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Key Requirements and Analysis – CSR Component of Companies Act 2013 and Corporate Social Responsibility Rules 2014



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Frequently Asked Basic Questions

Whether CSR is applicable to holding or subsidiary company of any company which does not meet the threshold?

Is there any time limit to constitute the CSR Committee?

Is this Act/Rule applicable for private companies, if they meet the profit/turnover criteria?

Which is the starting year for determining the threshold criteria of net profit?

Supposing a company meet the criteria of CSR condition, i.e. net worth is rupees five hundred crore or more “or” turnover of rupees one thousand crore or more or a net profit of rupees five crore or more, during any financial year, and accordingly the company requires to spend 2% as the case may be- considering the company meets the net worth and turnover criteria but the company has huge losses, still the company need to spend CSR expenditure?

What if company had incurred loss in any of three financial year?

Which year's financials will be considered for implementing CSR? CSR applicability basis Rs. 5 Cr. profitability criteria - does it apply to private companies also?

CSR norm - 5 Cr PAT in any financial year. Is it retrospective or from this financial year?

How to Assess Net Profit to compute 2% CSR?

By when should we have a CSR Committee and Policy?

Key Aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Section # 135 (1) of Companies Act 2013 and Rule # 1, 3 & 5 of CSR Rules 2014

Every company having - (i) Net Worth of Rs. 500 Cr. or more "OR" (ii) Turnover of Rs. 1000 Cr. or more "OR" (iii) a net profit of Rs. 5 Cr. or more, during **ANY FINANCIAL YEAR** shall constitute a CSR Committee of the Board consisting of three or more directors, of which at least one director shall be an independent director.

Section # 135 (3) of Companies Act 2013 and Rule # 5, 6 and 9 of CSR Rules 2014

CSR Committee shall:

- Formulate and recommend to the Board a CSR Policy, which shall indicate activities to be undertaken by the company as specified in Schedule VII
- Recommend the amount of expenditure to be incurred on the CSR activities identified
- Institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company and monitor the CSR Policy from time to time

An Analysis

- While there is a clarity wrt. the company's eligibility from retrospective perspective, there is however no clarity whether prospective FY should also be considered. Clarity is yet to be obtained from MCA on this.
- Establish Working Group, reporting to the CSR Committee
- Define roles and responsibilities of concerned personnel of the CSR Committee and the Working Groups to ensure effective implementation of the CSR Rules

Some relaxations have however been provided for private or public listed companies –

- A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- An unlisted public company covered under this section is not required to appoint an independent director and can have its CSR Committee without such director

The Company should have a CSR Policy, ensuring that –

- A thorough Stakeholder Consultation has been conducted for identifying appropriate CSR projects primarily in alignment with activities defined in Schedule VII
- CSR activities to preferably benefit stakeholders around areas where Company operates
- Specifies modalities of execution/implementation schedules of projects
- Mentions no reverse flow of income from the projects back to Company
- Defines the monitoring process of the CSR programs undertaken
- Is displayed in the Company's official website
- Identification of Mechanism and Implementing Partners to execute CSR Projects and for Implementation and Monitoring of the CSR programs/projects
- Institutionalizations of an effective Management Information System to ensure effective management, monitoring and evaluation of the CSR programs, supported by forms, formats, frameworks, SOPs, Objectives, Targets, Programs and Strategies with a focus on high Environmental and Social Returns on Investment for the impacted community

Key Aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Section # 135 (1) & (5) of Companies Act 2013 and Rule # 2 (e) & 3 of CSR Rules 2014

Board of every company governed under the mandate needs to form a CSR Policy shall ensure that the company spends, in every financial year, at least 2% of the average net profit of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy

An Analysis

- The rules are applicable from the 1st of April 2014
- Section # 135 (5) of the Act communicates that an average net profits of the **THREE IMMEDIATELY PRECEDING YEARS** to be considered for assessment of the minimum amount that needs to be spent and thereby does not provide clarity on whether it should consider the audited years only, or the last 2 audited FYs and the current FY (the audited result of which is probably yet to be declared) – hence, the following options could be exercised:
 - i. Since there is lack of clarity on the years to be considered and there are multiple interpretations on this matter, one could await for clarification in this respect from MCA "OR"
 - ii. Calculate average net profit from the audited net profit results of FYs 10/11, 11/12 and 12/13 "OR"
 - iii. Calculate average net profit from the audited net profit results of FYs 11/12, 12/13 and envisaged net profit of FY 13/14, based on Advance Tax deposited – however, there lies a risk that the average net profit calculation may differ on the basis of the actual net profit of FY 13/14 and could thereby lead to erroneous reporting in the Director's Report
 - iv. At a later date, should MCA give a clarity to exercise option # (ii) defined above, whereas the Company has already gone ahead with option # (iii) in the Director's Report, then the reference of the correction of MCA could be made in the Director's report and vice versa – the smart option could however be to go with the safe and conservative approach, i.e. the highest 2% value calculated either out of the aforesaid (ii) or (iii)
 - v. Should MCA give a flexibility to exercise either option # (ii) or (iii) then there are no issues.
- Companies are expected to spend 2% of the average profit of the last 3 years – hence, even for two consecutive years if the company has been in loss, but on an average, the company has been in profit since the last 3 years, then the company would be required to spend 2% of the average profit on the stipulated CSR projects.

Key aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Section # 135 (1) & (5) of Companies Act 2013 and Rule # 2 & 3 of CSR Rules 2014

- "Net profit" means net profit as per the financial statement of the Company and excludes the following:
 - (i) Profits generated outside India through overseas branches or subsidiaries
 - (ii) Any dividend received from other companies in India that needs to comply with the Rules
- **Net Profit** in respect of a financial year for which the relevant financial statements were prepared in accordance with the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the 2013 Act and in case of a foreign company, net worth, turnover and net profit shall be computed in accordance with the balance sheet and profit and loss prepared as per section 381(1)(a) and section 198 of the 2013 Act
- Average Net Profit to be calculated in accordance with section 198

An Analysis

Inconsistency on the definition of the terms

Frequently Asked Questions on Nature/Type of CSR Activities

If the Company engages in some CSR activity through an intermediary entity which is not a company established under Section 8 of the Companies Act, 2013 then whether such activity will be invalidated as CSR activity under Section 135?

If a company (say A) chooses to continually sponsor CSR activities undertaken by some other company (say B), then would company A be in compliance with the requirement of the Rules?

We support through monthly financial contribution an NGO who provides education to underprivileged girls and they submit monthly progress report to us. Does that qualify as CSR?

Corporate Social Responsibility as defined under Companies Act, 2013 relates to activities specified under Schedule VII. However under the relevant Rules, the definition reads as activities including but not limited to those mentioned in Schedule VII. If a company engages in some socially beneficial activity which does not fall in the categories mentioned in Schedule VII, will such activity be construed as CSR considering it is a socially beneficial activity?

Whether school for company staff children where other students are also allowed for education will be considered as CSR?

Can company donate funds in any of Govt. approved scheme and comply with CSR requirement?

We have spent money on an effluent treatment plant which gives results beyond the legal compliance – would this qualify in Schedule VII?

A Company incurs certain expenditure on the training of its employees in the area of CSR. Would it be taken into account for computation of CSR expenditure?

Would the expenditure to be incurred on the implementation of project be deducted from CSR amount?

Would a Green Building qualify under Schedule VII?

Why conduct Stakeholder Consultation?

What if I decide to undertake CSR activities which is aligned with my business or is of my personal choice?

Key aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Section # 135 (1) & (5) of Companies Act 2013 and Rule # 2 (c), 3 and 4 (3) of CSR Rules 2014

- The company shall give preference to the local areas around where it operates, for spending the amount earmarked for CSR activities
- CSR expenditure shall include all expenditure relating to CSR activities approved by the Board, on the recommendation of the CSR Committee, but does not include any expenditure which is not in conformity with Schedule VII of the Act

An Analysis

- At the outset, companies need to conduct thorough Stakeholder Consultation for identifying the needs, concerns and expectations of the local stakeholders and accordingly benefit them through appropriate CSR projects that are primarily in alignment with CSR activities defined in amended Schedule VII of the Companies Act, in and areas around which the company operates – proper documented records could be maintained in this context
- Should expectations of local stakeholders call for implementation of CSR activities, which do not fall under Schedule VII of the Companies Act, whereas the Company :
 - ▶ Intends to execute such CSR activities, then the Company may take up such CSR activities – however such CSR activities will not qualify for the spent on the 2% mandated by the law ; Should such CSR activities not lead to return of income back to the Company, the Company could place a request to MCA to incorporate such CSR activities in Schedule VII
 - ▶ Does not intend to implement such CSR activities, then, it has the flexibility to undertake Schedule VII based CSR activities in other places in India

Amended Schedule VII of the Companies Act

Sl. #	Type of CSR Activities which Qualify for 2% Spent
1	Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation and making available safe drinking water
2	Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects
3	Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centers and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups
4	Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and Water
5	Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional and handicrafts
6	Measures for the benefit of armed forces veterans, war widows and their dependents
7	Training to promote rural sports, nationally recognized sports, Paralympic sports and Olympic Sports
8	Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women
9	Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government .
10	Rural development projects

CSR Activities of Schedule VII – Which Do not Qualify?

