



## news flash

December 2013



### CORPORATE SOCIAL RESPONSIBILITY – COMPANIES ACT 2013

*“India is the first country in the world to have CSR provisions in the statute. We have left it very open on how the companies would want to do their CSR. But at the same time, they must make public their CSR details for the benefit of their shareholders and the public at large.”*

- Sachin Pilot, Member of Parliament  
Minister of Corporate Affairs

The Companies Act, 2013 (“**Act**”) introduces a new chapter to the corporate history of India with the codification of **Corporate Social Responsibility** (“**CSR**”) provisions. Presently only 98 sections of the Act have come into force and the CSR provisions are yet to become effective.

#### Applicability of CSR

Section 135 of the Act lays down the CSR provisions and makes them applicable to every company that crosses the following thresholds in any financial year:

- a) ‘**net worth**’ of Rs. 500 crore or more; or
- b) ‘**turnover**’ of Rs. 1000 crore or more; or
- c) ‘**net profit**’ of Rs. 5 crore or more;

“**Net worth**” means the aggregate of the paid-up share capital, reserves created out of the profits and securities premium account after deducting the accumulated losses, deferred expenditure, etc., which are not written off but does not include reserves created out of revaluation of assets write-back of depreciation and amalgamation.

“**Turnover**” means the aggregate of amount realized from the sale of **goods or services or both** during the financial year.

The definition of “**net profit**” is provided for in the draft CSR Rules to mean net profit **before tax** as per books of accounts and shall not include profits arising from branches outside India.

contd...

# news flash

December 2013

## 2% CSR clause

The Act requires the board of directors to ensure that every year the company spends at least 2% of the **average net profits** of the last three financial years towards CSR. Such average net profit is to be calculated according to Section 198 of the Act.

## CSR activities

Schedule VII lays down the following list of activities which may be included in the CSR Policy:

- eradication of hunger and poverty;
- promotion of education;
- promoting gender equality and empowering women;
- reducing child mortality and improving maternal health;
- combating human immunodeficiency virus, malaria and other diseases;
- ensuring environmental sustainability;
- employment enhancing vocational skills;
- social business projects;
- contribution to the government relief funds.

Preference must be given to the local areas around where the company operates for spending the amount towards CSR activities.

## Constitution of CSR Committee

Every qualifying company must constitute a CSR Committee comprising of:

- 3 or more directors;
- Out of which at least 1 director to be an independent director.

## Board's Report

The report of the Board of Directors should disclose (amongst other things) the following:

- composition of the CSR Committee;
- contents of CSR Policy;
- CSR activities undertaken in the prescribed format;
- if company fails to spend the CSR amount, then to specify the reasons for not spending the amount.

## Proposed Draft of the CSR Rules

The government has proposed a draft set of rules for CSR under section 135 of the Act. The CSR rules, which are applicable from the financial year 2014-15, state that CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken in pursuance of the normal course of business of a company.

The CSR Rules provide that the **CSR Policy** should include following:

# news flash

December 2013

- The projects/ programmes to be undertaken, the modalities of execution in the areas/sectors and implementation schedules.
- Any **surplus** arising out of the CSR activities shall not be part of business profits of a company.
- The corpus shall include:
  - a) 2% of the average net profits;
  - b) any income arising therefrom
  - c) surplus arising out of CSR activities..

The CSR activities can be implemented through:

- a) trust;
- b) not for profit company;
- c) society or foundation; or
- d) any other form of entity **operating within India**;

that may or may not be set up by the company itself.

Companies may collaborate/ pool resources with other companies to undertake CSR activities.

## **Impact on private companies / public unlisted companies**

A private company which comes within the purview of CSR will now need to mandatorily appoint 3 directors (as opposed to minimum 2 directors). Further, qualifying private as well as public unlisted companies will now need to spend an additional amount to appoint an independent director to comply with the provisions of the constitution of the CSR committee. Ordinarily, only listed companies are required to appoint an independent director.

## **Tax treatment**

The Rules state that tax treatment of CSR spending is to be in accordance with the Income Tax Act, 1961 as **may be notified** by the CBDT. The CBDT is yet to come out with any notification on this issue which has increased the uncertainties surrounding CSR spend.

## **CONCLUSION**

The clock is ticking for the companies to prepare and execute a CSR Policy. Before the CSR provisions come into effect, companies need to determine whether their net worth/ turnover/ net profits cross the specified thresholds. If yes, then such companies need to:

- Set up the committee
- Strategize, plan and structure the programmes/ projects to be undertaken
- Formulate the CSR Policy; and
- Execute and implement the policy.

# news flash

December 2013

## Disclaimer

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. It is not intended to be an exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash.

For further clarification, you may write to the corporate team, comprising of (amongst others) Mr. Aliff Fazelbhoj (Senior Partner) at [afazelbhoj@almtlegal.com](mailto:afazelbhoj@almtlegal.com), Mr. Vaishakh Kapadia (Partner) at [vkapadia@almtlegal.com](mailto:vkapadia@almtlegal.com), Ms. Kruti Desai (Partner) at [kdesai@almtlegal.com](mailto:kdesai@almtlegal.com), Ms. Sneha Patwardhan (Company Secretary) at [spatwardhan@almtlegal.com](mailto:spatwardhan@almtlegal.com) and Ms. Avanti Natu (Associate) at [anatu@almtlegal.com](mailto:anatu@almtlegal.com).

## ALMT Offices

### Mumbai:

4<sup>th</sup> Floor, Express Towers  
Nariman Point  
Mumbai 400-021  
India  
Tel: +91 22 4001 0000  
Email: [mumbai@almtlegal.com](mailto:mumbai@almtlegal.com)

### Bangalore:

2 Lavelle Road  
2nd Floor  
Bangalore 560 001  
India  
Tel: +91 80 4016 0000  
Email: [bangalore@almtlegal.com](mailto:bangalore@almtlegal.com)

### London

330, High Holborn  
1st Floor  
London WC1V 7QT  
United Kingdom  
Tel: +44 20 7203 6707  
Email: [london@almtlegal.com](mailto:london@almtlegal.com)