

PERMISSIBLE CSR ACTIVITIES & SCHEDULE VII

PUBLISHED BY
FINANCIAL MANAGEMENT SERVICE FOUNDATION

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INTRODUCTION

- 3.1.1 The Section 135 and the Companies (CSR) Rules, 2014 provide that specific activities have to be conducted under CSR. Further, Schedule VII has been provided which elaborate the specific activities.
- 3.1.2 Section 135(3)(a) provides that the activities should be undertaken by the company as specified in Schedule VII. On plain reading of Section 135 it seems that no other activities other than the one specified in Schedule VII are permissible.
- 3.1.3 However, Rule 2(c) defines that Corporate Social Responsibility shall not be confined to the projects and programmes specified in Schedule VII therefore, if one goes by the definition of CSR then all kinds of charitable activities are permissible and Schedule VII is just an indicative list.
- 3.1.4 Under the current enacted Rules it seems that there would not be any violation if a company conducts legitimate charitable activities even beyond the list provided in Schedule VII. However, it could be legally debated whether a Rule can supersede the Act because Section 135(3)(a) clearly provides that the CSR activities should confine to Schedule VII.

PERMISSIBLE CSR ACTIVITIES AS PER SCHEDULE VII

- 3.2.1 The various activities permissible under CSR as per Schedule VII are as under:
 - i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation **including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation** and making available safe drinking water;
 - ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, & the differently abled and livelihood enhancement projects;
 - iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
 - iv. 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 **including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;**
 - v. 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 arts and handicrafts;
 - vi. Measures for the benefit of armed forces veterans, war widows and their dependents;
 - vii. Training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
 - viii. Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socioeconomic development and relief and

welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

- ix. Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- x. Rural development projects

CSR ACTIVITIES AS PER SECTION 135

3.3.1 The various activities to be conducted under CSR are referred twice in Section 135. In Section 135(3)(a), it is mentioned that the CSR activities should be as per Schedule VII. And again in Section 135(4)(b) it is mentioned that the Board should ensure that the activities as per the CSR policy are undertaken by the company. The text of Section 135(3) & (4) is provided as under:

- (3) The Corporate Social Responsibility Committee shall,—
 - a. formulate and recommend to the Board, a **Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII**;
 - b. recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - c. monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in sub-Section (1) shall,—
 - a. after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
 - b. **ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.**

3.3.2 The provisions of Section 135 as stated earlier specifically refer to activities mentioned in Schedule VII. This is contrary to the definition of CSR under the CSR Rules which state that CSR activity shall not be limited to the activities mentioned in Schedule VII.

CSR ACTIVITIES AS PER CSR RULE

- 3.4.1 The Companies (CSR) Rules, 2014 defines CSR in terms of the CSR activities. The definition of CSR is very broad and states that it is not limited to the activities mentioned in Schedule VII.
- 3.4.2 Further, the Companies (CSR) Rules, 2014 explains CSR activities in terms of the methodology and exceptions. The elaboration of CSR activities and the exception have been made without mention of Schedule VII. Only in the definition of CSR policy under Rule 2(1)(e) a reference to Schedule VII has been made.
- 3.4.3 Under the current enacted Rules it seems that there would not be any violation if a company conducts legitimate charitable activities even beyond the list provided in Schedule VII. However, it could be legally debated whether a Rule can supersede the Act because Section 135(3)(a) clearly provides that the CSR activities should confirm to Schedule VII. However, if a company is following the enacted Rules, it cannot be punished, even if the Rules are not consistent with the Act.