Mandatory CSR Under Companies Act, 2013: What lies ahead?

CSR- What It Means?

- Process where companies integrate *social, environmental and economic* objectives with company's operations and growth

- Resources of the Company are not used solely for the purpose of increasing profits of the Company, but also used for activities that benefit society at large

- Ethical foundation for mandating CSR obligations lies in placing *social and environmental* responsibility at the doorstep of a company for its business activities

Applicable Statutes

- Provisions of Companies Act, 2013
- Companies (Corporate Social Responsibility Policy) Rules, 2014
- Companies (Accounts) Rules, 2014
- Enforced with effect from ***1st April, 2014***

CSR in India

- Companies that meet a certain threshold are required to **compulsorily** spend a portion of their profits on CSR activities under the Companies Act, 2013 ("**Act**")

- First country to mandate spend on CSR activities through a statutory provision

- **Section 135** of the Act deals with CSR

- Prescribed threshold:

  Every company (public or private) having:

  - net worth of **INR 500 Crores** or more, or

  - turnover of **INR 1000 Crores or more** or

  - a net profit of **INR 5 Crores** or more

Mandatory Spend on CSR

- Every company that satisfies prescribed threshold is required to spend **at least 2%** of its average net profits of **3** preceding financial years on specified CSR activities

- Rule 2(f) of CSR Rules, defines Net Profit as:
  "*net profit before tax as per books of accounts and shall not include*
  a) profits arising from branches outside India.
  b) any dividend received from other companies in India to which provisions of section 135 apply."

- Corpus to include:
  - 2% of the average net profits;
  - income arising from the corpus;
  - surplus arising out of CSR activities

CSR Committee

- Qualifying companies required to from a CSR Committee consisting of **3** Directors, at least **1** of whom has to be Independent Director

- Responsibilities of the CSR Committee:
  a) To formulate and recommend a CSR policy to the Board
  b) To recommend amount of expenditure to be incurred on CSR activities
  c) To monitor CSR policy of the company from time to time

Directors' Responsibilities

a) approval of CSR policy recommended by CSR Committee;
b) disclosure of contents of policy in the Directors' report and on company's website;
c) ensuring that prescribed CSR activities are undertaken by the company;
d) ensuring that a minimum of 2 % of net average profits are spent on CSR activities;
e) reporting CSR activities in the Directors' report

What to Spend on?

- Preference to be given to local areas and areas around where Company operates, for spending amount prescribed for CSR activities.

- **Schedule VII of the Act** lists activities to be undertaken as part of CSR-

  a) Eradication of extreme hunger and poverty;
  b) promotion of education;
  c) promoting gender equality and empowering women;
  d) reducing child mortality and improving maternal health;
  e) combating HIV, AIDS, malaria and other diseases;
  f) ensuring environmental sustainability;
  g) employment enhancing vocational skills social business projects;
  h) contribution to the Prime Minister's National Relief Fund or any other fund set up by the Government

How to Spend?

- Proposed CSR Rules prescribes manner in which activities are to be conducted:
  - to be conducted as projects, **only within India**;
  - <u>excludes</u> activities undertaken in pursuance of the normal course of business of a company;
  - may pool resources with other companies;
  - activities not to be exclusively for benefit of employees;
  - a trust, society or non-profit company can be set up to facilitate implementation of CSR activities;
  - implementation can also be done through NGOs <u>**not**</u> set up by Company, which have track record of at least 3 years in carrying on activities in such areas;
- Provisions on reporting likely to take effect from financial year 2014-2015

Consequences of non-compliance

- For failure to spend prescribed amount on CSR activities:

  Disclosure to be made in the Directors' report under Section 134(3)(o) of the Act, specifying reasons for not spending the amount

- For failure to provide details on CSR policy in the Directors' Report as required under Section 134(3)(o):
  - Company: Fine of not less than INR 50,000, and up to INR 25,00,00
  - Every officer in default: Imprisonment for a term which may extend to **3** years or fine of not less than INR 50,000, and up to INR 5,00,00, or both

Contact Details

Kunal Singhal

Managing Partner

Tel: +91 9910206120

kunal.singhal@caksc.in

Written communications should be addressed to:

Kunal Singhal & Co.

Chartered Accountants

503, Nilgiri Apartments,

9, Barakhamba road,

New Delhi – 110001,

Delhi, India