Sl. #	Broad Type/Nature of CSR Activities which do not qualify as 2% CSR spent
1	CSR activities undertaken outside India
2	CSR activities undertaken exclusively for the benefit of employees of the company or their family members
3	Contribution to a Political Party (directly or indirectly)
4	CSR activities undertaken in pursuance of the normal course of business of a company (<i>such as legal obligations, yielding in returns back to the company claiming the benefit</i>)
5	CSR activities which results in reverse flow of income for the company
6	While the Board policy could also cover other areas of CSR activities which are not encompassed under the amended Schedule VII, such activities will however not qualify for conformity with amended Schedule VII of the Rules and as such will not qualify against the 2% spent to be in compliance with the Rules

Frequently Asked Questions on Policy, Vehicle to be Set Up for Implementation, Monitoring & Evaluation of CSR Activities

What if I decide not to set up a Trust or Foundation to execute the CSR programs?

Why do I need to set up an CSR framework, ensuring proper and effective Monitoring and Evaluation of CSR Projects?

Why should I get a less credit, if I am putting in more effort in the overall success of the CSR project, although my investment in the corpus could be less?

Is there a way for me to benefit from this CSR rule, ensuring I am not in non-compliance?

What should be an effective CSR Policy?

Can the Policy be revised and if so, then is there a specific time frame?

How am I ensured of the proper utilization of the funds, which I am donating in a CSR project which is not managed by me?

Are there Auditing Standards for assessment of performance or impacts of CSR projects?

Key Aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Section # 134 (3) (o) & 135 (1) & (5) (3) (c) of Companies Act 2013 and Rule # 2 (c), (e) & 6 of CSR Rules 2014

The key constituents of a CSR Policy:

- The Policy should include in it the list of CSR projects or programs, within the purview of the Schedule VII of the Act
- The Policy should indicate that the surplus profit arising out of CSR projects shall not form a part of business profit of the Company

Section # 134 (3) (o) & 135 (3) (c) & (4) (b) of Companies Act 2013 and Rule # 2 (c), (e), 5 (2) & 6 (1) of CSR Rules 2014

The Policy should specify modalities of execution, implementation schedules and monitoring process of the projects/programs

An Analysis

- If one intends to religiously exercise the CSR Rules 2014, keeping the essence of CSR intact, then it definitely makes a wise sense to ensure that the policy mentions the appropriate utilization, monitoring and management of funds, followed by display of the impacts, generated by the CSR projects over the baseline.
- Third party endorsement could add credibility and provide confidence to other donor companies and other concerned stakeholders, primarily the shareholders, whose money is going into the CSR project activities. The audited report of a third party could facilitate in higher confidence building and lead to more inflow of funds into the CSR project. To enable this, the company needs to set up a proper CSR framework for the projects to be executed.
- The CSR Rules 2014 indicates that the CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company - as such, any CSR activity that results in return of profit back to the business shall not qualify for the 2% spend of the CSR Rules. As long as the CSR activity finds its place in the CSR Policy, there cannot be reverse flow of income from the CSR activity back to the Company. One could channelize the funds towards a Schedule VII based CSR activity and get it recognized under the 2% CSR mandate – however, the long term intention of taking up the CSR activity could be to convert this into a business venture. Hence, this flow of fund under the label of 2% CSR could become a dubious means or opportunity, to establish/set up the base for a future business venture. As long as the venture does not become self-sustainable/profitable project, one may continue to declare it as a CSR activity and showcase the contribution under the 2% mandate – and when it becomes a profitable venture, one may decide to extract the project out of the 2% mandate. **This is a grey area, which needs some attention and clarity from the MCA to prevent the misuse of the law.**

- Identification of Mechanism and Implementing Partners to execute CSR Projects and for Implementation and Monitoring of the CSR programs/projects
- Institutionalizations of an effective Management Information System to ensure effective management, monitoring and evaluation of the CSR programs, supported by forms, formats, frameworks, SOPs, Objectives, Targets, Programs and Strategies with a focus on high Environmental and Social Returns on Investment for the impacted community
- The impacts generated could be endorsed through a third party on the basis of the following standards:
 - International Standard on Assurance Engagement (ISAE) 3000 and
 - AccountAbility's AA 1000AS Standard

