

 BY
LAW

"The best way to find yourself is to lose yourself in the service of others."
-Mahatma Gandhi

"The business of business is business"
-Friedman

The Companies Act 2013 ("**Act**") has been passed replacing the six-decade old legislation Companies Act 1956. The new law has the potential of being a historic milestone by introducing several provisions which would change the way Indian corporate do business and one such provision is implementation of **Corporate Social Responsibility (CSR) being made mandatory**. There was no such provision in the Companies Act, 1956. In 2009, the Ministry of Corporate Affairs had prepared a set of voluntary corporate social responsibility guidelines which indicated some of the core elements that businesses need to focus on while conducting their affairs.

The Act has brought the idea of CSR to the forefront and through its disclose-or-explain mandate, is promoting greater transparency and disclosure. The Ministry Of Corporate Affairs has also issued draft Rules on 27 February 2014 pertaining to the same which came into effect from 1 April 2014. CSR is not a new concept in India. Ever since their inception, corporate enterprises like the Tata Group, the Aditya Birla Group and Indian Oil Corporation, to name a few, have been involved in serving the community. However, what this Act does is brings more companies into the fold. **The Act is the first regulation to make any voluntary social responsibility into a mandated social responsibility that is governed by a bundle of rules**. Under the said Act, any company having a net worth of Rupees 500 crore or more or a turnover of Rupees 1,000 crore or more or a net profit of Rupees 5 crore or more should mandatorily spend 2% of their net profits per fiscal on CSR activities. The calculation of net profits that determine the amount to be spent by companies under the ambit is to be done as per the requirements of the Act [\[1\]](#), as opposed to the concept of Profit before Tax that was clarified by the draft Rules.

The company can implement its CSR activities directly on its own or through its own non-profit foundation set-up so as to facilitate this initiative or even through independently registered non-profit organisations that have a record of at least three years in similar such related activities.

The first step towards formalising CSR projects in a corporate structure is the constitution of a CSR committee^[2] for effective implementation; the CSR committee must also oversee the systematic development of a set of processes and guidelines for CSR to deliver its proposed value to the company.

India has become the only country in the world with legislated corporate social responsibilities. There are mandatory CSR reporting requirements in Sweden, Norway, the Netherlands, Denmark, France and Australia. However, these requirements are implemented in the absence of any legal standards for an integrated report and undertaking such responsibilities is voluntary in these countries.

The CSR spending obligations have nothing to do with the listing status of a company; they apply to every company falling into the above mentioned criteria even foreign companies that have a branch office in India. Companies should not seek to make profit out of CSR activities or the same would not be counted as CSR activities. The basic objective of CSR is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of corporate bodies feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness. **A good CSR policy well implemented can have immense benefits to the brand value of the company, can result in an inspired and motivated work force and attract more customers and investors.**

There may be reluctance in compliance by some companies which are not profitable, but fall under the designated category due to triggering net worth or turnover criteria. A mandatory CSR seems burdensome. Also, it is the government's responsibility to determine high-priority needs of society and target public expenditures in these areas. By making CSR mandatory, the government is abdicating from one of its primary functions. The corporate sector is already over burdened with taxes. Further, it is not clear what all constitutes as CSR activities. The draft Rules state that 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 list is thus an inclusive list and not an exhaustive list.

Mandatory CSR is inherently contradictory. CSR is fundamentally an inspirational exercise and it is very difficult to legislate aspirations. Laws only set minimum standards; they do not create any impetus for positive action.

If the 2 percent allocation is not made in a given fiscal year, the CSR committee has to submit an explanation to avoid being penalized. There is no discussion of what explanations would be legally valid. On the other hand, it is important to appreciate that the government has extended a great advantage to companies by not asking them to pay this 2% as "tax". Instead it has given the freedom by asking companies to figure out the right opportunities, collaborate with other companies if they want to, spend the money, and just submit a report.

The legislature has done its part; the onus is now on the Executive to decide the spirit in which the provision of corporate social responsibilities is imposed on companies. One can only hope that the vision of the legislature is correctly implemented and the monies are spent in the right directions.

***- By Nirav Jani (Senior Associate & Team Leader)
Ritu Shetty (Junior Associate)***

Editor: Trupti Daphtary

[\[1\]](#) Companies Act, 2013 Section 198: Calculation of profits

[\[2\]](#) Companies Act, 2013 Section 135

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