



New circular on CSR Rules

**Taking the 'liberal' stance
to help kick-start implementation**

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New circular on CSR Rules:

Taking the 'liberal' stance to help kick-start implementation

While the government had notified the rules for implementation of Sec 135 (provisions on Corporate Social Responsibility) of the Companies Act 2013 on February 27, companies and other key stakeholders engaged in social development had sought clarifications on many of the key provisions. Last week, the Ministry of Corporate Affairs (MCA) issued a circular to address the major issues.

The clarifications have considerably enhanced the flexibility of the guidelines for companies to adhere to the law, particularly with regard to activities that can be undertaken and to their own involvement in these activities. In our view, the clarifications will help kick-start CSR efforts, particularly by companies that have not been actively engaged in CSR activities in the past.

While some points may need further clarification, we believe that these too will be addressed soon.

The key highlights of the circular are:

- 1. More companies will now be covered under Sec 135:** The circular has clarified that companies that have met the financial thresholds specified in the Act in *any of the three financial years prior to FY2014-15* will be liable to comply. We believe this provision may have resulted in some expansion in the list of companies covered by the regulation, vis-à-vis the earlier interpretation of one reference year.
- 2. 'Liberal interpretation' means a wider range of activities can now be taken up:** The circular mentions that companies developing programs as part of their CSR efforts can interpret Schedule VII of the Companies Act 2013 liberally; while some activities being undertaken or currently being planned may not exactly match with the wording of Schedule VII, these could be taken up if they capture the essence of the subjects mentioned. Our reading of the illustrations in the MCA circular (reproduced in the Annexure) suggests that across cause areas, activities that support the larger cause – even if this is in an indirect or peripheral way - will be allowed as CSR as per the law. This will include research as well as awareness building programs undertaken through mainstream media channels.

MCA has explicitly mentioned that:

- **Programs around road safety, creating consumer awareness, support to technology incubators not located within academic institutions** (provided they are approved by the Department of Science & Technology) can be considered as CSR programs

- **Awareness programs** such as financial literacy will be included as CSR activities. For the safety awareness program that the MCA has illustrated, expenditure on awareness building through print and AV electronic media is included
- **Expenses on research** and studies on all areas covered under Schedule VII will also be included as CSR expenditure
- **Rural development has been defined** as 'any project meant for development of rural India'. Hence, a wide range of projects could be classified under this category

Additional details, including cases where expenditure will not be permitted to be accounted for as CSR spend, are provided in Annexure 1. Some notable exclusions are:

- Sustainable urban development and urban transport systems
- Capacity development of government officials and elected representatives
- Professional exchange programs between countries
- Any development expenditure mandated by state/local government regulations

3. One-off events will not be considered as CSR activities: The circular states that CSR activities have to be in the nature of projects/programs rather than one-off events such as marathons, awards, charitable contributions and advertisements and sponsorships given to TV programs. Such events shall not qualify as CSR expenditure..

4. CSR employees' salaries and monetary value of employee volunteering can be considered as CSR spend: The circular mentions that the CSR expenditure will include the CSR employees' salaries. Also, recognition of the monetary value of employee volunteering as CSR expenditure is a welcome step for companies which have a huge and/or high cost employee base and especially those that have no identifiable local community as stakeholders (IT companies, investment banks etc). This expenditure will be calculated in proportion to employees' time/ hours spent specifically on CSR activities.

5. A foreign holding company's spend on CSR activities in India can be counted as CSR spending of their Indian subsidiary: This will be valid only if the CSR expenditure is routed through the Indian subsidiary. This will be beneficial for many Indian subsidiaries of foreign companies that are required to undertake CSR expenditure according to the Act, since some large global companies also directly fund social development programs in India.

6. Corpus expenditure can be included as CSR expenditure: The circular states that contribution to corpus of a trust/society/section 8 company will qualify as CSR expenditure, as long as it is created exclusively for a purpose that is directly relatable to a cause covered in Schedule VII of the Act. It would have been helpful to provide additional clarity on whether such contributions, which may be lumpy and thus in excess of the prescribed CSR spend for the year, could be adjusted and counted as CSR spend in the following financial years.

The circular does not lay down any deadline for creation and posting of CSR policies by companies, which will be a crucial first step for going ahead with implementation for companies that have not

undertaken CSR in a structured way in the past. However, we hope that this will be addressed in circulars/FAQs expected soon.

For all the highlights of the mandatory CSR provision in the Companies Act, 2013 (as notified on February 27, 2014) please [click here](#).

Annexure 1

General Circular No. 21/2014

No. 05/01/2014- CSR

Government of India

Ministry of Corporate Affairs

Shastri Bhawan, Dr. R. P. Marg

5th Floor, 'A' Wing,

New Delhi - 110 001

Dated: 18th June, 2014

To,

All Regional Director,

All Registrar of Companies,

All Stakeholders

Subject: - Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

This Ministry has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as 'the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013.

Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR') are as under:-

(i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.

(ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as

marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

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

(iv) Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.

(v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

(vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

(vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.

(viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-

(Seema Rath)

Assistant Director (CSR)

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