Key Aspects of CSR as per Companies Act 2013 and Rules 2014

The Mandate

Rule # 4 (1) & (2) of CSR Rules 2014

Vehicles that could be Explored for Executing CSR

Projects - A company may decide to undertake its approved CSR activities, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise. Provided:

- Such a trust, society or company is not established by the company or its holding or subsidiary or associate company and shall have an established track record of three years in undertaking similar programs
- The company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects & programs and the monitoring and reporting mechanism

Rule # 4 (3) of CSR Rules 2014

Companies could collaborate with each other in a manner that the CSR Committees of respective Companies are in a position to separately report on the projects and programs in accordance to the Rules. (Companies of a particular Group could set up its own Foundation or donate in another Foundation of another Company and get the CSR projects of mutual interest implemented)

An Analysis

The word '**MAY**' seems to be giving options to companies:

- Option # 1 – to spend on their own directly and not necessarily through what has been discussed in the adjacent column.
- Option # 2 - to spend through the mechanism discussed in the adjacent column

- For a CSR project executed in collaboration, reporting has to be done separately – as such, it calls for Attribution of the impacts of the CSR projects, which should be in the form of – (i) Investment/Donation (i.e. equity) and (ii) The role played by the collaborating companies for the sustenance and for making the CSR project successful.
- Companies would therefore need to develop an effective Attribution Framework for the CSR Impacts across various stakeholders involved and staking a claim, based on Investments made and Role Played by various interested and participating stakeholders for the Management, Maintenance and Sustenance of the CSR Projects.
- External stakeholder consultation could also be carried out with various Key Opinion Formers at the policy level, who could give their views on what proportion in terms of percentage could be attributed towards equity and Management, Maintenance and Sustenance of the CSR Projects, so as to effectively measure the attribution across the participating stakeholders.

Frequently Asked Questions on Flexibilities and Mandates as per the Companies Act and CSR Rules

What if I decide not to spend money on CSR programs?

What if I don't report in my Board Report?

What are the mandates of the CSR Committee and the Board?

What do I need to disclose/report?

Key aspects of CSR as per Companies Act 2013 and Rules 2014

Items	Details
Other Flexibilities	<ul style="list-style-type: none">● Every Company, which ceases to be a covered under section 135 for three consecutive financial years, shall not be required to constitute CSR committee and comply with the said section till such time, it meets the abovementioned criteria● Companies could spend 5% of the 2% CSR amount for building up the CSR capacities of their personnel and that of the workforce of their implementing agencies through institutions which have an established track record of a minimum of 3 years
Mandate of CSR Committee	<ul style="list-style-type: none">● formulate and recommend to the Board of the Company, a CSR Policy, which shall indicate the activities to be undertaken by the company in conformity or in line with activities which fall within the purview of Schedule VII● recommend the amount of expenditure to be incurred on the activities referred to above● prepare draft CSR Policy aligned with the requirements of the Rules, with a focus on Schedule VII and place it to the Board of the Company for approval● monitor the CSR Policy of the company from time to time● institute a transparent monitoring mechanism for implementation of the CSR activities taken by the Company
Mandate of the Board	<ul style="list-style-type: none">● take into account the recommendations made by the CSR Committee● approve the CSR Policy drafted for the company and in alignment with the CSR Rules 2014● ensure that the activities as included in CSR Policy of the company are undertaken by the company● ensure that the company spends, in every financial year, at least 2% of the average net profits of the last three financial years● ensure that the surplus profit arising out of the CSR projects shall not form a part of the business profit of the company

