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## **Corporate social responsibility (CSR) rules and regulation under companies Act, 2013**

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### **Abstract**

Corporate social responsibility (CSR) is a process by which an organization thinks about and develops its relationship with stakeholders for the common good and indicates its commitment in this regard by adoption of appropriate business processes and strategies. Thus CSR is not all about charity and donations. CSR is a way to conduct business, by which corporate entities visibly contribute to the social welfare. CSR has got popularity and contentious field of study since the 1970s. This research paper CSR is viewed as legislation. The objective of paper is to define the CSR rules and regulation under companies act, 2013. CSR which has largely been voluntary contribution, by corporates has now been included in law. CSR has become mandatory for corporates. The information required for the research paper has been collected from secondary resources.

**Keywords:** Corporate Social Responsibility, Companies act, Mandatory, Stakeholder.

### **1. Introduction**

The Companies Act, 2013 enacted on 29 August 2013 on accord of Hon'ble President's assent, has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The new law replaced the nearly 60-year-old Companies Act, 1956. The 2013 Act has introduced several provisions for changing the way to do business of Indian corporates and it also introduced a new provision regarding spending on Corporate Social Responsibility (CSR) activities. On the basis of CSR provisions it became mandatory for Indian companies and Companies have to spend a particular amount on CSR activities as well. They have to mention their report regarding CSR activities in a prescribed format in their website. The Reporting of CSR will be implemented on an annual basis commencing from fiscal year 2014-15.

### **2. Corporate Social Responsibility**

CSR in India has been in practice since 1850s in terms of charity and philanthropy. CSR has come into common use in the late 1960s and early 1970s. CSR is a process by which business can contribute to a better society, green and clean environment.

World Business Council For Sustainable Development (WBCSD), 2000 "Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large".

Carroll (1979) "The social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of organizations at a point of time".

The new companies act 2013, explains CSR activities in regard of eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the fund set up by Prime Minister's National Relief Fund or Central Government or the State Governments for socio-economic development and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.

### **3. Objectives of Research paper**

- To understand the concept of Corporate Social Responsibility.
- To define the CSR rules and regulations under CSR provision of Companies bill, 2013.

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#### 4. Review of Literature

CA. Sanjay Kumar Sharma (2013) has studied on “A 360 degree analysis of Corporate Social Responsibility (CSR) Mandate of the New Companies Act, 2013” and he found that In order to ensure meeting the true spirits of the new CSR law, a well-organized, professionally capable and independent team needs to be formed. It is possible only when companies come forward and join together for this common good goal. Building an expert and trained team of professionals is needed for managing funds earmarked for CSR purposes is required.

CS. Nitin Kumar (2014) has studied on the topic “A study of CSR rules under companies act, 2013” and he concluded in his study that Introduction of new CSR rule of Companies Act in India is a nice step for engaging companies to seriously contemplate social responsibility. In order to enable corporates to participate fully in the philanthropy space, the participation must start with a more inclusive management of CSR policies where government and industry work side by side, which does not assume that business and CSR are incompatible. In order to keeping the advantage of CSR provision in the Companies Act, Companies should not belief the CSR Clause as only a reporting requirement. They should utilize it as an opportunity to actually inspire for much spending on CSR.

Shaizy Ahmad (2014) has done a study on “Indian companies act, 2013 with special reference to corporate social responsibility” and he found in his study that as the investment in CSR is going to rise in coming years; the scope for generating more gigantic social welfare measures will also be rise & need is to equipped the management of funds and the utility of CSR activities.

Devika Sharma and Parul Agrawal (2014) have studied on “Corporate social responsibility; Importance and implications in an Indian context” and found that being socially responsible is very important in today’s world and it is the duty of every individual or organization along with corporate all educational institutes are becoming aware of this and are doing SR initiatives to make society a better place to live in. In the present scenario, companies are engaged in CSR initiative like social causes, health care, environment protection etc but some more initiatives are needed to be faced.

