



SHAHEED BHAGAT SINGH COLLEGE ALUMNI ASSOCIATION

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Dear Members,

Season's Greetings!!

We're springing into action with some food for thought on Corporate Social Responsibility.



Plus, get acquainted with another alumnus.

We hope you enjoy this month's sampling. Do let us know what you think. We look forward to your inputs!

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KNOWLEDGE PAGE

Corporate Social Responsibility (CSR)

In Corporate Social Responsibility (CSR), a company engages in actions that further social (and environmental) good, beyond the obvious interests of the firm, its business relationships and that which is required by law. The Ministry of Corporate Affairs, Government of India has formally notified CSR provisions under the Section 135 of Companies Act 2013 and the related rules, on February 27, 2014 pending publication in the Official Gazette of India. Along with 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Businesses' released in 2011, this development is already being considered one of the most forward looking and futurist framework in recent times to help businesses become more responsible.

The provisions dealing with CSR are contained in section 135 of the Companies Act, 2013 (the 2013 Act) effective from 1st April 2014. To decide the applicability of Section 135, audited accounts of any financial year will be taken into consideration **with effect from 1 April 2014**. Since the CSR spend amount is based on the average net profit of the last three years, companies can plan its CSR expenditure well in advance.

Applicability

The Companies Act, 2013 mandates a disclosure regarding CSR, than the CSR spend per se. The 2013 Act follows a 'comply or explain' approach. As per the provisions

of section 135 a company with turnover of INR 1000 crore or more or a net-worth of INR 500 crore or more or net profit of INR 5 crore or more in any financial year shall constitute a CSR Committee and would be required to spend at least 2% of their average net profits of the past three years on CSR activities. Further, the 2013 Act provides that if for any reason a company is unable to spend 2% of their average net profit on CSR, they would be required to explain the reason for not doing the same.

Computation of net profit

With respect to computation of net profit the Rules provides that 'net profit' should be calculated:

- » in accordance with Section 198 of the 2013 Act (similar to the computation for determining the limit on remuneration of the directors under Section 197) for a company (other than foreign company)
- » in accordance with clause (a) of sub-section (1) of Section 381 read with Section 198 for foreign company

The net profit should excludes any profits from any overseas branch or branches (whether operated as a separate company or otherwise) of the company and any dividend received from other companies in India, which are covered and comply with the provisions of Section 135 of the 2013 Act. Further, it clarifies that there is no need to recalculate net profit for the year where it has been calculated in accordance with Companies Act 1956.

What are CSR activities?

The Schedule VII (the Schedule) of the 2013 Act states that certain new activities could be classified as CSR activities for instance, protection of national heritage, art and

culture, including restoration of buildings and sites for historical importance and works of art, setting up of public libraries, promotion and development of traditional arts and handicrafts, measures for the benefit of the veterans of the Armed Forces, war widows and their dependents, rural development projects, training to promote sports, funds to technology incubators etc.

The scope of certain existing activities has been enhanced; for instance, the scope of promoting education also includes special education. Further, the Schedule elaborates in respect of certain activities for example, environment sustainability which includes ecological balance, maintaining quality of air, water and soil, conservation of national resources etc.

Still, the ***Schedule VII is restrictive in nature*** in terms of choice of the company. The Government should have permitted the companies to have their choice of CSR activities. The contribution of any State setup funds, social business projects has been removed.

It has been also been clarified in the rules that political contribution / funding won't be considered as CSR expenditure. Further, activities aimed to help only the company's employees or families of the company's employees won't be considered as CSR activities.

Under Section 467 of the Companies Act 2013, the Government has invoked the power to amend Schedule VII significantly. A "clause x" in the earlier Schedule VII, which empowered the government to prescribe "any other

matters", has been removed. So, if there is a need to add further activities under Schedule VII, the Government needs to propose an amendment by invoking power under Section 467 of the said Act.

Shared value proposition

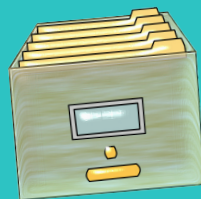
Further, it seems that the concept of shared value proposition has been ruled out, for instance, a company cannot choose a project which also supports their business object. If a water purifier company do CSR in the area of providing safe drinking water and run a campaign to create awareness regarding safe drinking water, this will have a shared value proposition. Such company also derived some value for its future business prospects. It would have been better, if this shared value concept would have been recognised in the rules.

