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AN EVOLUTION ON DEVELOPMENT OF CORPORATE SOCIAL RESPONSIBILITY IN INDIAN INDUSTRIES

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ABSTRACT

The present study finds out that the New Act's CSR requirements will increase the costs of doing business in India and add to existing administrative and reporting burdens. Unfortunately, the sheer amounts of money that must now be spent on CSR in India have increased substantially the dangers of violating U.S. and U.K. law, and we expect that there will be close scrutiny of companies' CSR payments by United States and U.K. authorities. Because of these risks, foreign companies with operations in India should seek the advice of counsel in structuring the CSR programs and establishing internal controls.

KEYWORDS

corporate social responsibility, Indian industry.

INTRODUCTION

The introduction of CSR provision in the Companies Act is a welcome step and all companies which satisfy the CSR criteria will have to undertake CSR activities under the new CSR regime during current financial year. This step will boost much required social projects with some professional management of the private sector.

CORPORATE SOCIAL RESPONSIBILITY

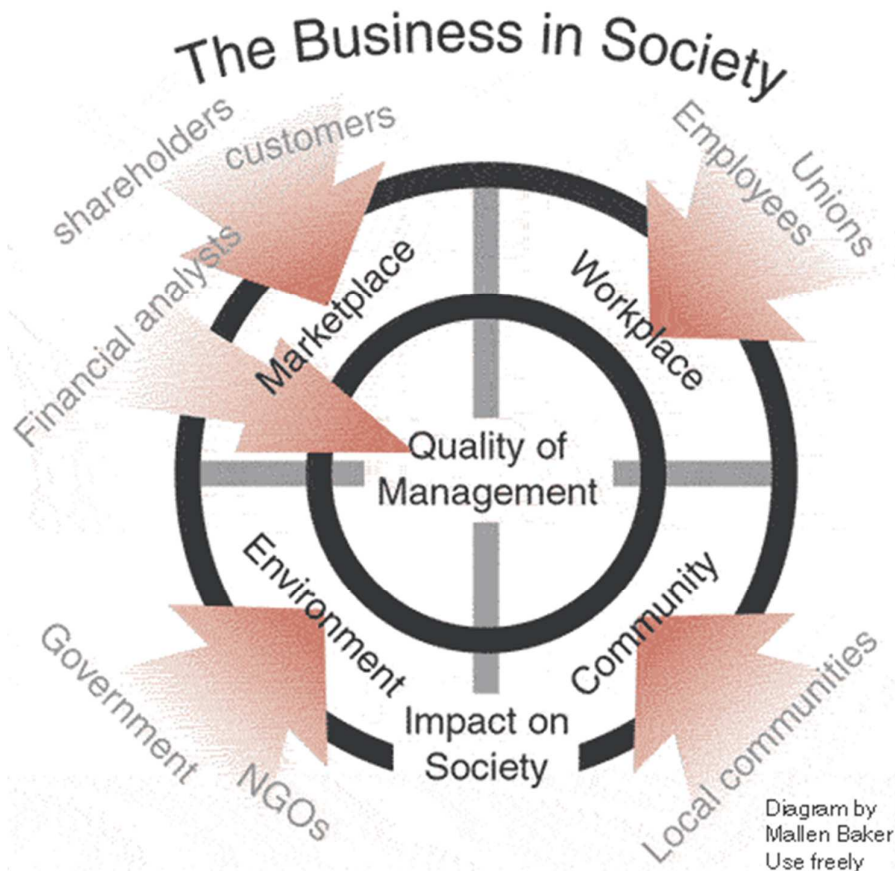
One of the most frequently asked questions at this site - and probably for all those individuals and organisations dealing with CSR issues is the obvious - just what does 'Corporate Social Responsibility' mean anyway? Is it a stalking horse for an anti-corporate agenda? Something which, like original sin, you can never escape? Or what?

Companies need to answer to two aspects of their operations. 1. The quality of their management - both in terms of people and processes (the inner circle). 2. The nature of, and quantity of their impact on society in the various areas.

Outside stakeholders are taking an increasing interest in the activity of the company. Most look to the outer circle - what the company has actually done, good or bad, in terms of its products and services, in terms of its impact on the environment and on local communities, or in how it treats and develops its workforce. Out of the various stakeholders, it is financial analysts who are predominantly focused - as well as past financial performance - on quality of management as an indicator of likely future performance.

