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## CSR under Companies Act, 2013: An Analysis

### Meaning of CSR



Corporate social responsibility means giving back to society what it gets from society. Corporate social responsibility is about capacity building for sustainable livelihoods. CSR means the obligation of companies to stress on their social, ethical and environmental performance as on their financial performance. The concept is broad enough to include things ranging from excessive managerial pay, employee retention during downturns and disposal of effluents to participation in community projects and funding of social causes. CSR refers to companies taking account of the social and environment, and not just financial consequences of their actions.

### Companies within the ambit of CSR Obligations

According to Section 135(1) of the Companies Act, 2013, CSR requirements are applicable to every company (qualifying company) which is having: (1) net worth of 500 crore or more, or (2) turnover of 1,000 crore or more, or (3) a net profit of 5 crore or more during any financial year. The words used in section 135(1) of the Companies Act are 'during any financial year' and not 'at any time during any financial year'. This implies that the applicability of CSR obligations will have to be determined independently for every financial year.

**Net worth:** According to Section 2(57) of the Companies Act, 2013, the term net worth means the aggregate value of the paid up share capital and all reserves created out of the profits and securities premium account after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off. Further, the net worth will not include there serves created out of revaluation of assets, reserves created out of the write-back of depreciation and the reserves created out of amalgamation.

**Turnover:** According to section 2(91) of the Companies Act, 2013, the term turnover means the aggregate value of the realization of amount made: (i) from the sale, supply or distribution of goods, or (ii) on account of services rendered or (iii) both by the company during a financial year.

**Net profit:** According to Rule 2(f) of Companies (CSR Policy) Rules, 2014, the term net profit means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely:-(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise and (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act. However, net profit in respect of financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956 shall not be required to be re-calculated in accordance with the provisions of the Act. However, in case of foreign company covered under these rules, net profit means

the net profit of such company as per profit and loss account prepared in terms of clause (a) of section 381(1) (a) read with section 198 of the Act.

### **Mandatory CSR Obligations**

The Companies Act, 2013 mandatorily requires every qualifying company:

- To constitute a CSR Committee of the Board
- To formulate a CSR Policy based on CSR Committee's recommendations
- To undertake activities included in CSR Policy
- To spend at least 2% of average net profits on CSR.

### **Constitution of CSR Committee**

Section 135(1) of the Companies Act, 2013 requires every qualifying company to constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. According to Rule 2(d) CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.

### **Responsibility of CSR Committee**

Section 135(3) of the Companies Act, 2013 states that the CSR Committee shall:-

- formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- Recommend the amount of expenditure to be incurred on the activities referred to in clause (a) and (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

### **Disclosure in Board's report**

The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee [Section 135(2)].



### **CSR Reporting in Board's Report**

Rule 8(1) requires that the Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure to the CSR Policy Rules, 2014. Further, in case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR [Rule 8(2)].

### **Judicial Pronouncements pertaining to CSR**

Indian Courts have already stressed the social character of companies on many occasions. In Panchrnahals Steel Ltd v. Universal Steel Traders

[1976] 46 Comp. Cas. 706, 718, the Gujarat High Court pointed out that a company has a three-fold reality-economic, human and public. Again in National Textile Workers' Union P.R. Rarnakrishnan [1983], the Supreme Court emphasized that a company is a social institution with duties and responsibilities towards the community in which it functions. It is assumed that social welfare of the people is the sole responsibility of the State. The State meets this expectation in two ways: by direct action through various schemes launched by it, and by encouraging others, including the corporates, to take the lead in some areas and share some of the responsibilities of social welfare.

### **Activities in Schedule VII**

The following are the activities that may be included by Companies in their Corporate Social Responsibility Policy as amended by Notification which will come into effect from 01.04.2014-

- Eradicating hunger, poverty, malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old age homes, day care centers and such other facilities for senior citizens and

measures for reducing inequalities faced by socially and economically backward groups;

- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;
- Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;
- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- Contribution to Prime Minister's Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Schedule Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technological incubators located within academic institutions which are approved by the Central Government;
- Rural development projects.

## Recent amendment in Schedule VII of the Companies Act, 2013



MCA vide **Notification dated: October 24, 2014** has made amendments in Schedule VII of the Companies Act, 2013 where few more activities have been included in the list of activities that can be undertaken by the Companies in their Corporate Social Responsibility Policies. Accordingly

item contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation has been added in Item (i) and contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga has been added in item (iv) of Schedule VII of the Companies, Act 2013.

Making amendments to the Companies Act, the Corporate Affairs Ministry has said that contributions to 'Swachh Bharat Kosh' and 'Clean Ganga Fund' would come under CSR framework.

'Swachh Bharat Kosh' has been set up to attract funds, from various entities including corporates, for activities related to Swachh Bharat initiative. The 'Clean Ganga Fund' is aimed at pooling money for taking up works to clean the Ganga river.

These two initiatives are the latest ones to be brought under the Corporate Social Responsibility (CSR) ambit where already contributions made to the Prime Minister's National Relief Fund have been included.

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