The definition of CSR creates ambiguity

Companies (CSR Policy) Rules, 2014 were also notified along with Section 135. The definition of CSR, as prescribed in Rule 2(c) seems to be 'inclusive' definition, although at several other places in the Rules it clearly states that those CSR activities falling under Schedule VII will only qualify as CSR expenditure by a company. This will create some ambiguity.

If someone takes up a CSR project, other than those permitted in Schedule VII, but in line with the CSR policy approved by the CSR committee of Board of Directors, CSR spend on such project won't be considered as part of the 2% CSR expenditure under the Companies Act 2013, even if they are well within the inclusive definition of CSR

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per se. This restricts the choice of the company with many existing CSR schemes / programmes have to reconsider and realign their activities with the newly amended Schedule VII. As indicated by the Ministry at several forums, it was expected that the Government would permit companies to have their choice of CSR activities.

Constitution of CST Committee - Appointment of an independent director

There has been concern around appointment of an independent director by private companies to comply with the provisions of section 135 of the 2013 Act with respect to constitution of CST Committee.

The notification clarified that an unlisted public company or a private company covered under sub-section (1) of section 135 of the 2013 Act, which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the 2013 Act, shall have its CSR Committee without such director. Though, this is great relief to private companies, the legal question is, can rule making power under Section 469, can relax the provision of Section 135 of the Companies Act 2013?

It would have been better, if MCA would have invoked its power under Section 462 to exempt certain class of companies from compliance of certain provisions of the 2013 Act.

The notification further specified the responsibilities of the CSR Committee to include:

- » Formulation and recommendation to the Board, CSR policy; CSR policy to indicate

the activities to be undertaken by the company as specified in Schedule VII

- » Recommendation the amount of expenditure to be incurred on the activities referred to above
- » Instituting a transparent monitoring mechanism for implementation
- » Monitoring CSR policy from time to time
- » Where a company collaborates with other companies for undertaking projects or programs, report separately on such projects or programs

CSR Reporting / Pooling resources / If outsource CSR function, three year track record must

Thus, companies may also collaborate with other companies for undertaking CSR activities; however, reporting of such CSR activities in the Board Report has to be done by individual company. Further, a company may decide to undertake the CSR activities through a registered trust or a registered society or a company established under section 8 of the 2013 Act or a company established under section 25 of the Companies Act 1956. However, if a company decided to undertake the CSR activities through such trust, society or company such trust, society or company should have an established track record of three years demonstrating that they have undertaken similar projects in past also.

The notification provides for a specified format of reporting. It requires that the Board Report of a company covered under the CSR Rules pertaining to a financial year commencing on or after April 01, 2014 to

include an annual report on CSR containing certain particulars mentioned in the rules related to CSR policy, composition of CSR committee, net profits, CSR spend etc. Additionally, the companies would be required to display their CSR policy on the website of the company.

An annual report on CSR activities must be included in the Board Report of a company spending on CSR. Similarly, for foreign companies including a branch office or project office, the CSR spend must be reported as an annexure in the balance sheet.

Foreign Companies (FCs):

Rules cover FCs, not Cos. Act per se. The ambit of the Act does not specifically cover foreign companies, but Rules clearly includes foreign companies having its branch or project office in India. As per Section 135(1), CSR apply to every "company" who qualify as per mentioned thresholds criteria. As per Section 2(20) "company" means a company incorporated under this Act or under any previous company law. It seems that by this reading, we cannot infer that every "company" also includes foreign company.

However, as per CSR Rule 3 (1) 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 fulfils the criteria specified in sub-section (l) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules. Section 2 (42) defines "foreign company" means any company or body corporate incorporated outside India which has a place of business in India; and conducts any business activity

in India in any other manner.

By the combined reading of above provisions of the section and rules together, it can be said that CSR provisions are also applicable to Foreign Companies having branch office or project office in India. However, the legal question is, can rule making power under Section 469, relax (exemption for Pvt. Companies from independent director requirement in CSR committee) or enhance the scope (CSR provisions applicable to Foreign Companies) of the provision of Section 135?

Net worth of foreign companies having its branch or project office in India

The net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance the provision of clause (a) of sub-section (1) of section 381.

