

# What is the CSR Policy under Companies Act,2013? By Teresa Dhar

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## **WHAT IS CSR?**

Corporate Social Responsibility (CSR) is understood as a management concept by which companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.

It is a kind of self-regulating business model or strategy which provides for the companies to be responsible or accountable to the society for every resource used for their enterprises. It is based on the principle of give and take and is also known as stakeholder's interest theory.

In simple words, it is a practice adopted by the companies to remodel their image as not only takers but also givers, that they wish to pay back for the resources it has taken from the society, become more conscious about the its influence on economic, social and environmental aspects and mitigate the detrimental effect it has created in the process.

As a matter of fact, in 2014, India became the first country to have mandatory CSR contribution legislation - which is no longer seen as a philanthropic action but as a necessity to hold the company liable for.

## **PROVISIONS FOR CSR AND ITS APPLICABILITY**

According to Schedule VII, Section 135 of the Companies Act, 2013, the CSR provisions are applicable to both private limited and public limited companies, their holdings and subsidiary companies and foreign companies are also included, provided that have offices in India and all the above-mentioned companies meet any of the following criteria:

- Company must have a net worth of INR 500 crore or more in any financial year;
- Company must have an annual turnover of INR 1,000 crores or more in any financial year;
- Company must have a net profit of INR 5 crore or more during any financial year.

Companies are bound by this Section to spend at least 2% of the average net profits of the company made during the three immediately preceding financial years for the enforcement of the CSR policy.

## **IMPLEMENTATION**

As per the Companies Act, 2013, the activities enumerated in Schedule VII can be executed in the following ways:

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It must be carried out within India, preferably at the local areas and the areas around where the company operates.

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It may be performed as CSR projects or activities or programs which may either be fresh or ongoing;

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It may be carried out with the aid of a registered trust or society, or a charitable company functioning within India which is established by the funding company, its parent, subsidiary or associate company; or which is not established by the funding company, its parent, subsidiary or associate company if it has a proven track record of undertaking similar activities for at least three years;

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It may be conducted in association with other companies provided that each eligible company is able to report its CSR activities individually.

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It may also use up to 5% of its CSR spending in a financial year for training its own employees/personnel for implementing CSR activities or for developing the required facilities/capacities of their own personnel or implementing agencies.

## SCOPE OF CSR UNDER THE CSR RULE

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CSR activities do not include those activities which are undertaken in the normal course of business.

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CSR activities should be undertaken by the company in the area which it operates or the local area which is in proximity to the company.

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CSR projects or programs undertaken by the enterprise should include activities as mentioned in Schedule VII to the 2013 Act.

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Only those activities which do not exclusively for the benefit of the company or its employees will be considered as CSR activities.

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The company can undertake CSR activities themselves or any registered body or society which has been established under Section 8 of the Companies Act, 2013, or through its holding or subsidiary company or otherwise subject to compliance of conditions mentioned therein and a cap of maximum 5 % of total CSR expenditure of the company in a financial year.

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An enterprise can also undertake CSR activities in collaboration with other enterprises.

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Any surplus which arises out of CSR activities wouldn't be considered as profits from business operations.

## **PENALTY FOR VIOLATION OF CSR**

According to Section 134(3)(O) the companies Act 2013, the board of directors compulsorily need to disclose all the relevant information about its Company's CSR policy and its implementation on annually.

Section 134(8) of the Act states that if the company fails to comply with the aforementioned provision, it shall be liable to pay a fine which shall not be less than Rs. 50,000 but may extend to INR 25,00,000.

Further, every defaulting officer shall be punishable with an imprisonment for a term, not more than 3 years or with a fine which shall not be less than INR 50,000 but may extend to INR 5,00,000 or with both.

This essentially infers that the Act penalizes a company for failure to disclose information about its CSR policy but does not hold them liable for not undertaking CSR activities.

However, Section 450 read with Sec 451 of the Act, which deals with general penalties for contravention of the rules and repeat offences, contains a provision for punishing a company or its officers in case no specific punishment is provided for a particular offence.

Sec 450 of the Act states that if a company contravenes with any provisions of the Act or any rules thereunder, the company and any defaulting officer are liable to pay a fine which may extend to INR 10,000 and INR 1,000 per day if the contravention continues after the first fine.

According to Section 451 of the Act, where the defaulter is punished either with fine or with imprisonment and where the identical offence is committed for the second or successive occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

## **CONCLUSION**

It is agreed that the concept CRS is novel is a great initiative towards securing accountability on part of the companies towards the society. However, there are undoubtedly certain fallacies such as there was no tax clarity on the CSR spending, ambiguity on the computation of financial accounts of foreign companies, an absence of clarity on the regulations of CSR vis-a-vis foreign contribution.

A key challenge facing business is the need for more reliable indicators of progress in the field of CSR, along with the dissemination of CSR strategies. Transparency and dialogue can help to make a business appear more trustworthy, and push up the standards of other organizations at the same time.

Even though there are certain lacunas, they should not be permitted to become an obstacle in implementing the true spirit of CSR. Thus, the government and corporate entities must mutually work together for an effective implementation and addressing their concerns.

References:

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