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Corporate Social Responsibility

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Overview of CSR Law in India



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Initiative of Credibility Alliance, CPA & FICCI-Aditya Birla CSR Centre for Excellence

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Overview of CSR Law in India

Introduction

- 1.1.1** Corporate Social Responsibility (CSR) in India is a statutory requirement under the Companies Act, 2013. Specifically Section 135 and Schedule VII of the Act provide for the CSR compliances along with the Companies (Corporate Social Responsibility Policy) Rules, 2014. India is the leading country in the world to pass such a legislation. In this chapter a brief summary of the CSR provision and the analysis thereof has been provided.

Effective Date

- 1.2.1** CSR law became effective from 1st April, 2014. In other words, it will apply from the financial year 2014-15. The Companies Act, 2013 received the assent of the President of India on 29th August 2013. The Ministry of Corporate Affairs (MCA) has vide its notification dated 27 February 2014, and in exercise of powers conferred by section 1(3) of the Companies Act, 2013 ('the Act'), notified 1 April 2014 as the date on which the provisions of section 135 and Schedule VII of the Act shall come into force. The MCA has also notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('the Rules') to be effective from 1 April 2014.

Companies to which it Applies

- 1.3.1** The CSR laws applies to every Indian company including its holding company or subsidiary company. The CSR provision also apply to foreign company having its branch office or project office in India. The CSR law will apply to aforesaid companies only if the criteria specified in sub section(1) of section 135 applies.

Financial Criteria of Applicability of CSR

- 1.4.1** Under sub section(1) of section 135 the CSR Laws applies to every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year.
- 1.4.2** In case of foreign companies the net profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.
- 1.4.3** In case of foreign companies the net worth of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

Amount to be Spent on CSR

- 1.5.1** Every company referred falling under the provisions of CSR, shall ensure that it spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.
- 1.5.2** The two percent net profit shall be determined as per the financial statements of the company computed under the provisions of the companies act. The net profit for the purposes of determining CSR contribution shall not include :
- ◆ Dividend received from other companies which are also covered under CSR provisions.
 - ◆ Income received from overseas/foreign branches or subsidiaries.
- 1.5.3** In case of foreign companies the net profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

Surplus Generated from CSR Activities

- 1.6.1** Under Rule 6(2) the CSR Policy of the company 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. In other words surplus generated from CSR activities should be ploughed back to CSR funds over and above the 2% contribution. In this context it is not clear how the taxation of such surplus will be treated. Any income including the surplus from CSR activities will be taxable if the CSR activities

are implemented directly by the company. However, such surplus shall be exempted from tax, if the CSR activities are implemented through registered NPOs.

CSR Committee

1.7.1 All companies to which the CSR laws apply shall under Rule 5 constitute CSR Committee of 3 members including one independent member. However, the requirement of 3 member with one independent will not be applicable in following circumstances :

- (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an Independent Director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such Director;
- (ii) a private company having only two Directors on its Board shall constitute its CSR Committee with two such Directors;
- (iii) with respect to a foreign company covered under these Rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.

1.7.2 It may be noted that clause (d) of sub-section (1) of section 380 of the Act a foreign company is required to provide the name and address of one or more person resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

Role of CSR Committee

1.8.1 The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company. Further the role of CSR committee shall include :

- ◆ Formulate the CSR policy and recommend to the board.
- ◆ Planning, Budgeting and Recommending expenditure on CSR to the board.
- ◆ Prepare strategic plans & implementation schedules for CSR expenditures.
- ◆ Monitor the implementation of the CSR projects or programs or activities undertaken by the company.
- ◆ Ensure that the surplus (if any) generated from CSR activities are ploughed back to the CSR funds over and above the 2% contribution.

Role of the Board of the Company

- 1.9.1** The Board of the company will be legally accountable for the CSR activities and shall have an oversight function over the CSR Committee. Further the role of the Board shall include :
- ◆ To constitute the CSR committee.
 - ◆ To approve the CSR policy.
 - ◆ To keep oversight control of the CSR activities.
 - ◆ To ensure legal compliance of at least 2% spending.
 - ◆ Report CSR activities.
 - ◆ Disclose reason for non compliance or under spending, if any under section 134(3)(o) specifying the reasons for not spending.
 - ◆ Ensure that CSR activities and compliances are uploaded on the official website of the company.

CSR Expenditure & Modes of Implementation

- 1.10.1** CSR expenditure shall include all expenditure including contribution to corpus on projects or programs relating to CSR activities, approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of schedule VII of the act.
- 1.10.2** It may be noted that CSR expenditure are subject to the following conditions :
- ◆ The CSR activities have to be confined to the activities described in the schedule VII of the Act.
 - ◆ The CSR expenditure can be made directly by the company.
 - ◆ The CSR expenditure can be made through registered organisations having at least 3 years experience in similar programmes.
 - ◆ The CSR expenditure can also be made through registered organisation promoted by the company. In such cases the condition of having at least 3 years experience in similar programmes, will not apply.
 - ◆ The company cannot make any contribution to any political party or political purpose as defined under section 182.
 - ◆ The company should give priority to the local area and the areas around it where it operates.

- ◆ The company should spent at least 2% of the average net profit made during the three immediately preceding financial years.
- ◆ The expenditure on employees shall not be permissible, unless it is upto 5% on capacity building pertaining to CSR. Further upto 5% on capacity building pertaining to CSR shall also be permissible for the implementing NPOs.
- ◆ Activities undertaken in pursuance of the normal course of business of the company is not CSR. For instance a company engaged in plantation cannot claim that the plantation is made as a part of its activity is CSR.
- ◆ Only CSR activities within India will be taken into consideration. Any activity outside India will not be considered even if it complies with all other conditions.
- ◆ If the company is unable to spend CSR funds as per provisions then it will have to report under section 134(3)(o) specifying the reasons for not spending.

