

Corporate Social Responsibility: An Analysis and Implications under Companies Act 2013

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ABSTRACT--- *The new Companies act 2013 has ushered in more revolutionary changes for promoting social development programme. Clause 135 of the act relates to corporate social responsibility. The present study is an overview of understanding the new laws governing CSR, process of implementing CSR and the concerns arising out of the same.*

1. INTRODUCTION

The new Companies Act 2013 has ushered in a more revolutionary change with respect to mandatory social spending requirements promoting socially beneficial activities and projects in India in the years to come. In order to overcome the social and economic challenges, the act mandates companies to undertake a mixed spectrum of initiatives and activities for the economic well-being of the underprivileged and for a better environment. Truly said, Section 135 of Companies Act 2013 is viewed globally as the world's largest and most ambitious Corporate Social Responsibility (CSR) experiment. Often referred to as the "2 percent" requirement, India's CSR requirement has made India the first country in the world to mandate that qualifying companies contribute at least 2 percent of their average net profits from the preceding three years to CSR.

2. OBJECTIVES OF THE STUDY

1. To analyse the CSR policy under the new Companies Act 2013.
2. To understand the process of implementing CSR in companies.
3. To review the concerns likely to be raised by the companies covered under the act.

3. DEFINING CSR

Early definition- The obligations of businessmen to pursue those policies, to make those decisions or to follow those lines of actions which are desirable in terms of objectives and values of our society- H. R. Bowen(1950).

The emerging concept of Corporate Social Responsibility (CSR) goes beyond charity and requires the company to act beyond its legal obligations and to integrated social, environmental and ethical concerns into company's business process (The triple bottom line approach). CSR, aims at a holistic and integrated approach for sustainable development to have a sustainable society.

Thus, CSR also called as corporate conscience, corporate citizenship or sustainable responsible business/ Responsible Business is a form of corporate self-regulation integrated into a business model CSR policy functions as a self-regulatory mechanism whereby a business monitors and ensures its active compliance.

1. CSR policy under the new Companies Act 2013

The Companies Act, 2013 enacted on 29 August 2013 has replaced the nearly 60-year-old Companies Act, 1956. Essentially a rule based legislation, the act has introduced several provisions which would change the way the Indian corporates do business especially the provision relating to the spending on Corporate Social Responsibility (CSR) activities.

Section 135 of Companies Act 2013 has imposed compulsory corporate social responsibility obligations upon Indian companies and foreign companies operating in India. The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014.

Why mandate CSR- Some statistical analysis

Making mandate CSR improves corporate governance, transparency, accountability to stakeholders, involves corporate actively in the nation building process.

It is estimated that post companies act 2013,

- Amount to be spent on CSR activities will be 18,000cr which would to be spent on CSR activities.

- Number of Indian corporate involved in CSR activities would be 16,400 companies. (Deccan Herald 30th Sept, 2013).

Comparison of current vs. possible CSR PSU's and Private sector

Name of PSU	Actual (cr)	2% of PAT(cr)	%Gap
ONGC	121	473	74.42
Coal India	119	235	49.36
IOC	83	156	46.79
SBI	71	261	72.80
HPCL	27	22	(-22.73)
BPCL	8	29	72.41
Private sector	Actual	2% of PAT	%Gap
Tata Motors	146	78	(-87.18)
RIL	288	423	31.91
Bharti Airtel	33	130	74.62
ICICI Bank	24	127	81.10
Maruti Suzuki	12	43	72.09
TCS	51	179	71.51

(icaitv.com/CSR%20under%20the%20Companies%20Act%202013%)

Some of the highlights of the new Companies Act relating to CSR:

- The compliance of CSR rules is applicable to private and public firms and foreign companies whose subsidiary companies operate in India.
- Every company have to comply the CSR requirements having-

Net Worth	•500 Crores or more
Turnover	•1000 Crores or more
Net Profit	•5Crores or more

