MODULE III
CSR LEGISLATION IN INDIA & THE WORLD

INTRODUCTION

The Companies Act, 2013, a successor to The Companies Act, 1956, made CSR a compulsory act. Under the notification dated 27.2.2014, under Section 135 of the new act, CSR is compulsory for all companies- government or private or otherwise, provided they meet any one or more of the following fiscal criterions

- The net worth of the company should be Rupees 500 crores or more
- The annual turnover of the company should be Rupees 1000 crores or more
- Annual net profits of the company should be at least Rupees 5 crores.

If the company meets any one of the three fiscal conditions as stated above, they are required to create a committee to enforce its CSR mandate, with at least 3 directors, one of whom should be an independent director. The responsibilities of the above-mentioned committee will be:

- Creation of an elaborate policy to implement its legally mandated CSR activities. CSR acts should conform to Schedule VII of the Companies Act, 2013.
- The committee will allocate and audit the money for different CSR purposes.
- It will be responsible for overseeing the execution of different CSR activities.
- The committee will issue an annual report on the various CSR activities undertaken.
- CSR policies should be placed on the company's official website, in the form and format approved by the committee.

- The board of directors is bound to accept and follow any CSR related suggestion put up by the aforementioned committee.
- The aforementioned committee must regularly assess the net profits earned by the company and ensure that at least 2 percent of the same is spent on CSR related activities.
- The committee must ensure that local issues and regions are looked into first as part of CSR activities.

During the immediately preceding financial year shall establish a Corporate Social Responsibility Committee of the Board involving of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent, it shall have in its Corporate Social Responsibility Committee two or more directors.

WHAT IS THE ROLE OF CORPORATE SOCIAL RESPONSIBILITY COMMITTEE?

(a) Formulate and recommend to the Board, a Corporate Social Responsibility Policy,

(b) Recommend the amount of expenditure to be incurred on the activities and

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

WHAT BOARD WILL DO?

The Board of every company shall —

(a) Approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website,

(b) Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company,

(c) Ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years (Yet to be notified)

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount kept for Corporate Social Responsibility activities:

If a company contravenes the provisions 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.

SECTION 135 OF COMPANIES ACT 2013

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility 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;

(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.

(4) The Board of every company referred to in sub-section (1) shall,—

(a) After taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) Ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), 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 year, 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:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities: Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company

in persuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty 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 Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility 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 thirty days from the date of completion of the third financial year.

(7) If a company is in default in complying with the provisions of sub-section (5) or sub section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less."

(8) 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.

(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

SCHEDULE VII – LIST OF CSR ACTIVITIES COVERED

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:

(i) Eradicating hunger, poverty and malnutrition, 'promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.

(ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.

(iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.

(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 including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;

(vi) measures for the benefit of armed forces veterans, war widows and their dependents;

(vii) Training to promote rural sports, nationally recognized sports, Paralympics sports and Olympic sports

(viii) contribution to the 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;

(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), Defense Research and Development Organization (DRDO), Department of Biotechnology (DBT), 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).

(x) Rural development projects

(xi) Slum area development.

Explanation. - For the purposes of this item, the term `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.

(xii) Disaster management, including relief, rehabilitation and reconstruction activities.

APPOINTMENT OF INDEPENDENT DIRECTOR

The Companies Act, 1956 does not provide us with the specific definition of an Independent Director. But Independent Directors are in the limelight as per the Companies Act, 2013. A separate criterion has been established for the companies to have an Independent Director. An independent director is a non-executive director of a company who helps the company in improving corporate credibility and governance standards.

He or she does not have any kind of relationship with the company that may affect the independence of his/ her judgment. The term "Independent Director" has been defined in the Act, along with several new requirements relating to their appointment, duties, role, and responsibilities.

The provisions relating to the appointment of Independent directors are contained in Section 149 of the Companies Act, 2013 should be read along with Rule 4 and Rule 5 of the Companies (Appointment and Qualification of Directors) Rules, 2014

Applicability on Appointing an Independent Director

Listed Public Company: Every listed public company shall have at least one-third of a total number of directors as independent directors. Any fraction contained in that one-third shall be rounded off as one.

Unlisted Public Company: The Central Government may prescribe the minimum number of independent directors in case of any class of public companies. As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the following classes of companies shall have at least 2 directors as independent directors.

- Public companies with paid-up share capital of Rs. 10 crore or more.
- Public companies with a turnover of Rs. 100 crore or more.
- Public companies with aggregate outstanding loans, debentures, and deposits, exceeding Rs. 50 crore.

Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or when a situation arises which affects his status of independence the terms and conditions of appointment of independent directors shall also be posted on the company's website.

Role of an Independent Director

- Independent Director Acts as a guide, coach, and mentor to the Company. The role includes improving corporate credibility and governance standards by working as a watchdog and help in managing risk. Independent directors are responsible for ensuring better governance by actively involving in various committees set up by the company. The independent directors are required because they perform the following important roles:
- Facilitate withstanding and countering pressures from owners.
- Fulfill a useful role in succession planning.
- On issues such as strategy, performance, risk management, resources, key appointments and standards of conduct he or she must support in gaining independent judgment to bear the board's deliberations.
- While evaluating the performance of the board and management of the company, he or she needs to bring an objective view.
- Scrutinizing, monitoring and reporting management's performance regarding goals and objectives agreed in the board meetings.

- Safeguard the interests of all stakeholders, particularly the minority shareholders.
- Balance the conflicting interest of the stakeholders.
- Check on the integrity of financial information and ensure financial controls and systems of risk management are in operation.
- In situations of conflict between management and shareholder’s interest, aim towards the solutions which are in the best interest of the company.
- Establishing suitable levels of remuneration of executive directors, key managerial personnel, and senior management.

Duties of an Independent Director

- Undertake appropriate induction and regularly update and refresh their skills, knowledge, and familiarity with the company.
- Attempt to attend company’s general meetings.
- Attempt to attend BOD’s meetings and board committees meeting being a member.
- Have adequate knowledge about the company and the external environment in which it operates.
- Report matters concerning unethical behavior, actual or suspected fraud or violation of the company’s code of conduct or ethics policy.
- Acting within his or her authority, assist in protecting the legitimate interests of the company, shareholders and its employees.
- Not to unfairly obstruct the functioning of the company or committee of the Board.
- Participate in the Board’s committee being chairpersons or members of that committee.
- Not to disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.
- Ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use.

Other Provisions Related to Independent Directors Under Companies Act, 2013:

- Companies that trigger the conditions of Corporate Social Responsibility Committee of the Board to formulate and monitor the CSR policy of a Company. The Companies Act, 2013 requires the CSR Committee to consist of at least three directors, including at least one independent director.
- Where a company is not required to appoint an independent director, it shall have in its Corporate Social Responsibility Committee two or more directors.
- The Independent director’s appointment process must be independent of the company’s management. Databank may be used to appoint an independent director
- Every independent director shall give a declaration that he meets the criteria of independence when :
- He or she attends the first board meeting as a director.
- In every financial year, at the first meeting of the board of directors.
- When a situation arises which affects his or her status of independence being an independent director?
- The independent director shall be appointed for a maximum term of 5 years. The term shall not be more than 2 consecutive terms. He or she shall be re-appointed only by special resolution by the company.
- Any vacancy in the office of independent director shall be filled in the very next Board Meeting or within 3 months of such vacancy, whichever is later.
- A person must be an independent director in not more than seven listed companies at a time.
- An independent director shall not retire by rotation and shall not be included in the ‘total number of directors’ for the purpose of computation of rotational directors.
- A person can be appointed as an alternate director. But he or she must be qualified to be appointed as an independent director.
- A small shareholder director shall be considered as an independent director, if:

He or she is eligible for appointment as independent director u/s 149 (6).
He or she gives a declaration that he or she meets the criteria of Independence as specified u/s 149(7).

- If the Board meeting is called at shorter notice so as to transact some urgent business, then the presence of at least 1 independent director is mandatory. In absence of any independent director, a decision shall be circulated to all the directors and later approved by at least 1 independent director.

THE DRIVERS OF CSR IN INDIA

In recent years, there has been a trend, particularly among large organizations, to adopt a more socially responsible approach to their business activities. In various marketing textbooks, this concept is usually explored when discussing marketing ethics and the role of a company in the overall market place.

There are numerous drivers in the marketplace that have encouraged larger companies to be more socially responsible, as discussed in more detail below. But the key drivers for firms becoming more socially responsible are:

- Government legislation
- customers expectations of firms
- consumer lobby groups
- the extent of costs involved
- the type of industry in which they operate
- the potential for competitive advantage by image
- top-level corporate culture

1. Government legislation

In many countries across certain industries, the government has imposed legislation that requires companies to conform and behave in a certain manner. In this case, however, the organizations impacted by this legislation are only complying with various requirements because of regulation. They may or may not be willing to incorporate social responsibility initiatives into their day-to-day operations of an overall strategy.