Permissible CSR Activities as per Schedule VII

- 1.11.1** The various activities permissible under CSR as per schedule VII are as under :
- (i) eradicating hunger, poverty and malnutrition, promoting health care including 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;
 - (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;
 - (vi) measures for the benefit of armed forces veterans, war widows and their dependents;

- (vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- (viii) 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 Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (x) rural development projects.

Content of CSR Report

1.12.1 The Board of the company shall prepare a CSR report under section 134(3)(o), the Companies (CSR Policy) Rules, 2014 provide the format (**Annexure 1**) for reporting CSR activities annually. In the CSR report the CSR committee also is required to provide a responsibility statement regarding proper implementation of CSR activities.

1.12.2 The major areas/points to be reported are as under :

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
 - (a) Total amount to be spent for the financial year;
 - (b) Amount unspent , if any;
 - (c) Manner in which the amount spent during the financial year is required to be mentioned in the prescribed format (**see Annexure 1**)
6. In case the company has failed to spend the two per cent, of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Collaboration with other Corporates

- 2.13.1** Under Rule 4(3) a company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with the Rules. In other words, a group of companies can jointly execute CSR programmes, such companies can be holding and subsidiary companies also. The modalities of such joint execution has not been explained in the Act or the Rules.

Penalty for Non Compliance of CSR Provisions

- 2.14.1** There is no specific penal provision under which a company can be penalised for violation of CSR Rules. However, there are two provisions under the act which provide for penalties and can be invoked against CSR violation.
- 2.14.2** It may be noted that, under Section 134(3)(o) the board of Directors are required to report on the CSR policy and its implementation during the year. Further, under Sub Section (8) of Section 134 if a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
- 2.14.3** Further, Section 450 of the Companies Act is another general section where punishment can be provided for any offence/violation where penal provision has not been specifically provided. Under this section, if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the Rules made thereunder, or any condition, limitation or restrictions subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
- 2.14.4** To sum up, under the Act for violation of CSR provisions penalties and punishments can be to the extent of (i) imprisonment for a term which may

extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both (ii) fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

When Company ceases to come under CSR criteria

1.15.1 When a company ceases to come under CSR criteria, even then it has to continue CSR activities for 3 years. In other words if the CSR criteria does not apply for three consecutive financial years, then the company can stop complying with the CSR regulations.

1.15.2 Under Rule 3(2) every company which ceases to be a company covered under sub – section (1) of section 135 of the Act for three consecutive financial years shall not be required to –

- (a) Constitute a CSR Coommittee; and
- (b) Comply with the provisions contained in sub – section (2) to (5) of the said section,

till such time it meets the criteria specified in sub – section (1) of section 135.

ANNEXURE - 01

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD’S REPORT

1. A brief outline of the company’s CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
 - (a) Total amount to be spent for the financial year;
 - (b) Amount unspent , if any;
 - (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No	CSR project or activity identified.	Sector in which the project is covered	Projects or programs (1) Local area or other (2) Specify the State and district where projects or Programs was undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Subheads : (1) Direct expenditure on projects or programs. (2) Overheads :	Cumulative expenditure upto to the reporting period.	Amount spent: Direct or through implementing agency
1							
2							

3							
	TOTAL						

* Give details of implementing agency:

6. In case the company has failed to spend the two per cent, of the average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/-	Sd/-	Sd/-
(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee)	(Person specified under clause (d) of sub-section (1) of section 380 of the Act)
		(wherever applicable)

About Publishers

Credibility Alliance (CA) is a consortium of Voluntary Organizations committed towards enhancing Accountability and Transparency in the Voluntary Sector through good Governance. Registered in May 2004 as an independent, not-for-profit Organization, CA emerged as an initiative from within the Sector after an extensive consultative process over a period of two years involving thousands of VOs all over India. As an Organization, CA aspires to build trust among all stakeholders through improving Governance within the Voluntary Sector. As an initiative whose hallmark has been the participatory approach, CA has developed suitable Norms through wide-ranging consultation with & participation of diverse Organizations within the Sector by developing a large membership base.

With the mission 'to build credibility of the Voluntary Sector through creation and promotion of Norms of Good Governance and Public Disclosure', CA's core programme areas comprise of: Accreditation, Capacity Building, Networking and Information Dissemination.

Centre for Promoting Accountability (CPA) is an organisation "To promote accountability and sustainability amongst organisations in the non-profit & CSR sector". It is promoted by Financial Management Service Foundation and is a part of FMSF family.

CPA assists civil society organisations to achieve development effectiveness by promoting transparency and accountability. CPA achieves this through an integrated process of accompaniment, systems development in financial management and governance, training and capacity building, research and publication, reviews and evaluations.

CPA came into existence in the year 2007. CPA firmly believes on the values of accountability, transparency and good governance. CPA is also involved in research and publication of materials that promotes accountability and involved in information dissemination on financial management, governance and legal regulations.

FICCI-Aditya Birla CSR Centre for Excellence has evolved in consonance with Mahatma Gandhi's dream: ethics-based business practices leading to improvement in the quality of life for the common people. The centre envisions- To incubate, nurture and accelerate a paradigm of sustainable and inclusive CSR in India and across the globe, thereby raising the Human Development Index through poverty alleviation.

The Centre for Excellence is a joint endeavor of Federation of Indian Chambers of Commerce & Industry (FICCI), a rallying point for free enterprise in India since 1927 and the Aditya Birla Group - a prominent business group with a mission to deliver superior value to customers, shareholders, employees and society at large.



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