Different organisations have framed different definitions - although there is considerable common ground between them. My own definition is that CSR is about how companies manage the business processes to produce an overall positive impact on society.

FIG. 1



DEFINITIONS

The World Business Council for Sustainable Development in its publication *Making Good Business Sense* by Lord Holme and Richard Watts, used the following definition.

“Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large”

The same report gave some evidence of the different perceptions of what this should mean from a number of different societies across the world. Definitions as different as CSR is about capacity building for sustainable livelihoods. It respects cultural differences and finds the business opportunities in building the skills of employees, the community and the government from Ghana, through to CSR is about business giving back to society from the Philippines.

Traditionally in the United States, CSR has been defined much more in terms of a philanthropic model. Companies make profits, unhindered except by fulfilling their duty to pay taxes. Then they donate a certain share of the profits to charitable causes. It is seen as tainting the act for the company to receive any benefit from the giving.

Definition of the term CSR: The term CSR has been defined under the CSR Rules which includes but is not limited to:

- Projects or programs relating to activities specified in the Schedule; or
- Projects or programs relating to activities undertaken by the Board in pursuance of recommendations of the CSR Committee as per the declared CSR policy subject to the condition that such policy covers subjects enumerated in the Schedule.

This definition of CSR assumes significance as it allows companies to engage in projects or programs relating to activities enlisted under the Schedule. Flexibility is also permitted to the companies by allowing them to choose their preferred CSR engagements that are in conformity with the CSR policy.

Activities under CSR: The activities that can be done by the company to achieve its CSR obligations include eradicating extreme hunger and poverty, promotion of education, promoting gender equality and empowering women, reducing child mortality and improving maternal health, combating human immunodeficiency virus, acquired, immune deficiency syndrome, malaria and other diseases, ensuring environmental sustainability, employment enhancing vocational skills, social business projects, contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women and such other matters as may be prescribed.

Local Area: Under the Companies Act, preference should be given to local areas and the areas where the company operates. Company may also choose to associate with 2 or more companies for fulfilling the CSR activities provided that they are able to report individually. The CSR Committee shall also prepare the CSR Policy in which it includes the projects and programmes which is to be undertaken, prepare a list of projects and programmes which a company plans to undertake during the implementation year and also focus on integrating business models with social and environmental priorities and process in order to create share value.

The company can also make the annual report of CSR activities in which they mention the average net profit for the 3 financial years and also prescribed CSR expenditure but if the company is unable to spend the minimum required expenditure the company has to give the reasons in the Board Report for non compliance so that there are no penal provisions are attracted by it.

NEED OF THE STUDY

When you review each of these, they broadly agree that the definition now focuses on the impact of how you manage your core business. Some go further than others in prescribing how far companies go beyond managing their own impact into the terrain of acting specifically outside of that focus to make a contribution to the achievement of broader societal goals. It is a key difference, when many business leaders feel that their companies are ill equipped to pursue broader societal goals, and activists argue that companies have no democratic legitimacy to take such roles. That particular debate will continue.

CORPORATE SOCIAL RESPONSIBILITY - INDIAN COMPANIES ACT, 2013

The Ministry of Corporate Affairs has notified Section 135 and Schedule VII of the Companies Act 2013 as well as the provisions of the Companies (Corporate Social Responsibility Policy) Rules, 2014 to come into effect from April 1, 2014.

With effect from April 1, 2014, every company, private limited or public limited, which either has a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, needs to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. The CSR activities should not be undertaken in the normal course of business and must be with respect to any of the activities mentioned in Schedule VII of the 2013 Act. Contribution to any political party is not considered to be a CSR activity and only activities in India would be considered for computing CSR expenditure.

The net worth, turnover and net profits are to be computed in terms of Section 198 of the 2013 Act as per the profit and loss statement prepared by the company in terms of Section 381 (1) (a) and Section 198 of the 2013 Act. While these provisions have not yet been notified, it has been clarified that if net profits are computed under the Companies Act, 1956 they needn't be recomputed under the 2013 Act. Profits from any overseas branch of the company, including those branches that are operated as a separate company would not be included in the computation of net profits of a company. Besides, dividends received from other companies in India which need to comply with the CSR obligations would not be included in the computation of net profits of a company.

