The MCA provides clarity on Corporate Social Responsibility under the Companies Act, 2013

23 June 2014

Background

The Ministry of Corporate Affairs (MCA) has received several references and representation from various stakeholders seeking clarifications on the following:

- Section 135 on Corporate Social Responsibility (CSR) of the Companies Act, 2013 (the Act)
- The Companies (Corporate Social Responsibility Policy) Rules, 2014 (the Rules)
- The types of activities to be undertaken as per schedule VII of the Act.

On 18 June 2014, the MCA has provided following clarifications:

Constitution of the CSR committee

All companies covered under the Act are required to constitute CSR committee under Section 135, if they meet any one of the following conditions:

- Turnover of INR10,000 million or more
- Net worth of INR5,000 million or more
- Net profit of INR50 million or more during any financial year.

Any financial year’ referred under section 135(1) and Rule 3(2) has been clarified to mean ‘any of the three preceding financial years’.

Broad range of activities covered

The CSR activities enumerated in schedule VII of the Act are broad-based and are intended to cover a wide range of activities. Thus, these prescribed activities should be interpreted liberally to capture their essence i.e., if a proposed CSR activity is not specifically mentioned in schedule VII of the Act, a company can undertake such an activity as long as the activity proposed is able to capture the essence of items prescribed under schedule VII of the Act. The MCA has also provided examples of the CSR activities which are given in the table below.

Programme mode vs. one-off events

The CSR activities should be undertaken by a company as a project/programme in accordance with its approved CSR policy. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes, etc. would not qualify as an expenditure on the CSR activities.
Types of expenditure considered as expenditure on the CSR activity

Following are the types of expenditure which will also be considered as expenditure on the CSR activity:

- Salaries paid to regular CSR staff and volunteers (in proportion to time spent on CSR activities) can be factored into CSR project cost as part of CSR expenditure.
- Expenditure incurred by the foreign holding company for CSR activities in India will qualify as CSR expenditure of the Indian subsidiary if:
  - the CSR expenditure is routed through the Indian subsidiary
  - the Indian subsidiary is covered under CSR provisions of the Act.
- Contribution to corpus of a trust/society/company with charitable objects, etc. will qualify as CSR expenditure if either of the following is fulfilled:
  - such entities are created exclusively for undertaking CSR activities
  - the corpus is created exclusively for a purpose directly relatable to a subject covered in schedule VII of the Act.

Types of expenditure not considered as expenditure on CSR activity

Expenses incurred by companies for fulfillment of any Act/Statute of regulations (such as Labour Laws, Land acquisition Act, etc.) would not be considered as CSR expenditure under the Act.

Registered trust

The Rules permit a company to undertake CSR activities under the CSR policy that is approved by its Board through a registered trust. In those cases, where registration of a trust is not mandatory in a State in India, then a trust registered under the Income Tax Act, 1961 would be considered as a registered trust for the CSR provisions under the Act.

Following are the examples of CSR activities as detailed in the MCA circular:

Promoting education

1. Educating the masses and promotion of road safety awareness in all facets of road usage
2. Safety traffic engineering and awareness through print, audio and visual media
3. Setting up Applied Research Training and Innovation Centre (ARTIC) at Nasik (also qualifies under Vocational skills and Rural development)

4. Consumer education and awareness:
   - Providing effective consumer grievance redressal mechanism
   - Protecting consumer’s health and safety, sustainable consumption, consumer service, support and complaint resolution
   - Consumer protection activities
   - Consumer rights to be mandated
   - All consumer protection programmes and activities on the lines of rural development, education, etc.

5. Donations to Indian Institute of Management, Ahmedabad for conservation of buildings and renovation of classrooms

6. Non Academic Technopark Technology Business Incubator (approved by Department of Science and Technology, Government of India) not located within an academic institution

7. Research and studies (or identified specifically under respective items of schedule VII).

Promoting health care including preventive health care

1. Social business projects such as giving medical and legal aid, treatment to road accident victims.
2. Provisions for aids and appliances to the differently-able persons.
3. Medical aid provided as a disaster relief measure.
4. Trauma care around highways.

Vocational skills

1. Drivers’ training, etc.
2. Capacity building for farmers covering best sustainable farm management practices to predominantly benefit rural farming community.
3. Training agriculture labour on skill development to predominantly benefit rural farming community.

Promoting education

1. Educating the masses and promotion of road safety awareness in all facets of road usage
2. Safety traffic engineering and awareness through print, audio and visual media
**Eradicating hunger, poverty and malnutrition**

1. Food supply as a disaster relief measure
2. Supplementing government schemes like mid-day meal by corporate through additional nutrition.

**Ecological balance**

1. Own research for individual crops to identify the most cost optimum and agri-ecological sustainable farm practices.
2. Applied research with a focus on water management.

**Conservation of natural resource**

Product life cycle analysis from the perspective of soil conservation (also qualify under ‘maintaining quality of soil, air and water”).

**Environmental sustainability, ecological balance and conservation of natural resources**

Renewable energy projects.

**Following are the examples of activities that are not CSR activities as detailed in the MCA circular:**

1. Training to enforcement personnel
2. Capacity building of government officials and elected representatives in the area of public private partnerships and urban infrastructure
3. Sustainable urban development and urban public transport systems
4. Programme providing professional exchange of physicians between India and the United States.

**Our comments**

By providing clarifications on CSR provisions, the MCA has once again indicated its commitment towards smooth implementation of the Act. CSR obligations are currently live for companies and they need to respond in a timely manner and finalise their policies and related implementation plans.

Whilst the MCA clarifications will help companies to broad-base the types of activities that can be undertaken as CSR activities; companies should still exercise a degree of caution and avoid situations where the underlying spirit of the Act is not met.
The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

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