Since there is only branch or project office in India, net worth criteria would not be applicable to FCs. Further, for calculation of Turnover or Net Profit of foreign companies having its branch or project office in India, Turnover or Net Profit of FCs in India shall only be considered.

CSR spend must be reported as an annexure in the balance sheet. CSR Committee of a foreign company shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.

CSR activities have to be carried out in India only to be qualified as CSR spend under the

Companies Act 2013.

Approvals for Foreign companies (FCs)

Foreign companies having a branch office or project office in India are required to undertake CSR activities need to take approvals under the **Foreign Contribution Regulation Act 2010 (FCRA)**. Such approvals under FCRA are administered by Ministry of Home Affairs.

This CSR spend requirement will also trigger an **amendment in the Foreign Exchange Management (FEMA) Regulations**, as Indian branch of a foreign company can undertake only eight specific activities and CSR isn't being part of those one of the specific activities, requires Reserve Bank of India (RBI) approval. Also worth noting is that Foreign Direct Investment (FDI) isn't permitted in case of a trust or societies.

The Rules are silent over the tax treatment

Further the Rules are silent over the tax treatment. There is no clarification on the tax treatment of the CSR expenditure in the Rules. The request for clarification by the industry was based on the interpretation that if CSR is not "normal course of business", such expenses may not be tax deductible expense.

Time-value of the company's personnel for CSR activities

There is a provision in the CSR rule which says that companies may build on CSR capacities from their own personnel, subject to a maximum limit of 5% of the total CSR expenditure of the company in a financial year. It is not clear as to whether the time-

value of the company's personnel for CSR activities is allowed under this 5% limit.

The concept of CSR is recognized world over that integrating social, environmental and an ethical responsibility into the governance of businesses ensures their long term success, competitiveness and sustainability. This approach also re-affirms the view that businesses are an integral part of society, and have a critical and active role to play in the sustenance and improvement of healthy ecosystems, in fostering social inclusiveness and equity, and in upholding the essentials of ethical practices and good governance.

This also makes business sense as companies with effective CSR, have image of socially responsible companies, achieve sustainable growth in their operations in the long run and their products and services are preferred by the customers, as a key element in propagating overall framework for confidence in the social market.

CSR has taken on many guises and name over the years with some companies pursuing CSR more vigorously and more broadly than other do. With the initiative taken over by Ministry to mandate expenditure on CSR activities Indian companies would need to now evaluate the way forward.

(This article, by Mr. Harinderjit Singh, has been prepared based on information obtained or derived from sources believed to be reliable, but does not represent that this information is accurate or complete. This article has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice.)

IN THE SPOTLIGHT

Featured Alumni



Hon'ble Shri Justice
Mool Chand Garg

A member of the first Executive Committee of SBSC Alumni Association, Justice Mool Chand Garg, completed his B.Com Hons from Shaheed Bhagat Singh College in 1974. He enrolled as Advocate on September 29, 1978 and practised on Civil, Criminal, Constitutional & Labour sides in the Delhi High Court and Subordinate Courts.

He joined Delhi Higher Judicial Service as Additional District Judge on 1995 and was appointed as Additional Judge of the High Court of Madhya Pradesh on January 18, 2008.

Justice Mool Chand Garg was appointed as Additional Judge of the Bench of Delhi High Court on April 11, 2008. He was transferred to High Court of Madhya Pradesh on April 18, 2011.

WE NEED YOU!

Contribute to the organisation

An organisation cannot exist without its members, and we are extremely proud of our alma mater and alumni.

In order to accomplish our objectives we need active participation from our members. We welcome with open arms, contributions from members towards the

growth of the organisation in any form.

Donations

In order to ensure smooth functioning of the organisation, we need to obtain a stable financial position. As a Registered society our organisation has an Exempt income status under Section 12 A of the Income Tax Act. Further, we have applied for Section 80G of income tax Act for 50% exemption to the Donors.

Volunteers

We organise programmes and workshops for alumni as well as students on a regular basis. , and People are the backbone of any activity, and we're looking for members to participate in activities to give something back to the college.

Big Ideas

Have some thoughts on what should be our areas of focus? We're listening!

Newsletter

If you wish to contribute towards the newsletter, we'd love to hear from you. Send us your articles, opinions, notes on thought leadership, anecdotes, illustrations - anything that we could feature here, and we'll be glad to include it.

Simply email us with the relevant subject line Donations / Volunteering / Feedback / Newsletter.