The CSR Rules appear to widen the ambit for compliance obligations to include the holding and subsidiary companies as well as foreign companies whose branches or project offices in India fulfil the specified criteria. There is a need for clarity with respect to the compliance obligations of a company as well as its holding and subsidiary companies.

The activities that can be undertaken by a company to fulfil its CSR obligations include eradicating hunger, poverty and malnutrition, promoting preventive healthcare, promoting education and promoting gender equality, setting up homes for women, orphans and the senior citizens, measures for reducing inequalities faced by socially and economically backward groups, ensuring environmental sustainability and ecological balance, animal welfare, protection of national heritage and art and culture, measures for the benefit of armed forces veterans, war widows and their dependents, training to promote rural, nationally recognized, Paralympic or Olympic sports, 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 SC, ST, OBCs, minorities and women, contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects.

However, in determining CSR activities to be undertaken, preference would need to be given to local areas and the areas around where the company operates.

To formulate and monitor the CSR policy of a company, a CSR Committee of the Board needs to be constituted. Section 135 of the 2013 Act requires the CSR Committee to consist of at least three directors, including an independent director. However, CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee and stipulates that the Committee for a private company and a foreign company need have a minimum of only 2 members.

A company can undertake its CSR activities through a registered trust or society, a company established by its holding, subsidiary or associate company or otherwise, provided that the company has specified the activities to be undertaken, the modalities for utilization of funds as well as the reporting and monitoring mechanism. If the entity through which the CSR activities are being undertaken is not established by the company or its holding, subsidiary or associate company, such entity would need to have an established track record of three years undertaking similar activities.

Companies can also collaborate with each other for jointly undertaking CSR activities, provided that each of the companies are able individually report on such projects.

A company can build CSR capabilities of its personnel or implementation agencies through institutions with established track records of at least three years, provided that the expenditure for such activities does not exceed 5% of the total CSR expenditure of the company in a single financial year.

The CSR Rules specify that a company which does not satisfy the specified criteria for a consecutive period of three financial years is not required to comply with the CSR obligations, implying that a company not satisfying any of the specified criteria in a subsequent financial year would still need to undertake CSR activities

unless it ceases to satisfy the specified criteria for a continuous period of three years. This could increase the burden on small companies which do not continue to make significant profits.

The report of the Board of Directors attached to the financial statements of the Company would also need to include an annual report on the CSR activities of the company in the format prescribed in the CSR Rules setting out inter alia a brief outline of the CSR policy, the composition of the CSR Committee, the average net profit for the last three financial years and the prescribed CSR expenditure. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report.

INDIA'S NEW CORPORATE SOCIAL RESPONSIBILITY REQUIREMENTS

In August 2013, the Indian parliament passed the Indian Companies Act, 2013 (the "New Act"), which has replaced the Companies Act of 1956. The New Act has made far-reaching changes affecting company formation, administration and governance, and it has increased shareholder control over board decisions. The New Act is being implemented in stages, and we have been monitoring its progression.

CORPORATE SOCIAL RESPONSIBILITY

One of the New Act's most startling changes—which came into effect on April 1, 2014—has been to impose compulsory corporate social responsibility obligations ("CSR") upon Indian companies and foreign companies operating in India. These obligations mainly come in the form of mandatory amounts companies must contribute to remedying social problems. This is a wholly new requirement; although companies were permitted, within certain limits, to make charitable contributions in the past, the New Act is essentially a self-administered tax. The Indian Ministry of Corporate Affairs recently has published, or "notified," detailed rules implementing the CSR requirements.

ENTITIES COVERED BY THE CSR OBLIGATIONS

The threshold coverage levels for CSR are low. Companies are subject to the CSR requirements if they have, for any financial year:

- a net worth of at least Rs. 5 billion (approximately U.S.\$80 million);
- a turnover of at least Rs. 10 billion (approximately U.S.\$160 million); or
- net profits of at least Rs. 50 million (approximately U.S. [\$800,000]).

Companies meeting these thresholds are required to develop a CSR policy, spend a minimum amount on CSR activities and report on these activities, or prepare to explain why they didn't.