Key aspects of CSR as per Companies Act 2013 and Rules 2014

Items	Details
Reporting Mandate of the Board	<ul style="list-style-type: none"> For the spent amount, board to disclose contents on CSR related information in its annual board report and also release the same on the company's website. The following may also be noted: <ul style="list-style-type: none"> the Board's Report of the Company covered under the Rules pertaining to a FY commencing 1st of April 2014, shall include an Annual Report on the CSR imperatives defined in the Annexure of the Rules in case of a foreign Company, the balance sheet filed under sub-clause (b) of sub-section (1) of Section #81, shall contain an Annexure regarding reporting on CSR If a Company fails to spend such an amount or part thereof, the Board shall, in its Report specify the reasons for not spending
What Needs to be Disclosed by the Board in its Annual Report wrt. CSR?	<ul style="list-style-type: none"> the CSR Policy formulated & Composition of the CSR Committee average net profit of the last 3 years and the Contribution towards CSR in percentage, on account of activities related to Schedule VII the Name; Nature of the CSR projects/programs undertaken in line with the amended Schedule VII of the Act and Locations where such Programs/Projects are being executed/undertaken manner in which the amount has been spent by the Company for every CSR project defined in Schedule VII amount Outlay/Budget of the Project amount spent on the Project, comprising of information on - Direct Expenditure, Overheads, Cumulative Expenditure upto the reporting period and Amount spent Directly or through Implementing Agency a Responsibility Statement of the CSR Committee that the implementation and monitoring of the CSR Policy is in compliance with CSR Objectives and Policy of the Company for a CSR project executed in collaboration, Board of Companies and their respective CSR Committees are to separately report on the projects and programs in accordance to the Rules as such, Attribution of the CSR based investment and Impacts would however need to be reported separately reasons for not spending the amount pertaining to 2% on CSR
What if a Company Does not Report?	<ul style="list-style-type: none"> Section # 134 (3) (o) of the Companies Act 2013, specifies that a Report by a Company's Board of Directors, in general meeting shall include the details about the CSR policy developed and implemented by the company on CSR initiatives taken during the year; Section # 134 (8) of the Companies Act 2013, specifies that if a company contravenes the provisions of Section # 134, then: <ul style="list-style-type: none"> the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lacs every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5 lacs, or with both.

Other CSR Based Policies laid down by Government of India

Income Tax Act , Section # 35AC - Income Tax Act Requirements on Expenditure in Socio-Economic Development Projects

Corporates which are providing monetary support to certain NGOs / Trusts for carrying out projects for socio-economic development of the society can avail tax benefits - the Income Tax Act has certain provisions which offer tax benefits to the "donors", provided such NGOs/Trusts are approved as per notification of the Central Government and are authorized to execute related projects

Provide information regarding the project, such as title of the project, commencement date, etc. to National Committee (The Central Government has constituted a National Committee to identify and approve these projects for socio-economic development and notify them under section 35AC)

"A certificate has to issued to the donor for claiming deduction under section 35AC" post receipt of approval from the National Committee on the submission of an Impact/Performance report (or a Social Return on Investment - SROI Report) indicating the achievement during the reporting period beyond the baseline set for the projects

National Voluntary Guidelines and SEBI's Mandate on Business Responsibility Reporting for top 100 companies – The Key Principles focusing on CSR

Principle # 1 - This is an overarching principle and specifically focuses on the Development of a Business Responsibility (BR) Policy, Disclosing the BR Report and Independent review of the Policy

Principle # 4 - Recognizing and respecting the interests and be responsive towards all stakeholders specially those who are disadvantaged, vulnerable and marginalized groups. This implies the following:

- Devise an appropriate mechanism to identify such stakeholders, engage and consult with them to understand their concerns and expectations
- Address their concerns, expectations and issues accordingly

Principle # 8 - Inclusive Growth and Equitable Development Policy. This principle focuses on the following:

- Business should understand their impact on social and economic development and respond through appropriate actions to minimize the negative impacts
- Initiate specified programs/projects in pursuit of the policy related to Inclusive Growth and Equitable Development; Complement and support the community development initiatives at local and national levels; Undertake projects either self through in-house initiatives or through Implementing Agencies, such as NGOs
- Lay down procedures to ensure adoption and for impact assessment of the community programmes/development initiatives undertaken
- Submit a Report on the Impacts derived by the beneficiaries of the CSR activities
- Disclose performance on the same in the Business Responsibility Report

Amidst the rise of various Voluntary and Regulatory Mandates on CSR in India, the wise decision is to pick up the right CSR activities which would get captured under all such frameworks ...

Key Aspects of Other Non-Financial Requirements as per Companies Act 2013

The Mandate

Section # 134 (3) (n) of Companies Act 2013

Report by the Board of Directors, to include a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company

An Analysis

- Board to identify all such risks which could threaten the sustenance of the organization – as such, apart from finance based risks, other risks emerging from the environmental, health, safety, social, information technology and governance perspective also needs to be identified;
- Identify means to mitigate the risks; define strategies to mitigate the risks
- Development of a Sustainability Risk Assessment & Management System for Identification of Sustainability Risks and Mitigating the Risks
- Development of a Sustainability Policy
- Design of an effective Sustainability framework to ensure effective management, implementation, monitoring and evaluation, supported by forms, formats, SOPs, Objectives, Targets, Programs and Strategies to Mitigate the Sustainability Risks
- Report by the Board of Directors, to include a statement indicating the following:
 - Development and implementation of a risk management policy and Framework to identify the Sustainability risks &
 - The risks therein, which could threaten the existence of the Company

