

Corporate Social Responsibility

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**THE INSTITUTE OF
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IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

WHY CORPORATE SOCIAL RESPONSIBILITY ?

- Business uses scarce resources of society
- Business often adversely affects environment
- Islands of plenty cannot exist amidst oceans of poverty
- Government alone cannot tackle problems of inclusive growth
- Business should supplement Government's efforts in addressing social challenges we face today.
- Business cannot succeed in a society which fails.

COMPANIES ACT, 2013

Duties of Directors

166(2) A director of a company shall act in good faith in order 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.

Penalty

Director of the company---fine which shall not be less than one lakh rupees but which may extend to rupees five lakh rupees.

CSR IN COMPANIES ACT, 2013

Section 135

Applicability

- Every company having
 - net worth of Rs 500 crore or more, or
 - turnover of Rs 1000 crore or more
 - or a net profit of Rs 5 crore or more ;during any financial year in the preceding 3 financial years

Companies (Corporate Social Responsibility Policy) Rules, 2014

Enhanced Applicability:

Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India which fulfills the criteria u/s 135 of the Act

The net worth, turnover or net profit of a foreign company shall be computed in accordance with B/S and P&L A/c of such company prepared in accordance with the provisions of the Act.

CSR SPEND IN FINANCIAL YEAR

- At least two per cent. of the average net profits of the company made during the three immediately preceding financial years.
- The section postulates that “net profit” shall be calculated in accordance with the provisions of section 198.
- Company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities
- Where the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount.

Companies (Corporate Social Responsibility Policy) Rules, 2014

CSR EXPENDITURE

The CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.

Activities undertaken in normal course of business of company shall not be included in CSR spend (eg. The business of co. is to run educational institution)

CSR Committee- Constitution

- CSR Committee shall consist of 3 or more directors, with at least 1 ID.
- Companies (CSR Policy) Rules 2014

S.No.	Type of Co.	CSR Committee
1	A pvt. co. having only 2 directors on its Board	with 2 such directors
2	Unlisted Co./ Pvt Co. Which is not required to appoint ID	Without such ID
3	Foreign company	one person (i.e. person resident in India authorised to accept on behalf of the company service of process any notices or other documents served on the company) and another person shall be nominated by the foreign company

The Board's report is required to disclose the composition of the CSR Committee

CSR Policy

- The CSR committee shall formulate and recommend to the Board, a CSR Policy.
- The policy shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- The CSR Committee shall recommend the amount of expenditure to be incurred on the activities referred in CSR Policy
- The CSR Policy of the company shall be monitored by CSRcommittee from time to time.

CSR IN COMPANIES ACT, 2013

CSR Policy

The Board of every company shall,—

- (a) after taking into account the recommendations made by the CSR Committee,
 - (i) approve the CSR Policy for the company
 - (ii) disclose contents of such Policy in its report
 - (iii) place it on the company's website, if any, in such manner as may be prescribed;

- (b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company

CSR IN COMPANIES ACT, 2013

SCHEDULE VII

Activities which may be included by companies in their Corporate Social Responsibility Policies:-

- (i) ID eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) 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;

CSR IN COMPANIES ACT, 2013

- V. 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;
- V. measures for the benefit of armed forces veterans, war widows and their dependents;
- VI. training to promote rural sports, nationally recognised sports, para olympic sports and Olympic sports;
- V. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Caste, the Scheduled Tribes, other backward classes, minorities and women;
- VI. contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government
- VII. rural development projects.

[MCA Clarification vide General Circular 21/2014 Dt. 18th June,2014](#)

Companies (Corporate Social Responsibility Policy) Rules, 2014

Every company which ceases to be a company covered under sub_section (1) of section 135 of the Act (i.e. net worth of Rs 500 crore or more, or turnover of Rs 1000 crore or more or a net profit of Rs 5 crore or more) for three consecutive financial years shall not be required to –

- (a) constitute a CSR Committee; and
- (b) comply with other provisions

Companies (Corporate Social Responsibility Policy) Rules, 2014

Implementation:

- CSR activities may be undertaken through
 - a registered trust or
 - a registered society or
 - A company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise.

