics from stakeholders' perspective.

**10. Has your jurisdiction issued or adopted a taxonomy on sustainable activities? Is it mandatory and what is its scope of application?**

India has not yet issued or adopted a comprehensive local taxonomy on sustainable activities akin to the EU taxonomy. However, India has been making strides towards creating frameworks and guidelines that promote sustainable finance and green activities by measures such as the BRSR, BRSR Core, the Carbon Credit Trading Scheme 2023 and Green Credit Programme (*mechanisms for trading in carbon credits*), etc.

Currently, there is no regulatory mandate for taxonomy on sustainable activities, however, regulators have indicated development of a green taxonomy. For instance, SEBI published a

circular on 6 February 2023, pursuant to which SEBI revised disclosures for issuers of green debt securities to align the disclosure regime with the updated Green Bond Principles recognised by IOSCO. The issuers of such green debt securities are required to (among other things) disclose details of any taxonomies, green standards or certifications (both Indian and global) that were referenced) and the alignment of projects with said taxonomies.

**11. Are there plans to adopt or incorporate the ISSB's IFRS S1 and/or S2 standards? If so, please indicate the extent of alignment, to what extent the standards will be mandatory, to whom they will apply and the timeline.**

SEBI has clarified that while undertaking BRSR disclosures, entities already preparing and disclosing sustainability reports based on internationally accepted reporting frameworks (e.g. GRI, Integrated Reporting Framework and TCFD) may refer to disclosures made under these frameworks. For instance, many entities in India follow CDP disclosure system on a voluntary basis, and CDP questionnaires are, to some extent, aligned with the environment-based questions in the BRSR.

In our experience, we see companies aligning their disclosures under international reporting frameworks (including CDP and TCFD) and therefore, they report on climate change-related respects accordingly.

The draft guidelines on “[Disclosure framework on Climate-related Financial Risks, 2024](#)” issued by the Reserve Bank of India (**RBI**), the apex bank of India, indicates the development of a disclosure framework, divided into four thematic areas: governance, strategy, risk management, and metrics and targets, which is in line with the IFRS S2. See section A.12 below for more detail.

## **12. Other upcoming developments / direction of travel**

Regulators may adopt a truncated form of the BRSR called BRSR Lite, which may be used by unlisted companies or large public companies on a voluntary basis to begin reporting on sustainability-related issues. We also expect to see an increase in voluntary disclosures as investor interest increase in their portfolio companies. Further, we expect more alignment with global climate-related disclosures in the future, including that of ISSB.

We expect SEBI to issue guidelines to regulate ESG investment schemes and compliances by asset management companies.

RBI has published a draft “Disclosure framework on Climate-related Financial Risks, 2024”, which will require entities in scope of the draft framework to disclose information about their climate-related financial risks and opportunities for the users of financial statements. The draft framework applies to the following entities:

- (a) all scheduled commercial banks (excluding local area banks, payments banks and regional rural banks);

- (b) all tier-IV primary (urban) co-operative banks;
- (c) all-India financial institutions (i.e. EXIM bank, NABARD, NaBFID, NHB and SIDBI);
- (d) all top and upper layer non-banking financial companies.



## **B. TRANSITION PLANNING**

### **1. Has your jurisdiction set decarbonisation targets and strategies?**

Yes, as announced at COP26 in Glasgow, India has announced its commitment to net zero emissions by 2070. The Indian

government also plans to become a net exporter of energy in the coming years.

The Indian government has also outlined its new 2030 decarbonisation targets and strategies, to: (a) achieve non-fossil energy capacity to 500 GW by 2030; (b) meet 50% of its energy requirements from renewable energy by 2030; (c) reduce total projected carbon emissions by one billion tonnes from now till 2030; and (d) reduce carbon intensity of its economy by less than 45%.

**2. Has the government or any regulator in your jurisdiction launched compliance and/or voluntary carbon trading schemes or carbon taxes? If so, please give details. If not, are there plans to do so?**

The (Indian) Energy Conservation Amendment Act, 2022, [as amended in 2022](#), has introduced the carbon credit trading scheme (**CCTS**) pursuant to which the central government may issue carbon credit certificates to entities registered under the CCTS, which can thereafter trade in carbon credit certificates.

The [CCTS](#), which was notified on 28 June 2023, and amended in [December 2023](#), provides a framework for the Indian Carbon Market (**ICM**) and contemplates both a compliance mechanism, applicable to “obligated entities”, as well as a voluntary offset mechanism for non-obligated entities.

In July 2024, The Bureau of Energy Efficiency (**BEE**) (the administrator for the CCTS) released the [Detailed Procedure for](#)



Compliance Mechanism under CCTS under which obligated entities would be required to meet annual GHG emission intensity targets, which will be notified for three-year trajectory periods. Obligated entities that exceed their respective targets shall be entitled to the issuance of carbon credit certificates, which could thereafter be traded on power exchanges as per the procedure to be defined by the Central Electricity Regulatory Commission. Carbon credit certificates can also be banked to meet subsequent years' compliance requirements or sold. Under the Detailed Procedure for Compliance Mechanism under CCTS, obligated entities who do not achieve their targeted reduction in GHG emission intensity shall surrender an equivalent number of banked carbon credit certificates or purchase carbon credit certificates to comply with the intensity targets, and may be penalised. Non-obligated entities may also voluntarily trade in carbon credit certificates.

The CCTS is yet to be implemented, but the Detailed Procedure for Compliance Mechanism under CCTS sets out the details of the compliance mechanism and clarifies that obligated entities shall be from specified energy intensive industries as specified by the Central Government. The cement, iron and steel, pulp and paper, as well as petrochemicals industry are covered in Annexure II. It also sets out the framework of the GHG emissions covered, monitoring and reporting process, verification process, and issuance and surrender of carbon credit certificates. However, other relevant rules and directives for operationalization of the ICM and implementation of the CCTS are yet to be notified.

