

# Article

## Corporate Social Responsibility (CSR) – *One of the major highlights of Companies Bill, 2012*

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The Companies Bill, 2012 (“**Bill, 2012**”) has been in the news for a long time not only because of the delay in passing the Bill but also because of the many new provisions to be introduced for the companies.

One of the key highlights of the Bill, 2012 is the introduction of provisions relating to Corporate Social Responsibility (“**CSR**”). This being a completely new concept it has had its own share of discussions. We discuss below the provisions relating to CSR:

#### **What is CSR?**

It is a well-perpetuated fallacy that corporate are run on the promoters’ or shareholders’ funds alone. The fact of the matter is that most of the capital required by corporate – both long-term and medium-term is provided by the banking/financial system, which is operated out of the public funds. Therefore, if corporate are mandated to undertake CSR, it is very fair and logical and a natural corollary of the nature of capital invested in them. It need not be over-stated that the corporate owe it to the people and the society to pay them back in terms of social services and by building social capital for common good. This cannot be the sole responsibility of governments.

Companies Bill, 2009 given an option to companies to spend on CSR however, Bill 2012 has made this mandatory for all eligible companies. CSR is an initiative by the Bill, 2012 to ensure that a portion of earnings of a company is used for a social purpose. Basically, companies cannot *eat the whole cake and have it too*.

#### **Which companies should indulge in CSR?**

The provisions of Clause 135 of the Bill, 2012 shall be applicable in case any company fulfills any *one* of the following conditions during any financial year:

1. net worth of Rs. 500 (five hundred) crores or more; or
2. turnover of Rs. 1,000 (one thousand) crore or more; or
3. net profit of Rs. 5 (five) crore or more

#### **How should companies comply with Clause 135?**

If any company qualifies, then a CSR Committee to be constituted consisting of 3 (three) or more directors with atleast 1 (one) being an independent director.

Clause 135 does not specifically apply to any company. The Bill, 2012 requires an independent director to be appointed only in a listed company (*clause 143*). Thus, if your company falls under any of the conditions mentioned above, then irrespective of



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the class, an independent director has to be inducted into the Board of Directors for the purpose of constituting the CSR committee.

#### **What disclosures are required to be made?**

The Board's Report should state the composition of CSR committee and the details of CSR activities on which the company has spent. If the company fails to spend the earmarked profits on CSR, reasons for such non-failure are also required to be included in the Board's Report.

#### **What are the duties of CSR committee?**

1. Formulate and recommend to the Board, a CSR policy. This should be in line with the activities specified in Schedule VII.
2. Recommend the amount of expenditure as in the CSR policy.
3. Monitor the CSR policy from time to time.

#### **What are the responsibilities of the Board with respect to CSR?**

1. Approve the CSR policy as recommended by the CSR committee and disclose contents of the same in its report and the company's website.
2. Ensure the company complies with the CSR policy.

#### **How much should the company spend on CSR?**

The company *shall make endeavour* to spend at least 2(two) % of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. The Bill, 2012 uses the phrase '*shall make every endeavour to spend*'. This is a bit of a dampener. The Bill, 2012 however, states that if the company fails to spend such an amount, the Board's report shall state reasons for not spending the amount.

#### **Is there any form required to file for compliance with CSR provisions?**

The Standing Committee in its report on Companies Bill, 2011 proposed for filing a certificate with the jurisdictional ROC, the Tribunal or any other authority, on an annual basis, indicating due compliance with the CSR provisions, however, the Ministry did not accept this recommendation stating that the compliances/ non compliances are to be disclosed in the Board Report which in any case will be filed along with the financial statement of the company. Hence, no form has been prescribed for filing the compliance certificate for CSR.



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**Conclusion**

The only objective behind the mandatory provisions of CSR is to instill the spirit of CSR amongst corporate sector. India will be the first country to have a mandatory provision on CSR in Companies Act after enactment of the Bill, 2012, hence, the effect of such provision can be seen only after implication.