- The specified companies need to spend at least 2% of its average net profit for the preceding three financial years on corporate social responsibility activities.
- The CSR activities should be undertaken with respect to any of the activities mentioned in Schedule VII of the 2013 Act.
- Every company will have to constitute CSR committee comprising of 3 director of which one will be independent director (recently a clarification is given for unlisted foreign and private companies having no independent director, only two members can constitute the CSR committee).
- In determining CSR activities to be undertaken, preference need to be given to local areas and the areas around where the company operates.
- A company can build CSR capabilities of its personnel or implementation agencies through institutions with established track records of at least three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year.
- A company can also carry out CSR activities by funneling funds through a registered trust or society or a separate company or Section 8 company (i.e., a company with charitable purposes) that has an established record of at least three years in CSR-like activities
- A company may also collaborate with other companies (small and medium sized enterprises) for CSR activities, provided they have to separately report about spending on such projects programmes.

List of CSR activities included under schedule VII

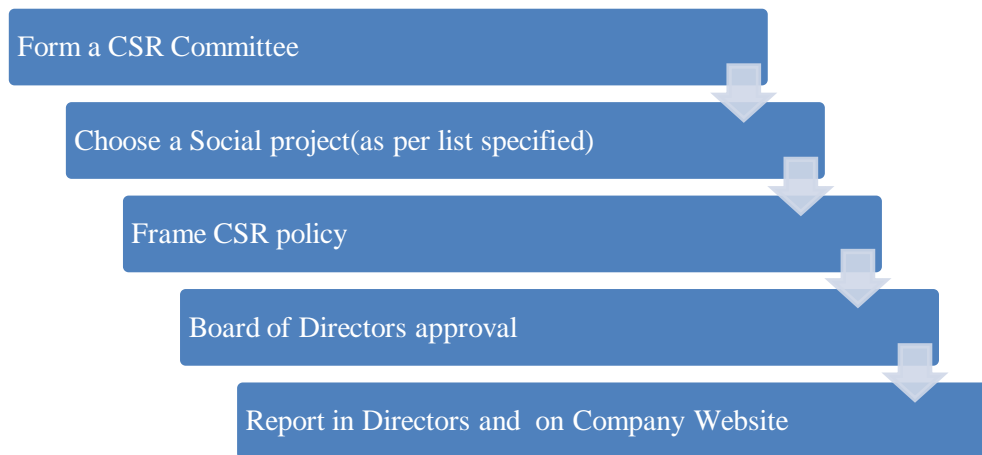
- Livelihood enhancement projects and rural development projects
- Promoting preventive health care and sanitation
- Making safe drinking water available
- Eradicating hunger, poverty and malnutrition, promoting preventive healthcare,
- Promoting education and promoting gender equality,
- Setting up homes for women, orphans and the senior citizens,
- Measures for reducing inequalities faced by socially and economically backward groups
- Ensuring environmental sustainability and ecological balance, animal welfare
- Protection of national heritage and art and culture.

- Measures for the benefit of armed forces veterans, war widows and their dependents.
- Training to promote rural, nationally recognized, paralympic or olympic sports,
- 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 funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- Contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects.
- On the eve of the 68th Independence day, our Prime Minister has announced that priority should be given to the provision of separate toilets for girls in schools that can be incorporated as expenditure under Corporate Social Responsibility

What is excluded under CSR spending

- Profits from overseas branches and dividend received from other companies in India will be excluded from the net profit criteria.
- Contributions of any amount ‘directly or indirectly to a political party are not a permitted CSR activity
- Money cannot be spent on CSR activities undertaken that are part of the normal course of the company's business or on projects for the exclusive benefit of employees or their family members.
- Surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company.

