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Corporate Social Responsibility in India: An overview

Corporate Social Responsibility (“**CSR**”) is the commitment promised by businesses and organisations to integrate social, political, and environmental concerns in their business operations vide monetary support etc. It is imperative for businesses to note the changes which take place in the global environment and to look beyond the financial sphere of the market and participate to address and help the social and environmental concerns that are co-existing alongside themselves. The Companies Act, 2013 (“**CoA**”) had introduced the concept of CSR and made it a mandatory feature for businesses in India. Before the CoA amendment which gave legal stature to CSR, it was traditionally seen as a philanthropic activity wherein it was believed that every company has a moral responsibility to play an active role for addressing their social obligations, subject to the financial health of the Companies.

❖ **Definition:** The Companies (Corporate Social Responsibility) Rules, 2014 (“**the Rules**”) define CSR as:

- Projects or programmes relating to activity specified in Schedule VII of the CoA.
- Projects or programmes relating to activities undertaken by the Board of Directors (“**BoD**”) of a company in pursuance of recommendations of the CSR committee as per the declared CSR Policy which is subject to the condition that such policy will cover activities or areas or subjects which have been enumerated in Schedule VII of the CoA.

❖ **Applicability:** Section 135 of the CoA mandates that every company fulfilling the criteria below mentioned shall implement and report CSR policies. Every Indian company including its holding or subsidiary company and a foreign company which has been incorporated outside India but has a place of business in India, whether by itself or through an agent, physically or through electronic mode, which conducts any type of business activity in India, having its branch or project office in India, would be required to constitute a CSR committee from amongst its BoD if any of the following criteria’s are fulfilled during the immediately preceding financial year:

- Net-worth of Rs.500 Cr. or more; or
- Net-worth of Rs.1000 Cr. or more; or
- Net profit of Rs.500 Cr. or more.

❖ **Composition of CSR Committee:** Every company which satisfies any of the criteria’s mentioned above, shall be required to constitute a CSR committee with 3 or more directors out of which at least one would be an Independent Director, with the exception of:

- A company which is not required to appoint an Independent Director, shall constitute its CSR Committee with two or more directors.
- A private company having 2 directors on its board shall constitute its CSR committee with such 2 directors.



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- A foreign company meeting the criteria shall constitute the CSR committee with at least 2 persons out of which one shall be a resident Indian, and another shall be nominated by the foreign company.

- ❖ **CSR Policy:** The CSR Committee shall in accordance with the board, formulate a CCSR policy which indicates the activities and/or measures undertaken by the company in areas which are in consonance to Schedule VII of the CoA.

- ❖ **Activities/Expenditures barred from being included in CSR:** the following activities/expenditures have been barred from being included under CSR:
 - Activities undertaken by a company in its ordinary course of business.
 - CSR projects or programmes or activities which are being undertaken outside of India.
 - CSR projects or programmes or activities that for the sole benefit of the employees of the company and their families.
 - Monetary contribution made directly or indirectly to a political party under section 182 of CoA.
 - One off events of the likes of marathons/awards/charitable contribution/advertisement/sponsorship of tv programmes etc.
 - Expenses incurred for fulfilment of any provisions under Acts such as labour laws, land acquisition Act etc.
 - Contributions made to the Chief Minister's Relief Fund or State Relief Fund for Covid-19.

- ❖ **Recent Amendments to CSR legislation:** The following elaborate on the recent amendments which have been brought to the CSR legislation of India;
 - **Measures relating to Covid-19:**
 - i. In response to the Covid-19 pandemic, the Ministry of Corporate Affairs ("MCA") issued a circular dated 23.03.2020 which clarified that the spending of CSR funds for activities related to the ongoing pandemic would be considered as eligible CSR expenditure as per CoA. The circular also clarified that the funds may be spent by companies for various activities relating to Covid-19 under items i to xii of Schedule VII of the CoA relating to promotion of healthcare, including preventive healthcare and sanitation, disaster management etc.
 - ii. The MCA also issued the Companies (Corporate Social Responsibility Policy) Amendment Rules 2020. The amendment now allows companies who are engaged in R&D activities for new vaccines, drugs, medical equipment and/or devices in their ordinary course of business and to include the R&D activities taken up for Covid-19 related vaccines, drugs etc for the financial years 2020-21, 2021-22 and 2022-23 under their CSR policy. Such an amendment is subject to the following conditions:



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- The R&D activities must be carried out in collaboration with the institutes/organisations mentioned in item ix of Schedule VII of the Companies Act.
 - The details of such activity must be disclosed separately in the annual report on CSR included in the board's report.
- **Amendment to Schedule VII of the CoA:** The MCA in line with the amendment rules, issued a notification dated 24.08.2020 substituting the entries in item ix of Schedule VII of the CoA. Contributions made by companies towards the following activities are now to be considered as CSR expenditure:
- Contributions to incubators or R&D projects in the field of science, technology, engineering, and medicine, funded by the central or state government, PSU's, or any agency of the central government.
 - Contributions made to public funded universities engaged in conducting research in science, technology, engineering, and medicine to promote sustainable development goals.
- **Companies (Amendment) Act, 2020:** The Companies (Amendment) Act 2020 received presidential assent on 28.09.2020. The amended Act introduced amendments to provisions concerning CSR under CoA. The changes introduced by way of the Companies (Amendment) Act, 2020 to the CSR provisions are as follows:
- Excess spending: The Companies (Amendment) Act provides that if a company spends an amount in excess of the requirements provided under the CoA, such company may set off the excess amount for succeeding financial years.
 - Penalty: If companies default in complying with ¹CSR expenditure amounts or the ²transfer of unspent CSR expenditure amounts, they'd be liable to:
 - a. Penalty of twice the amount required to be transferred to fund specified in Schedule VII of the CoA or the unspent CST amount or as the case may be, Rs. 10 million, whichever is less; and
 - b. Every officer who is in default would be liable to a penalty of 1/10th of the amount required to be transferred by the company to such fund as specified in Schedule VII of the CoA or the unspent CSR amount, as the case may be or Rs.200,000 whichever is less.

¹ Sub section 5 of section 135 of the Companies Act, 2013

² Sub section 6 of section 135 of the Companies Act, 2013



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- CSR Committee exemption: The Companies (Amendment) Act now provides that where the amount being spent by a company on CSR activities is less than 5 million, the requirement to constitute a CSR committee will not be applicable and the functions of such committee will be discharged by the company's BoD.
- ❖ **Conclusion:** It can be understood that the government of India by way of introduction of CSR related laws which made it a mandatory feature for companies meeting the necessary requirements, took one of its most advanced steps in terms of shifting the paradigm from a work only environment to providing company's the opportunity to work on social issues side by side. But since the introduction not many amendments have been made to boost CSR activity in India. The recent amendments which have been brought in wake of Covid-19 only address a few issues wherein one hand the amendments propose to provide an ease of compliance to companies by expanding its scope but on the other hand, they also seek to penalise defaulting companies and their officers for non-compliance of CSR provisions. Therefore, while CSR has been given the importance it needs, there still lacks a more comprehensive form of increasing its reach for benefits.

This Articles has been published by the Corporate Team at Lex Favios, Advocates & Solicitors