Section # 134 (5) (f) of Companies Act 2013

Report by the Board of Directors should include the Directors' Responsibility Statement which should state the directors had devised proper systems to ensure compliance with provisions of all applicable laws (i.e. inclusive of non financial laws pertaining to environmental, health, safety and social) and that such systems were adequate and operating effectively

- Assess the compliance status with a focus on the non-financial based laws, which could have a bearing on the company's process and operations;
- Quarterly review of compliance status with a focus on EHS&S laws, which could have a bearing on the company's process and operations by review of relevant documents and conducting site reviews
- Preparation of a MIS and effective framework, supported by SOPs, Programs, Strategies and relevant forms and formats for effective implementation and monitoring
- Report by the Board of Directors should include the Directors' Responsibility Statement which should state the directors had devised proper systems to ensure compliance with provisions of all applicable laws and that such systems were adequate and operating effectively

Key Aspects of Other Non-Financial Requirements as per Companies Act 2013

The Mandate

Section # 134 (3) (m) of Companies Act 2013

Report by the Board of Directors, to indicate conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed

An Analysis

- Assess the measures that would result in energy conservation and or facilitate in fore earnings on account of such measures taken
- Report by Board of Directors to indicate the measures that are being taken up the Company for conservation of energy, with a focus on - (i) ESCO certification and (ii) and setting up ISO 50001 (Energy Management System Standard)
- Develop a Energy Management System and Policy for more efficient use of energy; fix targets and objectives to meet the policy; use data to better understand and make decisions concerning energy use and consumption; measure the results; review the effectiveness of the policy and continually improve energy management
- Facilitate in Implementation of the System and Certification by an external agency
- Forex earnings could be through sale of carbon credits – with prices of carbon credit at all time low at present, it is not at all appealing to take projects through the carbon credit cycle, except the ones through Gold Standard
- Report by Board of Directors to indicate – (i) the measures that are being taken by the Company for conservation of energy and (ii) for-ex earnings on account of energy conservation measures

Section # 134 (8) of Companies Act 2013

Consequences for not Reporting the mandates related to the following:

- Sustainability Risk Assessment
- Compliance Assessment with Non-Financial Laws applicable to Operations and Processes
- Energy Conservation measures taken

- Section # 134 (3) (o) of the Companies Act 2013, specifies that a Report by a Company's Board of Directors, in general meeting shall include the details about the CSR policy developed and implemented by the company on CSR initiatives taken during the year;
- Section # 134 (8) of the Companies Act 2013, specifies that if a company contravenes the provisions of Section # 134, then:
 - ▶ the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25 lacs
 - ▶ every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 5 lacs, or with both.

Contact us

Rajib Kr. Debnath

Executive Director – Sustainability, Energy and CSR Services

M: +91 98107 27686

T: +91 124 462 8000

E: Rajib.Debnath@in.gt.com

NEW DELHI

National Office
Outer Circle
L 41 Connaught Circus
New Delhi 110 001
T +91 11 4278 7070

BENGALURU

“Wings”, 1st floor
16/1 Cambridge Road
Ulsoor
Bengaluru 560 008
T +91 80 4243 0700

CHANDIGARH

SCO 17
2nd floor
Sector 17 E
Chandigarh 160 017
T +91 172 4338 000

CHENNAI

Arihant Nitco Park, 6th floor
No.90, Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004
T +91 44 4294 0000

GURGAON

21st floor, DLF Square
Jacaranda Marg
DLF Phase II
Gurgaon 122 002
T +91 124 462 8000

HYDERABAD

7th floor, Block III
White House
Kundan Bagh, Begumpet
Hyderabad 500 016
T +91 40 6630 8200

KOLKATA

10C Hungerford Street
5th floor
Kolkata 700 017
T +91 33 4050 8000

MUMBAI

16th floor, Tower II
Indiabulls Finance Centre
SB Marg, Elphinstone (W)
Mumbai 400 013
T +91 22 6626 2600

NOIDA

Plot No. 19A, 7th Floor
Sector – 16A,
Noida – 201301
T +91 120 7109001

PUNE

401 Century Arcade
Narangi Baug Road
Off Boat Club Road
Pune 411 001
T +91 20 4105 7000

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