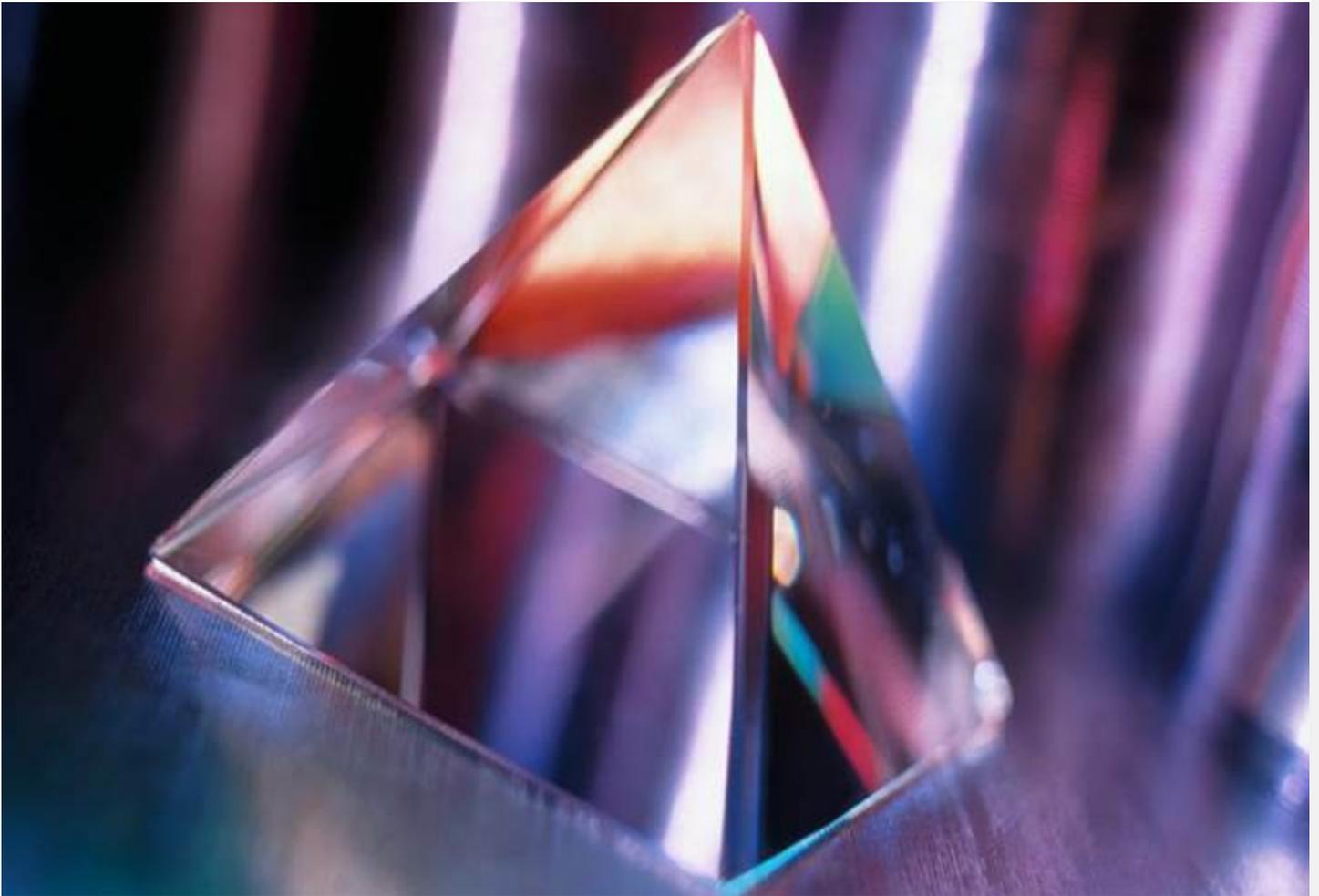


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D'Prism

A series on the Companies Act,
2013

Corporate Social Responsibility

Update

This issue provides updates to Issue 2 of D' Prism on Corporate Social Responsibility (CSR) having regard to clarifications provided by the Ministry of Corporate Affairs (MCA) by General Circular No.21/2014 of 18 June 2014.

In summary these are:

- The Companies Act, 2013 (the 2013 Act) requires constitution of a CSR Committee once certain quantitative criteria (net worth of Rs. 500 crores or more, turnover of Rs. 1000 crores or more or net profit of Rs. 5 crores or more) are met during 'any financial year'. The MCA has clarified that 'any financial year' in this context implies 'any of the three preceding financial years'.

It appears that the period of three years has been considered in the clarification to make it consistent with the exit clause provided in the Companies (Corporate Social Responsibility Policy) Rules, 2014 (the Rules). These state that a company which is not covered by the specified criteria for a period of three consecutive financial years is not required to constitute a CSR Committee and comply with the CSR provisions until the prescribed criteria are met.

However, it is expected that very few companies would incrementally be required to incur such CSR spends in view of the expansion to three preceding financial years instead of the immediately preceding financial year.

- The entries in Schedule VII to the 2013 Act 'Activities which may be included by companies in their Corporate Social Responsibility Policies' are indicative and must be interpreted liberally so as to capture the essence of the subjects enumerated. The MCA has also provided an annexure illustrating the intent. However, certain items which are not considered to be covered, though broad based, are:
 - Training to enforcement personnel with respect to promotion of road safety through CSR.
 - Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.
 - Sustainable urban development and urban public transport systems.
 - US-India physicians exchange program.

The following are some of the matters in which the MCA has provided a liberal interpretation:

- Any project meant for the development of rural India would be covered under 'rural development projects'.
- Supplementing of government schemes like mid-day meals etc. would be

- covered under 'poverty and malnutrition'.
- Slum re-development or housing for the economically weaker sections would be covered under 'measures for reducing inequalities faced by socially and economically backward groups'.
- Projects for renewable energy would be covered under 'environmental sustainability, ecological balance and conservation of natural resources'.
- Conservation and renovation of school buildings and classrooms would be covered under 'promoting education'.
- Provisions for aids and appliances to the differently-abled person would be covered under 'promoting health care including preventive health care'.

It has been our understanding that the Schedule is wide in coverage and the current activities of many companies would be covered under this Schedule. This is now reiterated by the MCA and, therefore, companies should examine whether and how their current activities are covered by the Schedule if 'interpreted liberally'.

- Activities under CSR should be in the nature of projects/programmes. Consequently, one-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes etc. would not qualify as part of CSR expenditure.
- Salaries paid by companies to regular CSR staff as well as to volunteers of companies engaged in CSR activities can be deemed to be part of CSR expenditure. Such expenditure can be reckoned based on the time/hours spent specifically on CSR.
- Expenditure incurred by a foreign holding company, routed through Indian subsidiaries for CSR activities in India, will qualify as CSR spend of the Indian subsidiary.

This will cover CSR spends by Indian companies that may be reimbursed by the foreign parent.

- For States where registration of Trusts is not mandatory, 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under the Income-tax Act, 1961.
- Contribution to corpus of a Trust/Society/Section 8 companies will qualify as CSR expenditure if:
 - the Trust/Society/Section 8 companies etc. is created exclusively for undertaking CSR activities; or
 - where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

^[1] CSR in this document means CSR under section 135 and Schedule VII to the Companies Act, 2013.

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