2. Process of implementing CSR in companies



The New Act requires companies to appoint a Corporate Social Responsibility Committee consisting of at least three directors and disclose the same in the annual Board of Directors’ report. The CSR committee is required to recommend a formal CSR Policy after referring to the list of social project mentioned as per list specified under Schedule VII of the Act. This document, which is to be submitted to the company's board, should recommend particular CSR activities, set forth a budget, describe how the company will implement the project, and establish a transparent means to monitor progress. It requires companies to prepare a detailed report, in a particular format, about the company's CSR policy, the composition of the CSR committee, the amount CSR expenditures, and the specifics of individual CSR projects. The report must also include a statement from the CSR committee that the implementation and monitoring of the board's CSR activities is, in letter and spirit, in compliance with its CSR objectives and CSR Policy of the company. A company's board must include this report in its annual report to shareholders and publish it on the company's website.

➤ **Key Concerns and challenges in implementing CSR**

CSR which has largely been a voluntary contribution by corporate, with the New Act significant bureaucratic requirements has been imposed. Some of the key concerns and challenges are

- One of the major concern is the ambiguity in understanding what all constitutes CSR activities as the list specified under Schedule VII of the Act. The list of activities seems like an illustrative list and not exhaustive. However, at the same time, an overall reading of the rules strongly suggests that the scheduled activities alone will be considered for the purpose of CSR.
- The amount spent on the CSR activities is non taxable.
- If the minimum CSR amount is not spent, the board is required to disclose this fact, with reasons therefore, in its annual Director's Report to the shareholders. However, the law is still unclear in case of non compliance is there any legal offence or otherwise.

- Companies that fall in the designated category due to profit in a particular year may be reluctant to fulfil as per compliance. This could increase the burden on small companies which do not continue to make significant profits.
- The working of the non-governmental organizations -NGOs are administered privately. These may be informally organised, unaudited, may have political patronage. Identifying credible NGOs that have the capacity to deliver effectively at scale, is also a daunting task.
- Indian subsidiary of U.S. and U.K. companies, need to follow the rules under the U.S. Foreign Corrupt Practices Act ("FCPA") or the U.K. Bribery Act ("UKBA"), respectively, as well as CSR rules under the new act which may be challenging.
- Ensuring the funds are optimally utilised for its selected purpose and contributes in the overall development of the nation.
- The New Act's CSR requirements will increase the costs of doing business in India and add to existing administrative and reporting burdens.
- Ambiguity relating to local area preference for CSR activity has raised concern for companies with multiple locations of factories.
- As per the rules, CSR activities should not include any activity undertaken 'only' for the benefit of the employees and their families. Employees are one of the stakeholders of the company, in case an activity is undertaken primarily but not exclusively benefiting its employees, should that be considered CSR activity? This calls for further clarity.

Recently, the government has proposed to set up a CSR portal in partnership with the Indian Institute of Corporate Affairs (IICA), which comes under the Corporate Affairs Ministry (Press Trust of India, New Delhi, August 21, 2014). Some of the highlights are

- To provide a "one stop virtual shop" for all social welfare spending needs of companies, government plans to have a Corporate Social Responsibility (CSR) portal along with data analytics platform.
- In the RFP (Request for Proposal) for setting up CSR portal, data analytics, e-learning and dissemination platform.
- The data analytics platform would have features such as sectoral and overall spend analysis, geographical location of CSR analysis and statistical reporting.
- The portal can be used to search for suitable independent directors as well, for the companies falling under the ambit of new companies law and also job seekers for CSR implementation.
- "An Electronic Data Gathering, Analytics & Research (EDGAR) system will be developed for creating a database of companies, CSR policies of all companies falling under the ambit of Section 135 and their areas of operation to create CSR landscape of the country.

4. THE ROAD AHEAD.....

The CSR Rules effective from April 2014 onwards would slowly evolve till they acquire a level of stability. Truly said, the dynamics is likely to take 4-5 years. Eventually the people, media and civil society of this country will judge if an activity is genuine CSR.

The new law relating to CSR is an attempt to involve corporate India with the government and civil society to bring about sustainable development. If implemented in true spirit, the Act has the potential to be a game changer for our country.

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