#### 5. Research Methodology

The present study is undertaken to understand CSR provision under new companies act, 2013. The prepared paper is a descriptive study in nature. The present study is based on secondary data and the major sources of data include official websites, books, magazines, research articles and Journals. Keeping in mind the objective of studies different news articles, books, research paper & websites has been reviewed. Moreover, the academic wisdom and knowledge of both the author and co-author of this paper is being used to prepare this paper.

#### 6. Findings of the Study

##### 6.1 The Companies Act, 2013: An Overview

The Companies Act, 2013 enacted on 29 August 2013 on accord of Hon’ble President’s assent, has the potential to be a historic milestone, as it aims to improve corporate governance, simplify regulations, enhance the interests of minority investors and for the first time legislates the role of whistle-blowers. The new companies act replaced the nearly

60-year-old Companies Act, 1956. The Act provides an opportunity to grip and make our corporate regulations more contemporary, as also potentially to make our corporate regulatory framework a model to emulate for other economies with similar characteristics. The Act is more of a rule-based legislation and contains only 470 sections, which means that the substantial part of the legislation will be in the form of rules. There are over 180 sections in the 2013 Act where rules have been prescribed and the draft rules were released by the MCA in three batches. It is widely expected that the 2013 Act and indeed the rules will provide for phased implementation of the provisions and in line with this, 98 sections of the 2013 Act have been notified and consequently the corresponding section of the 1956 Act cease to be in force.

##### 6.2 The Companies Act, 2013 & Csr

As we defined above that new companies Act, 2013 has introduced several provisions for doing business in new way and one of them is for spending on Corporate Social Responsibility (CSR) activities. The Section 135 has described the CSR rules, regulation and the CSR Rules have now been made applicable with effect from 1 April 2014.

#### 7. Applicability and constitution of a CSR Committee

Section 135 of the 2013 Act states that:

- ✚ Every company which have net worth of Rs 500 crore or more, or turnover of Rs 1000 crore or more, or net profit of Rs 5 crore or more during any financial year shall appoint a Corporate Social Responsibility Committee of the Board.
- ✚ This committee would encompass of three or more directors, out of which at least one director shall be an independent director.
- ✚ The command of CSR committee shall be:
  - To formulate and recommend to the Board, a Corporate Social Responsibility Policy, which shall points the activities to be undertaken by the company as specified in Schedule VII;
  - To recommend the amount of expenditure to be incurred on the activities referred to above;
- ✚ To monitor the Corporate Social Responsibility Policy of the company timely.
- ✚ The Board of every company referred to above shall after taking into account the recommendations made by CSR Committee:
  - Approve the CSR Policy for the company and disclose contents of such Policy in its report and also mention it on the company’s website, and make sure that the activities as are included in CSR Policy of the company are undertaken by the company, and make sure that the company spends at least two per cent of the average net profits in every financial year.
- ✚ If the Company fails to spend such amount on CSR activities than the Board shall specify the reasons for not spending the amount in its report. As per as the rule there are penalties for failing to report on CSR activities conducted or explain why CSR spending was not carried out. Failure company to explain its reason is punishable by a fine of not less than 50,000 rupees and up to 25 lakh rupees. Even, officers who fault on the reporting provision could be subject to up to three years in prison or fines of not less than 50,000 rupees

and as high as 5 lakh rupees.

- ✚ The Average net profit shall be calculated in accordance with the provisions of section 198 of the 2013 Act.
- ✚ CSR activities shall be counted only as per as Schedule VII
  - To eradicate extreme hunger and poverty
  - To promote of education, gender equality and empowering women
  - To reduce child mortality and improving maternal health
  - To combat human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases
  - To ensure environmental sustainability
  - Employment enhancing vocational skills
  - Social business projects
  - To contribute in the fund of Prime Minister's National Relief or any other fund set up by the Central Government or the State Governments for socio-economic development, relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women
  - Such other matters as may be prescribed
- ✚ The Act provides that the company shall give preference to the local area and areas around it for CSR activities where it operates.

