SECTION 135 – CORPORATE SOCIAL RESPONSIBILTY PROVISIONS AS PER THE COMPANIES (AMENDMENT) ACT, 2019

Ministry of Corporate Affairs has made Several Amendments in The Companies Act, 2013 vide the Companies (Amendment) Act, 2019. The Companies (Amendment) Bill, 2019 was passed by both the Houses of Parliament and the assent of the President of India was received on 31st July, 2019.

Out of those several amendments made through The Companies (Amendment) Act, 2019, Section 135 – Corporate Social Responsibility is a major amendment, by which the Ministry of Corporate Affairs has amended the provisions of the Corporate Social Responsibility and inserted the penal provisions in case of non-compliance which have been briefed below:

APPLICABILITY:

As per Section 135(1) read with Rule 3 of The Companies (Corporate Social Responsibility Policy) Rules, 2014, CSR is applicable on every Company including its holding or subsidiary and a foreign company having its branch office or project office in India, which fulfills the criteria specified in sub section (1) of section 135 of the Act as specified below.

CRITERIA FOR CONSTITUTION OF CSR COMMITTEE:

(1) As per Section 135(1) of the Companies Act, 2013;

Every company having:

- Net worth of Rs.500 Crore or More or;
- Turnover of Rs.1,000 Crore or more or;
- Net Profit of Rs.5 Crore or more

during the immediately preceding financial year, shall constitute a Corporate Social Responsibility Committee.

COMPOSITION OF CSR COMMITTEE:

Committee shall consist of three or more directors, out of which at least one director shall be an independent director.

However, where a company is not required to appoint an independent director under the provisions of Section 149 (4) of the Companies Act, 2013, it shall have in its Corporate Social Responsibility Committee two or more directors.

Accordingly, a private company having only two directors on its Board shall constitute its CSR Committee with two such Directors. In case, a private Company is having 3 Directors then, the CSR Committee shall be constituted with all the three Directors.

ROLE OF CSR COMMITTEE:

The CSR Committee shall:

a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII of the Companies Act, 2013;

b) Recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

c) Monitor the Corporate Social Responsibility Policy of the company from time to time

As per rule 5 (2) of the Companies Act, 2013:

The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

ROLE OF BOARD OF DIRECTORS:

As per Section 135(4) of the Companies Act, 2013, below are the responsibilities of Board:

i) After taking into account the recommendations made by the CSR Committee, the Board shall approve the CSR Policy of the Company.
ii) Disclose the contents of its policy in board report and also place on the Company's website.
iii) Ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

MANDATORY CSR EXPENDITURE:

As per Section 135(5), the Board shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years *or where the Company has not completed the period of three financial years since its incorporation*, *during such immediately preceding financial years*, in pursuance of its Corporate Social Responsibility Policy.

Interpretation:

For companies incorporated < 3 Financial Year ('FY') and on which CSR provisions are applicable, average Net Profit for the purpose of amount to be spend on Corporate Social Responsibility ('CSR') (i.e. 2%) shall be calculated for the immediately preceding financial years for which company was incorporated (i.e. it can be < 3 FY).

And, if the Company fails to spend such amount, the Board shall specify the *reasons for not spending the amount in the Director's report and, unless the unspent amount relates to any ongoing project as referred in the Section 135(6) of the Companies Act, 2013, transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.*

Interpretation:

Other than Ongoing Project - Transfer of unspent amount of CSR to a Fund specified in Schedule VII within 6 months of end of FY, unless it relates to any ongoing project.

Fund Specified in Schedule VII:

1) Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation
2) Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga
3) Prime Minister's National Relief Fund or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women
4) Funds provided to technology incubators located within academic institutions which are approved by the central govt.

<u>TREATMENT OF UNSPENT CSR EXPENDITURE*:</u>

As per Section 135(6), any amount remaining unspent pursuant to any ongoing project fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent CSR Account, and such amount shall be spent by the Company in pursuance of its obligations towards the CSR Policy within a period of three financial years from the date of such transfer, failing which, the Company shall transfer the same to a fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.

Interpretation:

In case of Ongoing Project - Unspent amount of CSR to be transferred to separate Bank A/c (in the name of 'Unspent CSR Account') within 30 days from the end of each Financial Year and such amount shall be used to be spent in pursuance of its obligations towards the CSR Policy within a period of three financial years from the date of such transfer. The balance amount in Unspent CSR Account after the end of 3rd FY, if any, shall be transferred to the Fund specified in Schedule VII

within 30 days from the date of completion of 3rd FY.

PENAL PROVISIONS:

If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

Link for the Companies (Amendment) Act, 2019: http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

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Suggestions may be send to rupesh@cacsindia.com

Dr. S. Chandrasekaran| Senior Partner| Chandrasekaran Associates | Company Secretaries 11-F, Pocket Four | Mayur Vihar Phase One | Delhi - 110 091 | Tel. +91-11-2271 0514 sankara@cacsindia.com | info@cacsindia.com | www.cacsindia.com