

CLARIFICATIONS ON PROVISIONS RELATING TO CORPORATE SOCIAL RESPONSIBILITY (CSR)

- The Ministry of Corporate Affairs (MCA) has issued clarifications on 18th June 2014 in respect of CSR under section 135 of the Companies Act, 2013 ('the Act'), the Companies (Corporate Social Responsibility) Rules, 2014 ('the Rules') and CSR activities to be undertaken as per Schedule VII of the Act.
- The clarifications given are summarized below:
 1. 'Any financial year' referred to in section 135(1) of the Act is clarified, which laid down criteria for applicability of CSR. As per the clarification, CSR provision would be applicable to all companies having net worth of Rs. 500 crore or more, or turnover of Rs. 1,000 crore or more or a net profit of Rs. 5 crore or more during any of the three preceding financial years.
 2. Activities undertaken in pursuance of the CSR policy must be interpreted liberally and are broad-based which are intended to cover a wide range of activities. Illustrative activities which are covered / excluded from CSR are given below under Annexure 1(a) and other clarifications provided by MCA are given below in Annexure 1(b).
 3. CSR activities should be undertaken by the companies in project / programme mode. One-off events such as marathons / awards / charitable contribution / advertisement / sponsorships of TV programmes, etc., would not qualify as part of CSR expenditure.

Our views

- This would be subjective in regard to what constitutes one-off events.
4. Expenses incurred by companies for the fulfillment of requirement under any law (such as payments made under Labour Laws, Land Acquisition Act, etc.) would not be considered as CSR expenditure.
 5. 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 considered as part of the CSR expenditure. As per the CSR Rules, expenditure on building CSR capacities of its own personnel or of those of the implementing agencies with atleast 3 years track record shall not exceed 5% of the total CSR expenditure in a year.

6. 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.

Our views

- “Routed through Indian subsidiaries” needs to be understood for accounting and tax purpose.

7. ‘Registered Trust’ (referred to in Rule 4(2) of the Rules) has been explained to include Trusts registered under Income Tax Act, 1961 for those States where registration of Trust is not mandatory.
8. 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.

Annexure 1

(a) Illustrative activities which are covered / excluded from CSR

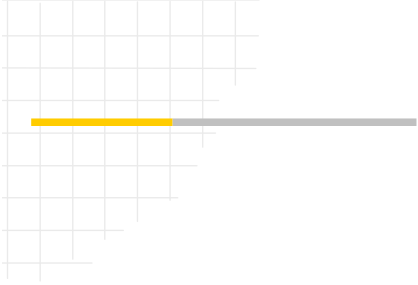
Additional items requested to be included in Schedule VII of the Act	Whether covered under Schedule VII	If covered, then under which head
1. Promotion of road safety through CSR a. Education / awareness of road safety and traffic engineering b. Drivers training c. Giving medical and Legal aid, treatment to road accident victims	Yes	a. Promoting education b. Vocational skills c. Promoting health care including preventive health care
2. Promotion of road safety through CSR - Training to enforcement personnel	No	It is establishment functions of government which cannot be covered
3. Provisions for aids and appliances to the differently- able persons	Yes	Promoting health care including preventive health care
4. Setting up ‘Applied Research Training and Innovation Centre’ which will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:		

Additional items requested to be included in Schedule VII of the Act	Whether covered under Schedule VII	If covered, then under which head
a. Capacity building for farmers covering best sustainable farm management practices	Yes	Vocational skill and livelihood enhancement projects
b. Training Agriculture Labour on skill development	Yes	Vocational skill
c. Doing own research on the field for individual crops to find out the most cost optimum and Agri – ecological sustainable farm practices. (Applied research) with a focus on water management	Yes	Ecological balance and maintaining quality of soil, air and water
d. To do Product Life Cycle analysis from the soil conservation point of view	Yes	'Conservation of natural resource' and 'maintaining quality of soil, air and water'
5. Consumer Protection Services	Yes	Promoting education
6. Whether donations to IIM [Ahmedabad] for conservation of buildings and renovation of classrooms would qualify as CSR and if yes then under (a) promoting education or (b) protection of national heritage	Yes	Promoting education, since it is pertaining to conservation and renovation of school buildings and classrooms
7. Non Academic Techno park TBI not located within an academic Institution but approved and supported by Department of Science and Technology	Yes	'Promoting education' if approved by Department of Science and Technology
8. Disaster relief	Yes	(i) 'Promoting health care including preventive health care' in case of medical aid (ii) 'Eradicating hunger, poverty and malnutrition' in case of food supply (iii) 'Sanitation and making available safe drinking water' in case of supply of clean water
9. Trauma care around highways in case of road accidents	Yes	Health care
10. Supplementing of Government schemes like mid-day meal by corporates through additional nutrition	Yes	Poverty and malnutrition

Additional items requested to be included in Schedule VII of the Act	Whether covered under Schedule VII	If covered, then under which head
11. Research and Studies in the areas specified in Schedule VII	Yes	Under the respective areas of items defined in Schedule VII. Otherwise under promoting education
12. Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure	No	-
13. Sustainable urban development and urban public transport systems	No	-
14. Renewable energy projects	Yes	'Environmental sustainability, ecological balance and conservation of natural resources
15. US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States	No	Not covered

(b) Other clarifications

Clarification sought	Clarification provided
1. Clarity on "rural development projects"	Any project meant for the development of rural India will be covered.
2. Whether activities in regard to enabling access to, or improving the delivery of, public health systems are considered under the head "preventive healthcare" or "measures for reducing inequalities faced by socially & economically backward groups"?	Depending on the context it can be covered under both the heads of 'healthcare' or 'measures for reducing inequalities faced by socially & economically backward groups'
3. Likewise, could slum re-development or EWS housing be covered under "measures for reducing inequalities faced by socially & economically backward groups"?	Yes, it can be covered
4. (i) Are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count?	Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.



Disclaimer:

This document has been prepared as a service to the clients. We recommend you to seek professional advice before taking any action on the specific issues.

In case of any clarification, you may reach us at nashah@nashah.com