Draft of CSR rules provide for the following:

- ✚ Net Profit for the section 135 and these rules shall mean net profit before tax as per books of accounts and shall not count profits arising from branches outside India.
- ✚ Reporting will be done on the annual basis commencing from financial year 2014-15.
- ✚ Tax treatment of CSR spend will be in accordance with the IT Act as may be notified by the Central Board of Direct Taxes (CBDT).
- ✚ CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company.
- ✚ The CSR Committee of company shall prepare the CSR Policy which shall comprise the following:
  - Specify the projects and programmes to be undertaken.
  - Prepare a list of CSR projects/programmes.
  - Plans to undertake during the implementation year, specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.
  - CSR projects/programmes of a company may also focus on integrating business models with social and environmental priorities and processes in order to create shared value.
  - Surplus arising out of the CSR activity will not be part of business profits of a company.
  - Would specify that the corpus would include 2 percent of the average net profits, any income arising there from, and surplus arising out of CSR activities.
- ✚ Where a company has been set up with a charitable objective or is a Trust/Society/Foundation/any other form of entity operating within India to facilitate implementation of its CSR activities, the following conditions shall apply:
  - Contributing company would need to specify the projects/ programs to be undertaken by such an organization, for utilizing funds provided by it;

- Contributing company shall establish a monitoring mechanism to ensure that the allocation is spent for the intended purpose only.
- ✚ A company may also implement its CSR programs through not-for-profit organizations that are not set up by the company itself. Such spends may be included as part of its prescribed CSR spend only if such organizations have an established track record of at least three years in carrying out activities in related areas.
- ✚ Companies may collaborate or pool resources with other companies to undertake CSR activities.
- ✚ Only such CSR activities will be taken into consideration within India.
- ✚ Only activities, not exclusively for the benefit of employees of the company or their family members shall be considered as CSR activity.
- ✚ Companies shall report, in the prescribed format, the details of their CSR initiatives in the Directors' Report and in the company's website.
- ✚ CSR which has largely been a noncompulsory contribution by corporates has now been included in law.
- ✚ There is a debate as to whether any penal consequences will emanate on failure to spend, or an explanation in the directors' report on the reasons therefore are only warranted.
- ✚ There may be reluctance in compliance, especially in case of companies which are not profitable, but fall under the designated category due to triggering net worth or turnover criteria.
- ✚ It is not clear what all constitutes CSR activities as the list specified under Schedule VII of the Act seems like an inclusive list and not exhaustive.
- ✚ The CSR provisions under the 2013 Act require a minimum of 3 directors for the constitution of the CSR committee, clarification needed as to whether qualifying private companies would be required to appoint a third director to comply with the CSR provisions.

## 8. Conclusion

CSR is not new in India. It has been done in terms of charity and philanthropy from many years ago. One side in India many companies has been doing CSR in many areas like education welfare, rural development, women empowerment, environment protection etc, and other side there are also many companies avoiding CSR. The new companies act, 2013 introduced a new provision regarding spending on Corporate Social Responsibility (CSR) activities. CSR, which has largely been voluntary contribution, by corporates has now been included in law. Through this act CSR became mandatory and companies must have to focus on CSR and reporting of CSR activities in brief with its spending amount in its website. Therefore companies cannot ignore CSR any more. Thus being mandatory of CSR is a big step for improvement of society by Indian companies. It will certainly engage companies to seriously contemplate social responsibility. CSR is going to rise in coming years; the scope for generating more gigantic social welfare measures will also be rise. The corporations which are doing CSR in limited areas like education welfare, rural development, women empowerment, environment protection, stakeholder engagement, health care etc, now do CSR in those areas which are really needed to focus like eradicating extreme hunger and poverty, promotion of education, promoting

gender equality and empowering women reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects.

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