**3. Are there mandatory requirements for companies to have in place and/or disclose climate-related transition plans? If so, please give details (including whether there is any standard or guidance on transition plans and/or requirement to consider the social impact of the plan). If not, are there plans for such requirements?**

It is not mandatory to have a transition plan or disclose a climate strategy in the BRSR or otherwise.

However, the [Detailed Procedure for Compliance Mechanism under CCTS](#) would require “Obligated Entities” to prepare and submit a long-term action plan to reduce, remove or avoid greenhouse gas emissions and act in accordance with the long term action plan. Compliance with such submitted long-term action plan must be submitted in a specified format. Where the actions implemented in terms of the submitted action plan are found inadequate for achieving compliance with the specific GHG emission norm, the shortfall would have to be met by purchasing carbon credit certificates.

Section 134(m) of the (Indian) Companies Act, 2013 requires that reports issued by the board of directors of a company provide details such as conservation of energy and corporate social responsibility initiatives undertaken by a company during the year.

**4. Are there mandatory requirements to set, meet and/or disclose climate-related targets? If so, please give details. If**

## **not, are there plans for such requirements?**

Presently, companies are not required to set or meet climate-related targets.

The [Detailed Procedure for Compliance Mechanism under CCTS](#) envisions that obligated entities will be subject to targets for reduction of GHG emissions set by relevant authorities and the (Indian) Energy Conservation Amendment Act, 2022 designates different share of consumption for various types of non-fossil sources.

Mandatory renewable energy obligations have been prescribed under the (Indian) Electricity Act, 2003, which require specific consumers (e.g. power distribution companies and captive consumers) to procure a percentage of electricity from renewable sources.

The mandatory “Perform, Achieve and Trade” Scheme issued under the [\(Indian\) Energy Conservation Act, 2001](#), also places obligations on designated consumers in specific energy intensive industries whose annual energy consumption is equal to or greater than the threshold limit specified by the Central Government notifications, to meet energy savings targets through issuance of tradeable energy savings certificates. Under the Indian Energy Conservation Act, 2001, [as amended in 2022](#), a proviso has been introduced to Section 14A of the principal Act to provide that any other person (other than designated consumers) may also purchase energy savings certificates on a voluntary basis.

## **5. Other upcoming developments / direction of travel**

As set out above, the CCTS is proposed to be implemented soon once the detailed procedures thereunder come into force and will involve development of methodologies for estimation of carbon emissions reductions. Separately, guidelines to monitor, report and verify emissions are also proposed to be formulated.



## C. GREENWASHING RISKS

1. Are there any recent examples of legal proceedings, regulatory actions or investigations against or into greenwashing in your jurisdiction?

No.

## 2. Are there any laws or regulations specifically dealing with greenwashing?

Yes.

The Advertising Standards Council of India (**ASCI**) is a voluntary self-regulatory organization incorporated under the Companies Act, 2013, which aims to ensure that advertisements in India are fair, honest and compliant with the ASCI Code for Self-Regulation of Advertising Content in India (**ASCI Code**). ASCI is a self-regulatory body, and its decisions are not binding unless the party in question submits to them.

ASCI has recently issued Guidelines for Advertisements Making Environmental/ Green Claims, effective from 15 February 2024 (**ASCI Guidelines**) which explain the ASCI's approach in determining whether an environmental/green claim on advertisements violates Chapter I of the ASCI Code.

While decisions of the ASCI are non-binding, the Central Consumer Protection Authority (**CCPA**) formed under the Consumer Protection Act, 2019 has requested the ASCI to forward any advertisements non-compliant with the ASCI Code and which could potentially violate the Consumer Protection Act, 2019 to the CCPA, for appropriate action.

The CCPA has also issued draft Guidelines for the Prevention and Regulation of Greenwashing, 2024 (**Draft CCPA Guidelines**) on 20 February 2024 which are to apply to all advertisements in respect of goods or services and requires that environmental and green



claims be substantiated through appropriate disclosures backed by verifiable evidence. Any contravention of the Draft CCPA Guidelines (once brought in force), would be considered a violation of the Consumer Protection Act, 2019 and would be punishable by imprisonment and a fine.

Separately, SEBI has introduced stringent disclosure requirements (under its Circular dated 3 February 2023, “Dos and Don’ts Related to Green Debt Securities to Avoid Occurrences of Greenwashing”) for issuers of green debt securities, such as continuous monitoring, prohibition of utilisation of funds for non-green purposes, prohibition of misleading labels and highlighting green practices while hiding unfavourable information.

### **3. What are the likely grounds on which such proceedings, actions or investigations can be instigated?**

Likely grounds include:

(a) Failure to meet disclosure requirements under securities laws and regulations – e.g. providing materially false or misleading information in listing documents or other corporate and ESG disclosure documents such as the BRSR.

(b) Breaches of directors’ duties – e.g. Section 166 of the (Indian) Companies Act, 2013 requiring a director to act in the best interests of the company and towards protection of the environment.

(c) Claims for misrepresentation, misleading or false advertisement where environmental/green claims are used falsely, without adequate substantiation, or without appropriate disclosures and qualifications as to the scope of the claim so as to be misleading.

There are also risks of regulatory enforcement, for example, codes/guidance issued by financial regulators on green debt securities and requirements on ESG disclosures.

#### **4. Other upcoming developments / direction of travel**

Presently, there have been no noteworthy greenwashing claims in India. However, the risk is expected to increase as reporting requirements become more robust and action in relation to false/misleading environmental and green claims under the Consumer Protection Act, 2019 increases in view of the ASCI Guidelines and the CCPA's focus on greenwashing.

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