

CSR EXPENDITURE TO FIGHT COVID-19



ATHENA LEGAL

CONTACT DETAILS

37 Link Road, First Floor, Lajpat Nagar-III,

New Delhi – 110024

PH: 011-42004400/42004422

Email: correspondence@athenalegal.in

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Corporate Social Responsibility (“**CSR**”) is a self-regulatory practice adopted by many companies that aims to contribute to societal development goals in a philanthropic, activist or charitable manner. The same is also accepted in India as a common practice. The concept of CSR was incorporated in the Companies Act 2013 (“**Act**”) whereby, CSR expenditure of at least two per cent of the average net profit made during three immediately preceding financial years, was made mandatory for companies having:

- net worth of Rs.500 crore or more; or
- turnover of Rs.1000 crore or more; or
- net profit of Rs.500 crore or more during any financial year

The companies falling under the above categories are required to form a CSR committee which would recommend the CSR activities to be undertaken. To regulate and prescribe the manner of conducting the CSR activities, the Companies (Corporate Social Responsibility Policy) Rules, 2014 (“**Rules**”) were also brought into play. These rules provide for formation of a CSR committee and policy for the companies. They further state that in order to undertake the CSR activities, the company has to form an entity under the Section 8 of the Act or any other such company which has a track record of three years in undertaking similar CSR activities.

The activities that can be considered as part of the CSR are given under the Schedule VII of the Act. These are:

- i. eradicating extreme hunger and poverty, promoting health care including preventive health care and sanitation;
- ii. promotion of education especially among children, women, elderly and differently abled;
- iii. promoting gender equality and empowering women;
- iv. reducing child mortality and improving maternal health;
- v. protection of national heritage, art and culture;
- vi. measures for the benefit of armed forces veterans, war widows, and their dependants;
- vii. training to promote rural sports, nationally recognized sports, paralympic sports, etc;
- viii. contribution to Prime Minister’s National Relief Fund, or any other state or central government funds for socio-economic development and relief and welfare of schedule caste, tribes, minorities and women;

- ix. contribution to incubators funded by central or state government or any agency or PSU of central or state government;
- x. rural development projects;
- xi. slum area development;
- xii. disaster management including relief, rehabilitation and reconstruction activities

These are broad classification for the CSR activities and as such a liberal interpretation can be given to them. The Ministry of Corporate affairs has published circulars providing clarifications regarding the CSR activities under the Act and Rules.

1. General Circular dated March 23, 2020 clarified that spending of CSR funds for COVID-19 is an eligible CSR activity for categories (i) to (xii) under the Schedule VII of the Act (as given above) in relation to promotion of health care including preventive health care and sanitation and disaster management.
2. Office memorandum dated March 28, 2020 clarified that the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) is covered under item no. viii of the Schedule VII of the Act and as such any contribution toward the same would be considered as a CSR expenditure eligible under the Act.
3. General Circular dated April 10, 2020 provided clarifications regarding frequently asked questions on the CSR expenditures in relation to COVID-19 activities. It clarified as to what activities would or would not be considered as an eligible CSR activity.

The collective understanding that can be derived from these circulars is:

❖ **Activities considered as eligible CSR expenditure:**

- Contribution of PM Cares Fund;
- Contribution to State Disaster Management Authority;
- Spending of CSR funds for COVID-19 related activities under items no. (i) to (xii) of the Schedule VII of the Act;
- Ex-gratia payment to temporary/casual workers/daily wage workers that is over and above the disbursement of actual wages.

❖ **Activities not considered as eligible CSR expenditure:**

- Contribution to Chief Minister's Relief Funds or State Relief Fund for COVID-19;
- Payment of salary/wages to employees and workers including contract labour;
- Payment of wages made to temporary/casual/daily wage workers.

These clarifications as provided with respect to eligible CSR expenditure for COVID-19 can pave way for a combined effort of private entities with the government in order to fight the pandemic. It is estimated that the companies have Rs.2000-3000 crore of unspent CSR fund for the financial year 2020, so the inclusion of expenditure in fight against the pandemic can help utilize this unspent fund.

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