

COMPANY LAW

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Ease of Doing Business – Simplify Corporate Social Responsibility Rules – Let the Corporate World Decide

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This article dwells upon chequered history of corporate social responsibility concept which was formally introduced in section 135 of the Companies Act, 2013 read with Schedule VII thereto and the Companies (Corporate Social Responsibility) Rules, 2014 and had undergone multiple amendments from time-to-time with a view to ease of doing business.

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Corporate social responsibility and its evolution

1. Corporate social responsibility ('CSR') is a company's commitment to operate in an economically, socially and environmentally sustainable manner whilst balancing the interests of diverse stakeholders. The concepts of corporate citizenship, sustainable business, environmental responsibility, the triple bottom line, social and environmental accountability, business ethics and corporate accountability are all very much linked with CSR. The term CSR refers to the concept of business being accountable for how it manages the impact of its processes on stakeholders and takes responsibility for producing a positive effect on society. The philosophy is basically to return to the society what it has taken from it, in the course of its quest for creation of wealth. CSR is the process by which an organisation thinks about and evolves its relationships with stakeholders for the common good, and demonstrates its commitment in this regard by adoption of appropriate business processes and strategies. Thus, CSR is not charity or mere donations.

1.1 National voluntary guidelines were, earlier, applicable to all businesses irrespective of size, sector or location. These guidelines were designed with a view to assisting enterprises to become responsible entities much before the CSR was officially inserted in the Companies Act, 2013 (the Act). The concept CSR was introduced in the Act section 135 of the Act read with Schedule VII and the Companies (Corporate Social Responsibility) Rules, 2014 framed

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there under. In 2014, India became the first country in the world to introduce a mandatory CSR obligation.

Importance of CSR

2. Business cannot exist in isolation. The social responsibility of business can be integrated into the business purpose so as to build a positive synergy between the two. CSR creates a favourable public image, which attracts customers. Reputation or brand equity of the products of a company which understands and demonstrates its social responsibilities is very high. It builds up a positive image encouraging social involvement of employees, which in turn develops a sense of loyalty towards the organisation, helping in creating a dedicated workforce proud of its company. Employees like to contribute to the cause of creating a better society. Society gains through better neighbourhoods and employment opportunities, while the organisation benefits from a better community, which is the main source of its workforce and the consumer of its products. Public needs have changed leading to changed expectations from consumers. The industry/ business owes its very existence to society and has to respond to the needs of the society. A company's social involvement discourages excessive regulation or intervention from the Government or statutory bodies, and hence gives greater freedom and flexibility in decision-making. A business organisation has a great source of power and money, entrusted to it by the society and therefore should be accompanied by an equal amount of responsibility. In other words, there should be a balance between the authority and responsibility. Financial institutions are increasingly incorporating social and environmental criteria into their assessment of projects. When making decisions about where to place their money, investors are looking for indicators of effective CSR management. In a number of jurisdictions, governments have expedited approval processes for firms that have undertaken social and environmental activities beyond those required by legislation.

CSR activities

3. Schedule VII of the Act, specifies the activities which may be included by companies in their Corporate Social Responsibility Policies. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. However, time and again the Central Government has come up with various amendments since 2014 in Schedule VII, when it was first came in limelight, which are as follows :

<i>Dates on which such provisions takes place</i>	<i>Provisions in respect of Schedule VII of the Companies Act, 2013</i>
<p>27th February, 2014 Notification by MCA</p> <p>Schedule VII was amended very firstly by this notification and represented as the original content (Provisions mentioned in the right column was substituted) (This notification shall come into force with effect from 1st April, 2014)</p>	<p>Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to :-</p> <p>(i) Eradicating hunger, poverty and malnutrition, promoting preventive health care and sanitation and making available safe drinking water ;</p> <p>(ii) Promoting education, including special education and employment enhancing vocation skills specially among children, women, elderly, and the differently abled and livelihood enhancement objects ;</p> <p>(iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphan ; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups ;</p> <p>(iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water ;</p> <p>(v) Protection of National Heritage, Art and Culture including restoration of Buildings and Sites of Historical Importance and Works of Art ;</p> <p>(vi) Setting up public libraries ; promotion and development of traditional arts and handicrafts ; measures for the benefit of armed forces veterans, war widows and their dependents ;</p> <p>(vii) Training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports ;</p> <p>(viii) Contribution to the Prime Minister's national relief fund or any other fund set up by the central government for socio-economic development and relief and welfare of the scheduled castes, the scheduled tribes, other Backward Classes, Minorities and Women ;</p> <p>(ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government ;</p> <p>(x) Rural development projects.</p>

