



India's CSR Law: At a glance

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ABSTRACT

The article provides the developmental background of India's CSR law which has been incorporated in companies Act 2013. It provides birds eye view about Section 135, expenditures allowed under CSR head and required reporting procedure for annual report as a part of mandatory disclosure.

KEYWORDS : Section 135, Corporate Social Responsibility

India's CSR Law: At a Glance

On 3 February 2015, the Ministry of Corporate Affairs has constituted the high level committee headed by Anil Bajjal, former secretary of Government of India, to suggest measures for improved monitoring of the implementation of Corporate Social Responsibility (CSR) policy which has been made mandatory from 01 April 2014. It is indeed essential to ensure proper monitoring of any policy and especially when the policy is of such nature where corporate behaviors in general is not so much enthusiastic due to many reasons like, need to divert energy from regular business activities which firstly reflects erosion of bottom line instead of expansion, lack of clarity on what counts as CSR, need to find some mechanism or credible organization that can help company towards complying with the policy etc. On top of that, being the very first year of the policy implementation, it's understood to have the state of ambiguity towards the methodology of compliance. Hence, at this juncture, it's essential to have a recap of all the chronological events till date which are associated with India's CSR policy.

What is Section 135?

On 8 August 2013, the then Minister of State, Ministry of Corporate Affairs, Sachin Pilot, during his Rajya Sabha speech, acknowledged Indian corporates for their commendable contribution over the period of time towards social development. He emphasised that in the form of CSR statute, the ministry would give structure and specific guidelines for social development activities to be undertaken by companies. He also pressed on the need for companies to have such policy which is clear, specific, time line driven and outcome oriented. However, as far as monitoring is concerned, he recommended not to have the same in the form of inspector raj but suggested to create such an environment in long run wherein companies voluntarily involve themselves in CSR activities.

After much curiosity, debates and discussions, finally on 30 August 2013, Ministry of Law and Justice published gazette notification pertaining to the companies act 2013 where in under section 135, CSR policy has been notified. The policy requires every company having net worth of Rs 5 billion or more or turnover of Rs 10 billion or more or net profit of Rs 50 million or more during any financial year shall constitute a CSR committee. Such committee should be comprising of three or more directors and out of which at least one director shall be an independent director. Also, as per section 134, sub section 3, the company's board report shall disclose the composition of CSR committee, its recommendations for CSR policy, and the amount of expenditure to be incurred for CSR. Also, it is essential for companies to put the policy on company's website, if any. Not only that, from time to time, this policy be monitored as well in such a way that activities included in the policy are dutifully undertaken by the company.

Mathematically, the board shall ensure that, in every financial year, the company shall spend at least 2% of the average net profit of the company made during the three immediately preceding financial years and if company fails to spend such amount, the board, in the report, shall specify the reasons for not spending the amount.

What is allowed as CSR expenditure?

The next question arises regarding where do companies should

spend the CSR money. Here, the policy indicates that the preference has to be given to the local areas and around where company operates. The activities to be undertaken as per CSR policy (as per schedule VII of section 135) primarily includes (i) eradication of extreme hunger and poverty (ii) promotion of education (iii) promoting gender equality and empowering women (iv) reducing child mortality and improving maternal health (v) combating human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), malaria and other diseases (vi) ensuring environmental sustainability (vii) employment enhancing vocational skills (ix) contribution to the prime minister relief fund or any other fund set up by central / state government for socio - economic development and funds for the welfare of scheduled cast, scheduled tribe and other backward cast, minorities and women.

Subsequently, after the first notification of the Companies Act 2013, over the period of 18 months, several add on notifications/office memorandums have been issued by the ministry pertaining to CSR Policy. On 27 February 2014 the ministry specified two things in the published notification. First, clarification on various terms associated with the CSR policy and second, structure of CSR reporting in board's report. Clarifications in the first section mainly include (i) 'net profit' does not include any profit arising from any overseas branch(es) of the company and any dividend received from other companies in India (in line with the provisions of section 135 of the act) (ii) every company (either holding or subsidiary and foreign company) defined under clause (42) of section 2 of act shall comply with CSR policy, subject to given conditions of net profit, turnover or net worth. (iii) activities if undertaken in pursuance of company's normal course of business should be excluded (iv) CSR activities may be undertaken through registered society or a company established by the company or its holding or subsidiary or associate company (v) companies may collaborate with other companies for CSR activities but should be in position to report separately in accordance with rules (vi) activities benefiting only employees of the company or their families shall not be considered (vii) companies may build their own CSR capacities of their own as well as those of their implementing agencies through institutions with established track record of at least three financial years. However, such expenditure should not exceed more than 5% of total CSR expenditure in one financial year (viii) direct or indirect contribution to any political party shall not be considered (ix) the surplus arising out of the CSR activities shall not form part of the business profit. The structure to report CSR activities in board's report, has been discussed in later section.