REQUIRED AMOUNT OF CSR SPENDING

An entity or business that meets these specified thresholds must spend on CSR activities no less than two percent of its average net profit for its preceding three financial years. Net profit means a company's profits as per its profit and loss account prepared in accordance with the New Act, but excludes profits from a company's operations outside India or dividends received from an Indian company that has itself met its CSR requirements.

PERMITTED CSR ACTIVITIES

There is a long list of permissible areas for CSR funding. They include such purposes as ending hunger and poverty; promoting public health; supporting education; addressing gender inequality; protecting the environment; and funding cultural initiatives and theaters.

All CSR funds must be spent in India. The New Act encourages companies to spend their CSR funds in the areas where they operate, but money cannot be spent on activities undertaken that are part of the normal course of the company's business or on projects for the exclusive benefit of employees or their family members. Contributions of any amount to a political party are not a permitted CSR activity. However, the New Act has an exception allowing companies to use their CSR funds to support development projects initiated by the prime minister or central government. It is important to note, as discussed further below, that such projects in India have had a troubling tendency to become vehicles for political patronage, and they can raise legal issues in other jurisdictions if they come to be seen as political payoffs.

CSR COMMITTEE AND CSR

The New Act requires companies to appoint a Corporate Social Responsibility Committee consisting of at least three directors. If a company is one that is required by the New Act to appoint independent directors to its board, then the CSR committee must include at least one independent director. The CSR committee is required to recommend a formal CSR Policy. This document, which is to be submitted to the company's board, should recommend particular CSR activities, set forth a budget, describe how the company will implement the project, and establish a transparent means to monitor progress.

ADMINISTRATION OF CSR PROJECTS

A company can meet its CSR obligations by funneling its activities through a third party, such as a society, trust, foundation or Section 8 company (i.e., a company with charitable purposes) that has an established record of at least three years in CSR-like activities. Companies may also collaborate and pool their resources, which could be especially useful for small and medium-sized enterprises.

REPORTING REQUIREMENTS

Unfortunately, the New Act imposes significant bureaucratic requirements. It requires companies to prepare a detailed report, in a particular format, about the company's CSR policy, the composition of the CSR committee, the amount CSR expenditures, and the specifics of individual CSR projects. A company's board must include this report in its annual report to shareholders and publish it on the company's website.

The report must also include a statement from the CSR committee that the implementation and monitoring of the board's CSR activities is, in letter and spirit, in compliance with its CSR objectives and CSR Policy of the company.

FAILURE TO COMPLY

If the minimum CSR amount is not spent, the board is required to disclose this fact, with reasons therefore, in its annual Director's Report to the shareholders.

It is still not clear whether failure to comply is a legal offense of any sort. Thus, the new Act may be the advent of a new regime in Indian corporation law of the concept of "comply or explain." What is clear, however, is that failure to explain non-compliance is a punishable offense under the New Act. It is therefore likely that any company that fails to comply with its CSR obligations will be subject to investigation by the Indian authorities.

IMPLICATIONS FOR INDIAN SUBSIDIARIES OF FOREIGN CORPORATIONS

If the Indian company undertaking CSR is a subsidiary of a United States entity, or if its business activities "touch" the U.K., then the U.S. Foreign Corrupt Practices Act ("FCPA") or the U.K. Bribery Act ("UKBA"), respectively, as well as other regulatory laws of these jurisdictions, may apply to the Indian company's CSR payments. This may raise serious issues of compliance and liability.

It is typical in India for social welfare projects to be administered through private non-governmental organizations ("NGOs"). This has led to a proliferation of such groups; by one estimate, there are two million NGOs in India, or one for every 600 people. Although most NGOs are reputable and well-meaning, there have been many instances of fraud and abuse. Indian NGOs often are informally organized, unaudited, and operate with little governance. Thus, it is difficult to know their ownership structure or to monitor or audit their use of CSR funds. Moreover, it is common for politicians and political groups in India to form NGOs as a means of collecting political donations, dispensing patronage, or circumventing Indian election laws.