<i>Dates on which such provisions takes place</i>	<i>Provisions in respect of Schedule VII of the Companies Act, 2013</i>
31st March, 2014 MCA Notification dated 27.02.2014	For the words mentioned in the Schedule VII, item (i) of MCA Notification dated 27th February, 2014 "promoting preventive health care" read "promoting health care including preventive health care".
6th August, 2014 Further amendments in Schedule VII	(1) In Schedule VII, after item (x), the following item and entry shall be inserted, namely:- "(xi) Slum area development. Slum Area shall mean any area declared as such by the Central Government or any State Government or any other competent Authority under any law for the time being in force."
24th October, 2014 Further amendments in Schedule VII	(i) In item (i), after the words "and Sanitation", the words "including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation" shall be inserted ; (ii) In item (iv), after the words "and water", the words "including contribution to the Clean Ganga fund setup by the Central Government for rejuvenation of river Ganga ;" shall be inserted.
30th May, 2019 Further amendments in Schedule VII	After item (xi) and the entries relating thereto the following items and entries shall be inserted, namely: "(xii) Disaster management, including relief, rehabilitation activities."
11th October, 2019 Further amendments in Schedule VII	for item (ix) and the entries relating thereto, the following item and entries shall be substituted, namely :- "(ix) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector undertaking of Central Government or State Government, and contributions to public funded universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs) ;"

<i>Dates on which such provisions takes place</i>	<i>Provisions in respect of Schedule VII of the Companies Act, 2013</i>
19th November, 2019 Amendment <i>vide</i> MCA Notification dated 11th October, 2019 (Specified above)	for words “Defence Research and Development Organisation (DRDO)”, read “Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT),”
26th May, 2020 Further amendments in Schedule VII This notification shall be deemed to have come into force on 28th March, 2020.	Item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.
General Circular No. 10 /2020 of MCA dated 23th March, 2020 Clarification on spending of CSR funds for COVID-19	Funds may be spent for various activities related to COVID-19 under item Nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.
MCA Notification dated 23rd June, 2020 Further amendments in Schedule VII	in item (vi), after the words “war widows and their dependents”, the words “Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows ;” shall be inserted.

Simplify CSR Rules, 2020

4. Affairs (MCA) has from time to time amended the section 135, Schedule VII and the rules made thereunder. Recently, MCA has released the Draft Companies (CSR Policy) Amendment Rules, 2020 proposing amendments to Companies (Corporate Social Responsibility Policy) Rules, 2014 for public comments. MCA introduced a negative list of attributes which sets out the activities which shall not be counted for the CSR expenditure. These are as follows :

- ◆ Activities undertaken in pursuance of normal course of business of the company.
- ◆ Any activity undertaken by the company outside India.

- ◆ Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- ◆ Activities that significantly benefit the employees of the company and their families.

Provided that in case of any activity having less than (twenty five) 25% employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.

Also, the Rules also cover the following major amendments:

- ◆ CSR activities to be undertaken by: Company itself, section 8 company, entity established under Act of parliament/state legislature, International Organisation
- ◆ Utilisation certificate of the CSR disbursement – To be given by Chief Financial Officer(CFO)
- ◆ Annual Action plan – to be formulated and recommended by CSR Committee
- ◆ Unspent CSR funds, except if retained for ongoing projects, to be transferred to National Unspent CSR Fund

Conclusion

5. Ever since these section 135 of the Act, Rules and Schedule VII came into force, MCA has come up with various amendments, through which companies are facing sort of trouble choosing the field in which they should spend on the CSR Activities. The General Circular No. 21/2014 of MCA dated 18th June, 2014 emphasised on the clarifications with respect to representations received in the Ministry on CSR. Due to various ambiguities in the legal interpretation of the provisions of CSR, MCA further issued a General Circular No.1/2016 dated 12th January, 2016 and General Circular No. 15/2020 dated 10th April, 2020 bringing out frequently asked questions (FAQs) with regard to CSR under section 135. Time to time amendments, clarifications and FAQs can be avoided, if Government sticks to a negative or prohibited list and leave it on the corporates to decide and spend on CSR.

5.1 In order to make the companies business easier, viable and facilitate to invest in the name of CSR there should be more simplified rules on CSR for the corporate world by giving a negative list where the companies are not allowed to do CSR. It must be left to the CSR company to decide, in which segment it should invest be it be health, education, poverty, etc. The government must only prohibit the corporate world from doing CSR only when the purpose of CSR is defeated. Like, CSR must not be outside India, CSR must not be a political contribution or charitable contribution, etc.

5.2 CSR in different ways serve all the three aspects of Triple Bottom Line (TBL)- Profit, People and Planet. A typical sustainability initiative may reduce resource use, wastage, and emissions, which may reduce cost, improve working conditions and productivity, and provide environmental benefits to the society. Contribution to Prime Minister's National Relief Fund (PMNRF) falls in this channel. In fact, all donations towards PMNRF are notified for 100 per cent deduction from taxable income under Section 80G of the Income-tax Act, 1961.

5.3 Companies must be free to do CSR which creates value for all of them, including economic and social development or prevention of environment or whatever they want to do, except such negative/prohibited list of activities and also adhering with the principles of National Voluntary Guidelines (NVG) on the Social, Environment & Economic Responsibility of Business.