MCA Clarification vide General Circular 21/2014 Dt. 18th June, 2014

‘Registered Trust’

1. Registered with Registrar of Trust in the State,
2. Where no Registrar of Trust in State, Registered with IT Authority

Companies (Corporate Social Responsibility Policy) Rules, 2014

Implementation:

- Trust/Society
 - Such trust, society or co. (other than unrelated to the company) shall have an established track record of 3 years in undertaking similar programs or projects;
 - the co. has to specify the project or programs to be undertaken through these entities, and;
 - also the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism
- Collaboration with other company/(ies) for undertaking projects or programs or CSR activities is permitted.
- The CSR projects or programs or activities that benefit only the employees of the co. and their families shall not be considered for CSR

Companies (Corporate Social Responsibility Policy) Rules, 2014

Implementation:

- Building CSR capacities

Companies may build capacities of

- their own personnel;
- their Implementing agencies

through Institutions with established track records of at least 3 financial years but such expenditure shall not exceed 5% of total CSR expenditure of the co. in one FY.

Companies (Corporate Social Responsibility Policy) Rules, 2014

Monitoring Process

- i. The CSR Committee shall institute transparent monitoring mechanism for implementation of projects,
- ii. The CSR Policy shall include monitoring mechanism.
- iii. The CSR policy shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company

Companies (Corporate Social Responsibility Policy) Rules, 2014

CSR Reporting:

Board's Report of a company pertaining to a FY commencing on or after the 1st April, 2014 shall include an annual report on CSR.

The BoDs of the co. shall disclose contents of CSR policy in its report and the same shall be displayed on the company's website, if any.

Issue 1

- From which FY CSR Expenditure & Reporting Begins?

Response

- Companies have to spend the amount on CSR activities as required by section 135 during the F.Y. 2014-15 and Reporting of the same would be in 2015 Board's Report or otherwise state the justification for the same in Board Report.
- Average Net Profit of 3 preceding F.Y. will include F.Y 13-14, 12-13,11-12.

Issue 2

- The concept of CSR is based on Comply or Explain. What if company does not comply nor explain?

Response

Disclosure has to be made in board's report u/s 134

- Penalty u/s 134(8)

Co. Fine which shall be not less than Rs. 50000 but not more than Rs. 2500000.

Every officer – Imprisonment extending upto 3 years or fine not less than Rs. 50000 but not more than Rs. 500000.

Issue 3

- Will constitution of CSR Committee be applicable to holding & subsidiary companies?

Response

- Rule 3(1) of Companies (CSR Policy) Rules, 2014:
 - Every company;
 - its holding or subsidiary

If fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules.

- **So, the criteria needs to be fulfilled by individual company.**

Issue 4

- **Should a section 8 company also do CSR?**

Response

- Section 8 companies are intended to apply profits in promoting the charitable and other objects i.e. promotion of commerce, art, science, sports, education etc. , these should not be required to follow CSR provisions.
- Rather, under Rule 4 of Companies (CSR Policy) Rules, 2014 companies may route their CSR activities through its section 8 companies.

Issue 5

- Where CSR activities lead to profits then what about such surplus?

Response

- The surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. The same shall be specified in CSR Policy. Ideally it should be rolled over to CSR Corpus.

Issue 6

- If a company having turnover of more than Rs. 1000 crores or more but has incurred loss during preceding three the F.Y then whether such company is required to comply with the provisions of the section 135 Companies Act, 2013?

Response

- As per the literal interpretation the answer is yes. However, such company can provide the justification for not spending the amount on CSR activity in its Board Report

Issue 7

- There are certain corporate groups who run hospitals and educational institutions, will this be considered as CSR?
- If the hospitals and educational institutes are part of the business activity, they would not be considered as CSR Activity. However if some charity is done by these hospitals or educational institutes, without any statutory obligation to do so, then it can be considered as CSR Activity.

Thank You