Because creating a CSR department may entail significant costs, such as increased headcount, overhead, and administrative expense, many companies may choose to implement their CSR activities through NGOs, such as the existing societies, trusts, or foundations that the New Act contemplates. While this decision may make financial sense, it will raise a number of concerns for the compliance functions of any company subject to the FCPA or the UKBA. In particular:

- If the ultimate or beneficial owner of the NGO is a government official, a company's CSR payments may violate the FCPA if they are seen to have been made to influence the actions of the government official or to secure an improper business advantage.
- Under the UKBA, the offense of bribery is committed when payment is made with the intention of inducing the person bribed to improperly perform a relevant function. Thus, regardless of whether the ultimate or beneficial owner of the NGO is or is not a government official, any payments made under a CSR program that can be said to have been made to induce an improper act may be a crime under the UKBA.

- If the NGO's beneficial or controlling owner is a Politically Exposed Person, this fact could trigger enhanced due diligence requirements under U.S. or U.K. anti-money laundering ("AML") regulations. Generally speaking, these AML regulations require a company to implement "know your client" due diligence procedures before engaging in monetary transactions, and failure to do so can expose an organization to penalties regardless of whether or not the company was found to have been involved in a suspicious transaction.

As corporate counsel knows all too well, the FCPA, UKBA and the AML laws of the U.S. and U.K. impose serious criminal and civil penalties upon companies and corporate officers that make improper payments, are involved in suspicious transactions, or fail to undertake reasonable measures to protect against or prevent the same. Thus, even though the New Act is directed at Indian companies, its effects will be felt in any multinational company with significant operations in India. Companies will need to police how they implement their CSR Policy and add CSR compliance oversight to their compliance and internal controls program to ensure that these functions remain robust, and that any CSR activities conducted under the New Act are *made* and *monitored* for appropriate purposes.

EVOLUTION OF CORPORATE SOCIAL RESPONSIBILITY IN INDIA

The evolution of corporate social responsibility in India refers to changes over time in India of the cultural norms of corporations' engagement of corporate social responsibility (CSR), with CSR referring to way that businesses are managed to bring about an overall positive impact on the communities, cultures, societies and environments in which they operate. The fundamentals of CSR rest on the fact that not only public policy but even corporates should be responsible enough to address social issues. Thus companies should deal with the challenges and issues looked after to a certain extent by the states.

Among other countries India has one of the oldest traditions of CSR. But CSR practices are regularly not practiced or done only in namesake specially by MNCs with no cultural and emotional attachments to India. Much has been done in recent years to make Indian Entrepreneurs aware of social responsibility as an important segment of their business activity but CSR in India has yet to receive widespread recognition. If this goal has to be realised then the CSR approach of corporates has to be in line with their attitudes towards mainstream business- companies setting clear objectives, undertaking potential investments, measuring and reporting performance publicly.

The Four Phases of CSR Development in India

The history of CSR in India has its four phases which run parallel to India's historical development and has resulted in different approaches towards CSR. However the phases are not static and the features of each phase may overlap other phases.

The First Phase

In the first phase charity and philanthropy were the main drivers of CSR. Culture, religion, family values and tradition and industrialization had an influential effect on CSR. In the pre-industrialization period, which lasted till 1850, wealthy merchants shared a part of their wealth with the wider society by way of setting up temples for a religious cause. Moreover, these merchants helped the society in getting over phases of famine and epidemics by providing food from their godowns and money and thus securing an integral position in the society. With the arrival of colonial rule in India from the 1850s onwards, the approach towards CSR changed. The industrial families of the 19th century such as Tata, Godrej, Bajaj, Modi, Birla, Singhania were strongly inclined towards economic as well as social considerations. However, it has been observed that their efforts towards social as well as industrial development were not only driven by selfless and religious motives but also influenced by caste groups and political objectives. Or studies

The Second Phase

In the second phase, during the independence movement, there was increased stress on Indian Industrialists to demonstrate their dedication towards the progress of the society. This was when Mahatma Gandhi introduced the notion of "trusteeship", according to which the industry leaders had to manage their wealth so as to benefit the common man. "I desire to end capitalism almost, if not quite, as much as the most advanced socialist. But our methods differ. My theory of trusteeship is no make-shift, certainly no camouflage. I am confident that it will survive all other theories." This was Gandhi's words which highlights his argument towards his concept of "trusteeship". Gandhi's influence put pressure on various Industrialists to act towards building the nation and its socio-economic development. According to Gandhi, Indian companies were supposed to be the "temples of modern India". Under his influence businesses established trusts for schools and colleges and also helped in setting up training and scientific institutions. The operations of the trusts were largely in line with Gandhi's reforms which sought to abolish untouchability, encourage empowerment of women and rural development.

