ARTICLE ON

corporate social responsibility

UNDER THE COMPANIES ACT, 2013

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CORPORATE SOCIAL RESPONSIBILITY UNDER THE COMPANIES ACT, 2013

INTRODUCTION

Corporate Social Responsibility is a new mandate introduced by the Companies Act, 2013 and is aimed at ensuring that corporate houses return some benefit to the society from which they draw all their resources. It is aimed at maintaining equilibrium between the corporate sector and the society in general for the mutual development of both.

Provisions regarding Corporate Social Responsibility (CSR) are contained in Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014. This Section and the Rules have been notified vide MCA circular dated 27.02.2014 to become applicable from **01.04.2014.**

PROVISIONS OF COMPANIES ACT, 2013 READ WITH RELEVANT RULES ON CSR

MEANING OF CSR

"Corporate Social Responsibility (CSR)" **means and includes but is not limited** to

(i) Projects or programs relating to activities specified in Schedule VII to the Act; or

(ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule **VII** of the Act.

APPLICABILITY

- Every company including its holding or subsidiary company and a foreign company having branch or project office in India which has in any of the three preceding financial years:

Net worth of Rs. 500 crore or more

Or

Turnover of Rs. 1000 crore or more,

Or

Net Profit of Rs. 5 crore of more

- CSR provisions and rules shall come into force from 01.04.2014.
- Every company which ceases to be covered by the above criteria for 3 consecutive financial years shall not be required to comply with the CSR provisions till such time it again falls within the above threshold limits.

RESPONSIBILITY OF THE COMPANY & BOARD OF DIRECTORS

- To constitute a CSR Committee of the Board in the manner prescribed below and disclose its composition in the Board's Report.
- To approve the CSR Policy framed by the CSR Committee after considering recommendations of the Committee.
- To ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.
- To ensure that atleast 2% of average net profits of three immediately preceding financial years **is spent every financial year** in pursuance of the CSR Policy.

  "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 provisions of Section 135 of the Act

- Average net profit shall be calculated in accordance with provision of Section 198 of the Companies Act, 2013.
- To disclose CSR policy and initiatives in Board's report and Company's website.
- To ensure that activities reflected in CSR policy are actually undertaken by company.
- To include in the Board's report, annual report on CSR in the manner prescribed in the rules.
- If the company does not spend 2% of net profits as required, then Board has to report the reasons for it in the Board's report.

COMPOSITION AND FUNCTIONS OF CSR COMMITTEE

- CSR Committee should consist of atleast 3 directors out of which atleast 1 director should be independent director.

  <u>Explanations:</u>

  (i) an unlisted public company or a private company covered under subsection (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 2 directors on its Board shall constitute its CSR Committee with 2 such directors;

  (iii) with respect to a foreign company covered under the rules, the CSR Committee shall comprise of at least 2 persons of which 1 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.

- Board's Report shall disclose composition of CSR Committee.

- Functions of CSR Committee:

  ❖ 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 of the Act.

  ❖ Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

  ❖ Monitor the Corporate Social Responsibility Policy of the company from time to time.

  ❖ Prepare a transparent monitoring mechanism for ensuring implementation of the projects / programmes / activities proposed to be undertaken by the company.

CSR POLICY AND ITS IMPLEMENTATION

- 'CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, **<u>excluding activities undertaken in pursuance of normal course of business of a company</u>**. The CSR Policy of the company shall, inter-alia, include the following, namely :-

  - a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule **VII** of the Act, specifying modalities of execution of such project or programs and

  - monitoring process of such projects or programs:

- 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.

- The CSR activities shall be undertaken by the company, as per its stated CSR Policy, as projects or programs or activities **(either new or ongoing),** excluding activities undertaken in pursuance of its normal course of business.

- The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust (including Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory) 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, provided that –

  (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
  (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

- 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 these rules.

- The CSR projects or programs or activities **undertaken in India** only shall amount to CSR Expenditure.

- Only activities which are **not exclusively for the benefit of employees** of the company and their family members shall be considered as CSR activity.

- Company shall give **preference to the local area** and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities.

- Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure shall not exceed 5% of total CSR expenditure of the company in one financial year.

- CSR expenditure shall include all expenditure including contribution to corpus, or 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.

- Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR CORPORATE SOCIAL RESPONSIBILITY POLICIES

(Schedule VII of Companies Act, 2013 as amended vide MCA notification dated 27.02.2014)

(i) Eradicating hunger and poverty and malnutrition, promoting healthcare including preventive healthcare and sanitation and making available safe drinking water;

(ii) Promoting education including special education and employment enhancing vocational 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 natural 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 benefits of armed forces veterans, war widows and their dependents

(vii) training to promote rural sports, nationally recognised 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; and

(ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government.

(x) rural development projects

CSR REPORTING

- Disclosures to be made in Board's Report
  - ❖ 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 as specified below.
  - ❖ Composition of the CSR Committee
  - ❖ CSR Policy and initiatives

❖ If the stated CSR expenditure is not made by the company, then the reason for same has to be disclosed

- 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.

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 (2% 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) Projects or programs wise	Amount spent on the projects or programs Sub heads: (1) Direct expenditure on projects or programs (2) Sub-heads	Cumulative expenditure upto 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/- Chief Executive Officer or Managing Director or Manager	Sd/- Chairman, CSR Committee	Sd/- (Person specified under clause (d) of sub-section (1) of section 380 of the Act) (wherever applicable)

CLARIFICATIONS ISSUED BY MINISTRY OF CORPORATE AFFAIRS (MCA) WITH REGARD TO PROVISIONS OF CORPORATE SOCIAL RESPONSIBILITY UNDER SECTION 135 OF THE COMPANIES ACT, 2013

The Ministry vide its general circular number 21/2014 dated 18.06.2014 has made the following clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013 read with Rules made thereunder:

- The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the **Annexure** given at the end of the chapter.

- CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as marathons/ awards/ charitable contribution/ advertisement/sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

- Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

- Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

- "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

- Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

- 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

- Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

ANNEXURE ILLUSTRATING COVERAGE OF A WIDE RANGE OF ACTIVITIES IN SCHEDULE VII (As per MCA general circular number 21/2014 dated 18.06.2014)

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	Promotion of Road Safety through CSR: (i)(a) Promotions of Education, "Educating the Masses and Promotion of Road Safety awareness in all facets of road usage, (b) Drivers' training, (c) Training to enforcement personnel, (d) Safety traffic engineering and awareness through print, audio and visual media" should be included. (ii) Social Business Projects:"giving medical and Legal aid, treatment to road accident victims" should be included.	(a) Schedule VII (ii) under "promoting education". (b) For drivers training etc. Schedule VII (ii) under "vocational skills". (c) It is establishment functions of Government (cannot be covered). (d) Schedule VII (ii) under "promoting education". (ii) Schedule VII (i) under 'promoting health care including preventive health care.'
2.	Provisions for aids and appliances to the differently-able persons - 'Request for inclusion	Schedule VII (i) under 'promoting health care including preventive health care.'
3.	The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural **farming community:** (a) Capacity building for farmers covering best sustainable farm management practices. (b) Training Agriculture Labour on skill development. (c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri – ecological sustainable farm practices. (Applied research) with a focus on water management. (d) To do Product Life Cycle analysis	Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills" and "rural development". (a) "Vocational skill" livelihood enhancement projects. (b) "Vocational skill" (c) 'Ecological balance', 'maintaining quality of soil, air and water'. (d) "Conservation of natural resource" and 'maintaining quality of soil, air and water'
4.	To make "Consumer Protection Services" eligible under CSR. (i)Providing effective consumer grievance redressal mechanism. (ii) Protecting consumer's health and safety, sustainable consumption, consumer service,	Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".

	support and complaint resolution. (iii) Consumer protection activities. (iv) Consumer Rights to be mandated. (v) all consumer protection programs and activities" on the same lines as Rural Development, Education etc.	
5.	a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility. b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR	Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as "promoting education".
6.	Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.	Schedule VII (ii) under "promoting education", if approved by Department of Science and Technology.
7.	Disaster Relief	Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example, (i) medical aid can be covered under 'promoting health care including preventive health care.' (ii) food supply can be covered under eradicating hunger, poverty and malnutrition. (iii) supply of clean water can be covered under 'sanitation and making available safe drinking water'.
8.	Trauma care around highways in case of road accidents.	Under 'health care'.
9.	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10.	Supplementing of Govt. schemes like mid-day meal by corporates through additional nutrition would qualify under Schedule VII.	Yes. Under Schedule VII, item no. (i) under 'poverty and malnutrition'.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.	No.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities faced by socially & economically backward groups", depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes.

16.	Renewable energy projects	Under 'Environmental sustainability, ecological balance and conservation of natural resources'
17.	(i) Are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c)(ii) of the Final Rules, they will count)?	(i) & (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	No.

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