Examples here would include legislation relating to environment, pollution, use of workers and conditions, product disposal, materials used in production, and so on.

Therefore, this is not necessarily a driver of corporate social responsibility, but is adopted and followed by companies as it is a requirement imposed upon them by government.

2. Customers’ expectations of firms

Consumers are becoming more aware of social and environmental issues and the consideration of the future is becoming slightly more important when consumers consider purchase decisions. As a result, some consumers will have an expectation that certain companies behave in an appropriate manner, relative to society and the communities. For instance, Disney has faced significant criticism in the past relating to the use of low paid workers in developing countries to produce toys, games and novelties. Likewise, some consumers have been critical of KFC because of the conditions that their supply chickens are held in. The changing expectations of consumers has resulted in firms being more responsive to these issues and adopting a more corporate responsible outlook

3. Consumer lobby groups

In conjunction to the previous driver of corporate social responsibility, the Internet and social media has made it much easier for consumer lobby groups to form, to generate attention and adverse media coverage, and therefore achieve its goals of change. Typically, these consumer lobby groups will target large and well-known companies within industries that adversely affect the environment were deemed to not provide a of product value. For example, Walmart is often the target of lobby groups because of their perceived actions and impact on local communities and business centers. Another example is McDonald’s, who are frequently criticized for the perceived impact that they may have on obesity and people’s health.

Therefore, larger companies who are more likely to be the target of lobby groups, become more likely to be willing to be engaged in corporate social responsibility initiatives.

4. The extent of costs involved

A shift to increase social responsibility may come at a reasonable cost to the organization. For example, a manufacturer choosing to manufacture its products in more developed countries or choosing to pay the production workers are much better salary – rather than “exploiting" unskilled workers in developing countries – will significantly impact their unit margin and overall profitability.

However, a bank can shift its customer bank statements from paper-based to electronic (known as e-statements) on the basis that they are saving lots of paper – but this has the impact of reducing costs for the organization. Likewise, a major hotel chain can encourage its customers to reuse their bath towels each day. Again the hotel can claim an environmental benefit of reduced water and power usage, all the while delivering themselves a reduction in costs and increase in profitability. Therefore, where the social responsibility initiative represents a win-win scenario, an organization is far more likely to implement it.

5. The type of industry in which they operate

There are a number of more significant industries where there is greater pressure an expectation on the firms to become responsible corporate citizens. Following the Global Financial Crisis, there has been in increased expectation on banks and other financial institutions to be more transparent and ethical in their business operations.

Obviously manufacturing is another industry that has greater pressure on it – particularly heavy manufacturing where there could be significant pollution, or large companies deciding to manufacture in developing countries, or manufacturers who have issues with product disposal (e.g. mobile phones and batteries and chemicals).

6. Potential for a competitive advantage by image

There are some companies that are attempting to build their core image, or at least parts of their brand association around their socially responsible behavior. Some companies will highlight that they are ethical manufacturers – Etiko is one such manufacturer, and bankmecu is a financial institution that rewards customers with cheaper home loans if they have environmentally friendly houses.

In this case, these types of organizations are truly practicing the societal marketing concept. They are foregoing some profitability in order to contribute to society or to certain communities.

7. Top level corporate culture

Corporate social responsibility is also a reflection of the overall corporate culture and of top management values. In other words, how important is making a contribution to society to the senior management of the organization? This will guide how embedded social responsibility is the overall strategy, or is it simply an exercise in publicity?

FOUR FACES OF SOCIAL RESPONSIBILITY

The four types of Corporate Social Responsibility are philanthropy, environment conservation, diversity and labor practices, and volunteerism.

1. Philanthropic Efforts

The largest companies in the world are aligned with philanthropic efforts. Microsoft works closely with the Bill and Melinda Gates Foundation to bring technology to communities around the world. The company understands that its success requires not just continued innovation, but building a next generation capable of understanding, using and improving technology.

Even small companies benefit from aligning with philanthropic causes. A local car wash might offer schools a platform to host fundraisers for sports teams. Restaurants have fundraising nights when proceeds benefit a local school or charity. Supporting these causes happens to also be good marketing, because the community is invited into the business, has a good experience and sees the company in a positive light.