Likewise, in the month of June, 2014 after new government took over in center, the Ministry issued the general circular indicating that the schedule VII (Section 135) must be interpreted liberally to capture the essence of the subject. Additionally, several clarifications have been made as well regarding CSR activities. The circular indicates that marathons, awards, charitable contributions, advertisements, sponsorships of TV program would not be qualified under CSR expenditure. Expenses incurred for fulfillment of any act / statute of regulations (such as labour law, land acquisition act etc.) would not count as CSR. The circular also indicates that contribution to corpus of trust / society/ section 8 companies will qualify as CSR expenditure as long as it's created exclusively for CSR or is directly related to subjects covered in

schedule VII.

In this notification only, some specific categories have been highlighted that shall be considered under CSR activities. This mainly includes, (i) promoting education for road safety / drivers training (ii) medical or legal aid treatment for road accident victims (iii) capacity building for farmers, agricultural laborers, applied research on ecological balance, maintaining quality of soil, air and water etc. (iv) consumer education and awareness (v) conservation and renovation of school / educational institutions' buildings and classrooms (vi) disaster relief (vii) mid-day meal scheme (viii) improving delivery of public health system (ix) slum redevelopment for housing (x) renewable energy projects etc.

In the same line, to broaden the base of CSR expenditure, the ministry came up with one more notification on 24 October 2014, wherein two more categories have been added in the basket of accepted CSR expenditures, namely, Swachh Bharat kosh and Clean Ganga project which are special purpose funds set up by the central government.

How to report?

Just straight forward spending and brief reporting of CSR activities in board's report will not do. The policy demands systematic reporting of company's CSR activities undertaken in a particular financial year with specific items to be reflected in board's report as, (i) brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken (with web-link to the CSR policy and projects) (ii) the composition of the CSR committee (iii) average net profit of the company for last three financial years (iv) prescribed CSR expenditure (v) details of CSR spent during the financial year (as per given tabulated proforma) (vi) if specified amount has not been spent, reason for the same in board report and (vii) responsibility statement of the CSR committee which acknowledges that 'implementation and monitoring of CSR policy is in compliance with CSR objectives and policy of the company' (page 9, The Gazette of India, Ministry of Corporate Affairs, 27 February 2014). This document has to be signed by the Chief Executive Officer, chairman of CSR committee and the person specified under clause (d) of sub-section (1) of section 380 of the Act, wherever applicable. However, there is no penal provision regarding non-compliance of the said provisions in means of spending or in reporting part. However, section 134(8) of the Act provides for penal provision for non-disclosure of the reasons in the Board's report, the company shall be punishable with fine which shall not be less than 0.05 million rupees but which may extend to 2.5 million rupees. Also the company officer(s) who is in default shall be punished with imprisonment for a term which may extend to three years or with fine which shall not be less than 0.05 million rupees but which may extend to 0.5 million rupees, or with both.

Way forward

As the high level committee would be involved in brainstorming to suggest measures for improved monitoring of the implementation of CSR policy, in coming days, it would be interesting to observe Indian corporate behaviour in terms of moral responsibility vis-à-vis legal compliance towards ensuring sanctity of societal expectations and compliance with Section 135, respectively.

REFERENCES

• Notices & circulars, <http://www.mca.gov.in/> accessed on 27 April 2015 | • Sachin Pilot's speech on The Companies Bill, 2012 in Rajya Sabha, <https://www.youtube.com/watch?v=OwQCZLNWk6U>, viewed on 18 April 2015 | • <http://www.legalservicesindia.com/article/article/csr-under-the-companies-act-2013-1704-1.html> assessed on 25 May 2015.