

Regulation of ESG Data

The Securities and Exchange Board of India (**SEBI**) amended the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999 (**Credit Rating Regulations**), vide the Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2023 (notified in the official gazette on July 03, 2023 (**ERP Amendment**)).

The ERP Amendment is applicable from July 03, 2023 – however, an additional six months (i.e. till January 03, 2024) was provided to existing ESG rating providers (**ERPs**) to obtain registration with SEBI.

Why is this relevant to you?

- ▮ If any of your establishments in India are dealing with ESG data in relation to an Indian issuer or securities of an Indian issuer, the regulations could apply to you.
- ▮ If any of your establishments in India are dealing with ESG data of overseas entities or securities issued by an overseas issuer, the regulations could apply to you.
- ▮ If you are dealing with ESG data outside India, in relation to an Indian issuer or securities of an Indian issuer, the regulations could apply to you.
- ▮ If your current ESG operations and the output generated by you can be termed as ‘ESG Ratings’, then the regulations will apply to you.

Set out below is a matrix of entities to whom the Credit Rating Regulations shall apply:

The rule appears to be primarily driven from the perspective of ‘ESG Rating Users’, i.e.: if the ESG Rating User is located in India (irrespective of the nature of the security or the issuer being rated), it will be governed by

the Credit Rating Regulations, with the only exception being if the ERP is located outside India and is rating non-Indian securities/ issuer.

- ▮ It would be prudent to look into your ESG practices and requirements in the context of the Credit Rating Regulations.

Sr. No.	Location of ESG Rating Provider	Asset class in securities market	Location of ESG Rating User	Applicability of the Credit Rating Regulations
1.	India	Indian	India	Yes
2.	India	Indian	Rest of the world (ex-India)	No
3.	India	Global	India	Yes
4.	Rest of the world (ex-India)	Indian	India	Yes
5.	Rest of the world (ex-India)	Indian	Rest of the world (ex-India)	No
6.	Rest of the world (ex-India)	Global	India	No

Broad overview of the regulations

- ⌞ ESG Ratings have been defined as: *“rating products that are marketed as opinions about an issuer or a security, regarding its ESG profile or characteristics or exposure to ESG risk, governance risk, social risk, climatic or environmental risks, or impact on society, climate and the environment, that are issued using a defined ranking system of rating categories, whether or not these are explicitly labelled as “ESG ratings”.*
- ⌞ Registered ERPs must comply with the eligibility criteria, conditions of certificate, code of conduct and other requirements, as laid down in the Credit Rating Regulations and Master Circular for ERPs, dated July 12, 2023, on an ongoing basis.
- ⌞ There are two categories of ESG Rating Providers:
 - Category I having more stringent eligibility and compliance standards while enjoying no restrictions in relation to rating of green debt securities.
 - Category II having relatively relaxed eligibility and compliance standards while being restricted from rating green debt securities.
- ⌞ Change of control of an ERP will require SEBI approval.
- ⌞ Guidance on conflict of interest policies and requirements in relation to code of conduct has been prescribed.
- ⌞ Minimum networth requirements and requirements in relation to office infrastructure, manpower, etc., have also been stipulated.
- ⌞ Strict confidentiality and information-handling requirements have been stipulated, along with mandatory ongoing disclosures to be made by the ERP in relation to its ratings and operations.

Regulators in other jurisdictions (such as the EU, UK, Japan and South Korea) have taken various measures to increase scrutiny of ERPs. International bodies such as the International Organization of Securities Commissions have also recommended regulatory actions to promote good practices to counter the risk of greenwashing in ESG ratings.

What should your next steps be?

- ⌞ *Assessment of current output*
 1. **Assessment of your ESG data processing/output** – The definition of ESG Rating has legal and technical nuances. Does your current output fall under the definition of ‘ESG Rating’?
 2. **Assessment of applicability** – If the answer to question 1 is ‘yes’, then does the regulation apply to you as per the matrix above?
 3. **Assessment of compliance** – If your answer to questions 1 and 2 are ‘yes’, then do you have an ERP registration with SEBI or expect to get one before January 03, 2024?
- ⌞ *Business continuity*

If you are reliant on data service agencies to provide you ESG data or ratings, it would be worthwhile to confirm with them if they have obtained SEBI registration.

References are available below:

- ⌞ Amended Credit Rating Regulations - [SEBI | Securities and Exchange Board of India \(Credit Rating Agencies\) Regulations, 1999 \[Last amended on July 4, 2023\]](#)
- ⌞ Amendment to the CRA regulations - [SEBI | Securities and Exchange Board of India \(Credit Rating Agencies\) \(Amendment\) Regulations, 2023](#)
- ⌞ Master Circular for ESG Rating Providers - [SEBI | Master Circular for ESG Rating Providers \(ERPs\)](#)
- ⌞ FAQs on ESG Rating Providers - [sebi.gov.in/sebi_data/faqfiles/dec-2023/1702391838801.pdf](#)
- ⌞ Consultation paper dated January 24, 2022 on ESG Rating Providers for Securities Market - [SEBI | Consultation Paper on Environmental, Social and Governance \(ESG\) Rating Providers for Securities Markets](#)
- ⌞ Consultation paper dated February 22, 2023 on Regulatory Framework for ESG Rating Providers in Securities Market - [SEBI | Consultation Paper on Regulatory Framework for ESG Rating Providers \(ERPs\) in Securities Market](#)
- ⌞ Consultation paper dated February 20, 2023 on ESG Disclosures, Ratings and Investing - [SEBI | Consultation Paper on ESG Disclosures, Ratings and Investing](#)

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