

Note



Annual Business Responsibility Reports – will this make companies *responsible*?

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Note

In continuation to what was seen as a transition towards the ‘triple bottom line’ approach i.e. people, planet and profit, the market regulator Securities Exchange Board of India (“SEBI”) came up with its Circular vide CIR/CFD/DIL/8/2012 dated August 13, 2012¹ (“Circular”) mandating Business Responsibility Reports (“BRs”) to be prepared by listed companies.

Genesis of BR

The Indian Institute of Corporate Affairs² (“IICA”) in the year 2011 issued *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business* (“Guidelines”) wherein it was stated that companies should not be just responsible *but also* socially, economically and environmentally responsible. Through such reporting, the Guidelines expect that businesses will also develop a better understanding of the process of transformation that makes their operations more responsible. These BRs will also help in identifying some of the best practices that can serve as guidance models.

SEBI’s circular took this initiative forward by mandating certain companies to compulsorily prepare BR. This was mainly because the need was felt for companies to be more answerable to their stakeholders at the same time ensuring that through such reporting, stakeholders also take an active interest in the functioning of the companies.

Filing procedure of BR

For all listed companies to which the Circular is applicable, BR is to be included as a part of the Annual Report.

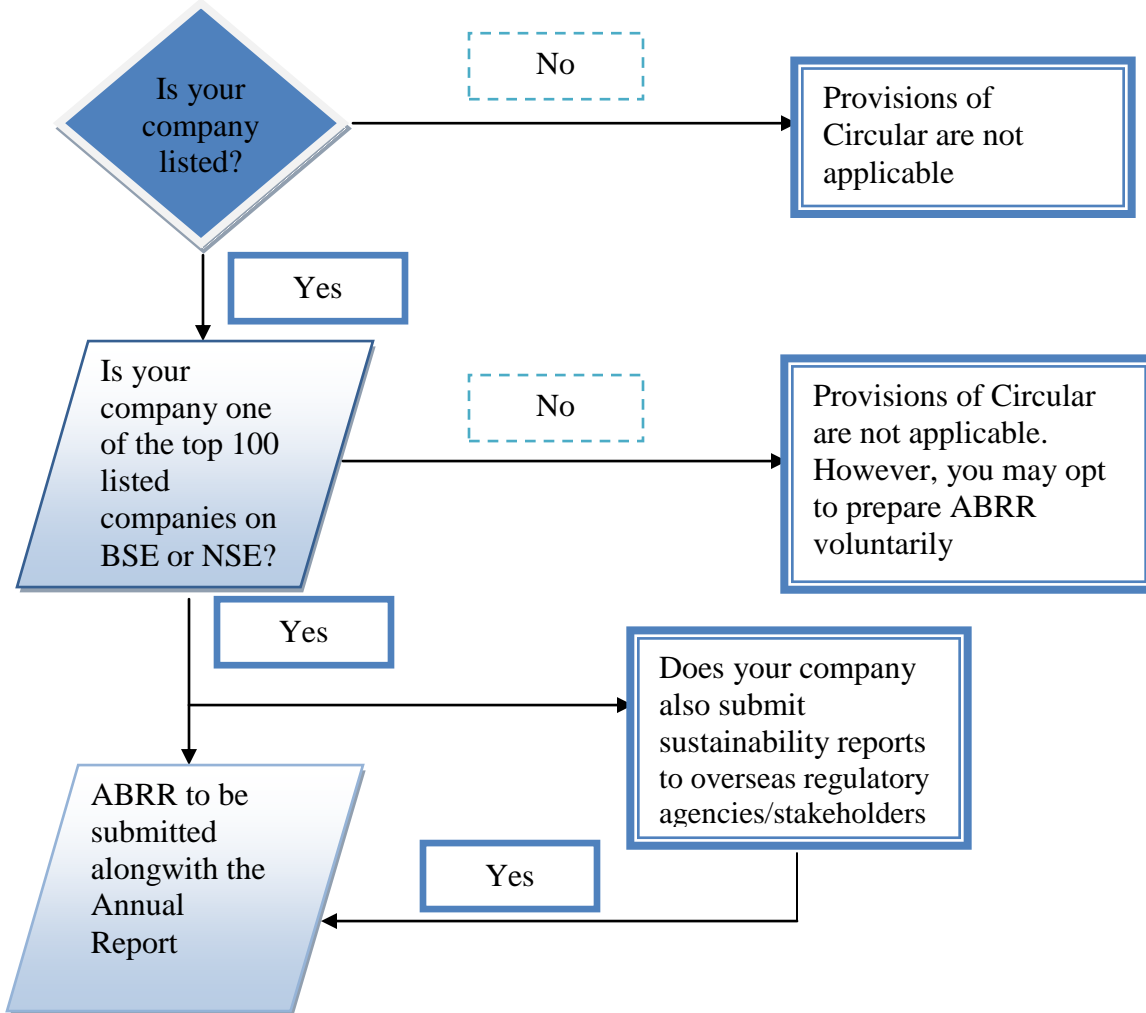
¹ http://www.sebi.gov.in/cms/sebi_data/attachdocs/1344915990072.pdf

² IICA has been established by the Indian Ministry of Corporate Affairs for capacity building and training in various subjects and matters relevant to corporate regulation and governance such as corporate and competition law, accounting and auditing issues, compliance management, corporate governance, business sustainability through environmental sensitivity and social responsibility, e-Governance and enforcement.