2. Environmental Conservation

Environmental concerns regularly make the headlines, whether a long-term problem like global climate change or a more local issue such as a toxic chemical spill. Companies that align themselves in these efforts help minimize environmental problems by taking steps such as reducing their overall carbon footprint. Although major corporations get most of the attention for their environmental commitments — General Mills has committed to a 28 percent reduction in greenhouse gas emissions, for example — there are plenty of opportunities for small and mid-sized business as well.

Does your business have an active recycling program on site? Have you considered using alternative energy sources like solar and wind to help power your operations? There are plenty of "green cleaning" alternatives that can help reduce your use of harsh toxic cleaning chemicals. All these steps can make a small but significant contribution to improving the environment. You can also ask your suppliers to do the same, letting them know that their environmental measures will be a factor in your purchasing decisions. By doing so, your environmental commitments are multiplied along the supply chain.

3. Company Diversity and Labor Practices

Business leaders realize that diversity in the workplace is beneficial when everyone is getting along and working as a team. However, labor policies must apply to all employees, even those at the highest levels of the company. The scandals with Harvey Weinstein and Steve Wynn show that no company is impervious to the ramifications of sexual harassment. This movement has also given rise to other diversity issues in the workplace that need attention and consistent action. As a business leader, review your own diversity policies and protocol to address any complaints and violations. This is not only good for your company image; it also helps build a positive company culture with good morale and high productivity.

4. Supporting Volunteer Efforts

Local communities and charities always need help. Smart business leaders know that being involved in the community in a productive way is good for the company too. Give employees the opportunity to help a local school plant trees or work with the city council on addressing homelessness in the area. Business leaders have the opportunity to choose where to spend volunteer efforts to best help the local area along with the company. The important thing for businesses is to choose a cause and contribute time.

REGULATORY ENVIRONMENT IN INDIA

Clause 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014 are the two most important documents providing legal framework for CSR.

a) Clause 135, Companies Act, 2013

Under 135 (1), every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Under 135 (2), the Board's report should disclose the composition of the Corporate Social Responsibility Committee.

Under 135 (3) the Corporate Social Responsibility Committee should formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII [The Schedule VII mentions the list of activities which may be included by companies in their Corporate Social Responsibility Policies].

The list of activities is as follows:

Eradicating extreme hunger and poverty

- Promoting education
- Promoting gender equality and empowering women
- Reducing child mortality and improving maternal health
- Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and
- Other diseases ensuring environmental sustainability
- Enhancing vocational skills
- Promoting social business projects
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central

- Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women, etc.

Under 135 (3), the Corporate Social Responsibility Committee should also recommend the amount of expenditure to be incurred on the activities and monitor the Corporate Social Responsibility Policy of the company from time to time.

Under 135 (4), the Board of every company referred to in sub-section (1) should approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website. The Board should also ensure that the activities mentioned in the Corporate Social Responsibility Policy of the company are undertaken. Most importantly,

under 135 (5), the Board of every company referred to in sub-section (1), should ensure that the company spend at least two percent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

b) Companies (CSR Policy) Rules, 2014

The Companies (Corporate Social Responsibility Policy) Rules, 2014 came to force on the 1st April, 2014. It defines CSR as the projects or programs relating to activities specified in Schedule VII of the Companies Act or projects relating to activities undertaken by the board of directors of a company subject to the condition that such subject is covered in Schedule Vll of the Act. Clause 3 of the Companies Rules, 2014 includes all companies which fulfills the criteria specified in sub-section (l) of section 135 and having its branch office or project office in India to implement CSR. It urges the companies to constitute a CSR committee and comply with the provisions of the act.

The CSR committee of every company which fulfills the criteria specified in sub-section (l) of section 135 is supposed to register a foundation/ institution for undertaking the CSR activities, either under the Trust Act, Societies Act or the Companies Act.

Some of the highlights of the rules are as follows:

- Programs benefitting only the company employees are not considered as CSR activities. Hence the companies must be careful is choosing programs or activities according to the schedule VII.
- Monies spent on capacity building of staff under the CSR banner cannot exceed 5% of the expenditure CSR expenditure shall include all expenditure including contribution to corpus, or projects related to CSR. But caution should be made to fall within the schedule VII purview. Contribution made to any political parties cannot amount to CSR activity

The Companies Rules, 2014 also gives provision for more than two companies to collaborate and undertake CSR programs. The Board's Report of company from the financial year 2014 shall include an annual report on CSR. In case of a foreign company, the balance sheet shall contain an annexure regarding report on CSR