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Legal Provisions - CSR

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Clause 135

Private sector

- Though in past no legal requirements still corporates generally try to provide 0.5% -2.0% of their PAT for CSR. Exceptions exist where 3% - 9% has been provided. Even loss-making companies contributing.
- Clause 135: CSR mandatory for organisation satisfying any of three conditions:
 - Minimum Turnover Rs 1000 crore, or
 - Networth Rs 500 crore, or
 - Net profit in any financial year Rs 5 crore or more.
- A company qualifying for mandatory CSR would need to have CSR Committee of a minimum of 3 Board Members. One Board member must be an independent Director. Director's Report needs to disclose the composition of CSR Committee.

Legal basis of CSR.....*cont'd*

Public Sector:

- ❑ All profit making Central Public Sector Enterprises need to provide for CSR as per Companies Act
- ❑ CSR amount once allocated would not lapse

Board's Responsibilities

- ❑ Formulate a CSR Committee
- ❑ Consider CSR Committee's recommendations and approve CSR Policy.
- ❑ Disclose the policy on company's website in the format prescribed in Rules.
- ❑ To ensure that the company spends 2% of the average net-profits made immediately during last 3 financial years in accordance with CSR Policy.
- ❑ Ensure that activities as listed in the policy are undertaken.
- ❑ Monitor CSR Policy from time to time.
- ❑ Board Responsible for reporting on CSR in prescribed format through Director's Report.
- ❑ Board accountable for ensuring mandatory spending otherwise explain through Directors' Report.

CSR Committee's Responsibilities

- ❑ Committee shall formulate a CSR Policy, identifying the activities (domains/sectors) to be undertaken as per Sch. VII.
- ❑ Committee to recommend activity-wise expenditure.
- ❑ Committee to set-up a transparent monitoring mechanism (Rule 2)
- ❑ Committee to monitor implementation.

Activities to be covered under CSR

- Board to formulate policy to indicate activities to be undertaken. Presently permitted activities covered under Sch VII. (Black – Original; Red – amended)
 - Eradication of extreme Hunger & Poverty, **malnutrition, preventive health care, sanitation, drinking water.**
 - Education including special education and employment enhancing vocation skills, among children, women, children & elderly, differently abled and livelihood enhancement projects
 - Gender equality and women empowerment, **setting up homes & hostels for women, orphans, elderly and for reducing inequalities faced by socially and economically backward**
 - ~~Child Mortality & Maternal Health~~
 - ~~HIV, Malaria & other diseases~~
 - Environment Sustainability, **animal welfare, agroforestry, maintaining of quality of soil, air, water**
 - ~~Skill Enhancement~~
 - ~~Social Business Projects~~
 - **Heritage, libraries, traditional arts,**
 - **War veterans & widows**
 - **Sports**
 - **Technology incubators**
 - **Rural development projects**
 - PM / ~~CM~~ or similar other Relief funds set up by central / ~~state~~ govts.
 - Any other matters as prescribed.
 - Replaced on 27th Feb 2014
 - 18th June 2014 Circular guidance towards interpretation of Sch VII
 - 6th Aug 2014 adding **(xi) slum development area**
 - 24th October 2014 addition of **Swachh Bharat Kosh Fund & Clean Ganga Fund**
- Give preference within vicinity of the operational area

Other Issues clarified

Effectiveness

- ❑ Official CSR to be applicable from FY 2014-15.

Basis of Profit

- ❑ Explanation under S. 135 states 'average net profit' to be calculated in accordance with S. 198.– basically Profit before tax.
- ❑ Rule 3(d) further states that 'net profit' not to include profits arising from branches outside India.
- ❑ Net Profit will be 3 years average net profit starting from block of 3 years preceding 31-3-2014.

CSR Policy

- ❑ Policy to include not only activities (sectors) as specified under Schedule VII but also list of projects / programmes, areas and implementation schedules.
- ❑ Policy to identify what will constitute CSR amount (corpus).

Other Issues.....*cont'd*

CSR through company promoted agency (Rule 3)

- ❑ Contributing company to disclose projects / programmes to be undertaken by such agency
- ❑ Contributing company to put in place a monitoring system to ensure that funds allocated are spent as intended.

CSR through other implementing agencies

- ❑ Only if these agencies have a track record of undertaking similar activities for at least 3 years. (Rules 4 & 5)

Others

- ❑ Can collaborate with other corporates or pool resources. (Rule 6)
- ❑ Only funds spent in India to be treated as CSR.
- ❑ Director's Report to include a Report on CSR activities (Format as per Rules).

Reporting on CSR (through Directors' Report)

- ❑ CSR Policy in brief
- ❑ Provide complete policy including list of projects - through a weblink
- ❑ Composition of CSR Committee
- ❑ Disclose Average Net profit of last three years
- ❑ Disclose CSR threshold amount (2%)
- ❑ Project-wise details to be given in prescribed format as follows:
 - Name of the project
 - Sector
 - Implementation area of project (District / State, also if it is 'local area' or not)
 - Funds budgeted, unspent fund brought forward from previous year, amount actually spent during the year, cumulative spending, unspent amount carried forward
 - Give details of amount spent directly or through implementing agencies (Give names & other details of implementing agencies)
- ❑ If 2% not spent give reasons for the same.
- ❑ A Responsibility Statement by CSR Committee (more like a Certificate).
- ❑ Report to be signed by MD/Director / CEO

CSR Reporting included in BRR (as per SEBI requirement)

- Calculate CSR spending during the year as % of **PAT**. (Section B, Para 4)
- List activities (sectors ?) on which CSR spending undertaken. (Para 5)
- Answer Y/N (Under Section D, Para 2)
 - Is there a CSR Policy ?
 - Has it been **prepared in consultation with stakeholders** ?
 - Does the policy conform to any national / international standards ?
 - Approved by the Board ?
 - Signed by MD/ Director /CEO ?
 - Specified committee oversees implementation ?
 - Weblink provided ?
 - Policy formally **communicated to all stakeholders** ?
 - Will policy be implemented through inhouse structure ?
 - **Grievance Redressal Mechanism** in place relating to policy ?
 - **Independent audit/ evaluation** of implementation of policy ?
- If any answer in negative give reasons.

CSR Reporting.....*cont'd*

Principle 8

- ❑ Provide details of all projects under CSR.
- ❑ Specify how projects are being implemented (through company/own agency/outside NGOs, etc.)
- ❑ Any **Impact Assessment** undertaken ?
- ❑ Contribution to Community Dev. Projects to be specified both in terms of amounts as well as details of projects.
- ❑ Specify steps taken to make Community Dev. Projects **sustainable**.

Thank You.