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Applicability





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Submission of BR by companies which have been submitting sustainability reports to overseas regulatory agencies/stakeholders

For such companies, a separate report need not be prepared. Companies need to only furnish the same report to their stakeholders along with the details of the framework under which their BR has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.

Implementation and monitoring of BR by companies

The suggested framework requires details of directors who are responsible for the BR to be provided in Section D. Although, it is not expressly provided, companies may form a separate committee to monitor the implementation of BR.

Consequential amendment of Equity Listing Agreement

Clause 55 has been inserted in this regard mandating BRs to be provided by listed companies as applicable.

Format for BR

Annexure 1 of the Circular prescribes a suggested framework for the BR and is divided into the following sections:

1. Section A: General Information about the Company
2. Section B: Financial Details of the Company
3. Section C: Other Details - this generally relates to subsidiaries of the company
4. Section D: BR Information
5. Section E: Principle-wise performance

Each principle has been described in detail and pertains to varied topics from ethics, well being of employees to promotion of human rights and supporting inclusive growth and equitable development. These principles have been provided briefly in Annexure 1 to this note.



Note

Certification of BR

The Circular is ambiguous in this regard. However, the Guidelines provide that the BR should be signed by the owner/Managing Director of the CEO of the company.

Special mention of some provisions of the suggested framework

1. Part 2a of Section D

This part requires companies to explain their inability in formulating any principle. Clearly every principle, being 9 in total, will have to be implemented by all applicable companies.

2. Governance related to BR (Part 3 of Section D)

This part relates to assessment of BR performance of the company and the frequency. Surely, companies cannot just formulate a BR and not act upon it. Also, this part holds Board of Directors, Committee of the Board or CEO responsible for such assessment.

3. Principle wise performance (Section E)

This section requires companies to answer specific question relating to every principle.

Review of BR

The Circular is not clear regarding this. Although, the BR requires companies to specifically mention the reasons for non-compliance, yet it is not clear how defaulting companies will be dealt with.

Prelude to Corporate Social Responsibility (“CSR”)

Although, the intent behind CSR and BR is the same yet the two should not be confused. The principles require companies to focus on the growth of underdeveloped areas whereas CSR concentrates on the areas in which the company operates. Further, the Circular does not earmark any amount for spending on the principles specified.



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Our analysis

As already provided, BR needs to be annexed to the Annual Report of listed companies. A joint reading of Section 216 and 217 of the Companies Act, 1956 makes it clear that profit and loss account, auditors' report and report of the board of a company has to be attached to every balance sheet of the company. Since, the Circular is amply clear that BR has to be attached to annual report, it is opined that BRs will also have to be attached to the balance sheet of the company.

The requirements of the Circular are an ambitious step of SEBI towards making companies responsible towards stakeholders and to actively engage stakeholders in its activities. However, the success of such an initiative needs to be seen.

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Note

Annexure 1

Principle 1

- Companies to conduct business ethically, develop governance structures and ensure to communicate transparently all information that impact relevant stakeholders.

Principle 2

- Consumer awareness regarding their rights to be ensured by education, product labelling.
- Companies should ensure that the manufacturing processes and technologies used are resource efficient and sustainable.

Principle 3

- Companies to take account of the work balance of employees, especially women.
- Companies should provide a workplace environment that is safe, hygienic humane, and which upholds the dignity of the employees

Principle 4

- Companies should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.
- Businesses should give special attention to stakeholders in areas that are underdeveloped.

Principle 5

- Companies should not be complicit with human rights abuses by a third party.
- Companies should, within their sphere of influence, promote the awareness and realization of human rights across their value chain

Principle 6

- Companies should utilize natural and manmade resources in an optimal and responsible manner.
- Companies should take measures to check and prevent pollution.

Principle 7

- Companies while pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines

Principle 8

- Companies should innovate and invest in products, technologies and processes that promote the wellbeing of society.
- Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.

Principle 9

- Companies should ensure that they do not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products.
- Companies should promote and advertise their products in ways that do not mislead or confuse the consumers or violate any of the principles in these Guidelines.