The Third Phase

The third phase of CSR (1960–80) had its relation to the element of "mixed economy", emergence of Public Sector Undertakings (PSUs) and laws relating labour and environmental standards. During this period the private sector was forced to take a backseat. The public sector was seen as the prime mover of development. Because of the stringent legal rules and regulations surrounding the activities of the private sector, the period was described as an "era of command and control". The policy of industrial licensing, high taxes and restrictions on the private sector led to corporate malpractices. This led to enactment of legislation regarding corporate governance, labour and environmental issues. PSUs were set up by the state to ensure suitable distribution of resources (wealth, food etc.) to the needy. However, the public sector was effective only to a certain limited extent. This led to shift of expectation from the public to the private sector and their active involvement in the socio-economic development of the country became absolutely necessary. In 1965 Indian academicians, politicians and businessmen set up a national workshop on CSR aimed at reconciliation. They emphasized upon transparency, social accountability and regular stakeholder dialogues. In spite of such attempts the CSR failed to catch steam.

The Fourth Phase

In the fourth phase (1980 until the present) Indian companies started abandoning their traditional engagement with CSR and integrated it into a sustainable business strategy. In the 1990s the first initiation towards globalization and economic liberalization were undertaken. Controls and licensing system were partly done away with which gave a boost to the economy the signs of which are very evident today. Increased growth momentum of the economy helped Indian companies grow rapidly and this made them more willing {Gajare, R.S. (2014). A conceptual study of CSR development in India. In D.B. Patil & D.D. Bhakkad, Redefining Management Practices and Marketing in Modern Age Dhule, India: Atharva Publications (p. 152-154).} and able to contribute towards social cause. Globalization has transformed India into an important destination in terms of production and manufacturing bases of TNCs are concerned. As Western markets are becoming more and more concerned about labour and environmental standards in the developing countries, Indian companies which export and produce goods for the developed world need to pay a close attention to compliance with the international standards.

Current State of CSR in India

As discussed above, CSR is not a new concept in India. Ever since their inception, corporates like the Tata Group, the Aditya Birla Group, and Indian Oil Corporation, to name a few, have been involved in serving the community. Through donations and charity events, many other organizations have been doing their part for the society. The basic objective of CSR in these days is to maximize the company's overall impact on the society and stakeholders. CSR policies, practices and programs are being comprehensively integrated by an increasing number of companies throughout their business operations and processes. A growing number of corporates feel that CSR is not just another form of indirect expense but is important for protecting the goodwill and reputation, defending attacks and increasing business competitiveness.

Companies have specialised CSR teams that formulate policies, strategies and goals for their CSR programs and set aside budgets to fund them. These programs are often determined by social philosophy which have clear objectives and are well defined and are aligned with the mainstream business. The programs are put into practice by the employees who are crucial to this process. CSR programs range from community development to development in education, environment and healthcare etc.

For example, a more comprehensive method of development is adopted by some corporations such as Bharat Petroleum Corporation Limited, Maruti Suzuki India Limited. Provision of improved medical and sanitation facilities, building schools and houses, and empowering the villagers and in process making them more self-reliant by providing vocational training and a knowledge of business operations are the facilities that these corporations focus on. Many of the companies are helping other peoples by providing them good standard of living.

Also, corporates increasingly join hands with non-governmental organizations (NGOs) and use their expertise in devising programs which address wider social problems.

CSR has gone through many phases in India. The ability to make a significant difference in the society and improve the overall quality of life has clearly been proven by the corporates. Not one but all corporates should try and bring about a change in the current social situation in India in order to have an effective and lasting solution to the social woes. Partnerships between companies, NGOs and the government should be facilitated so that a combination of their skills such as expertise, strategic thinking, manpower and money to initiate extensive social change will put the socio-economic development of India on a fast track.

Law

Under the Companies Act, 2013, any company having a net worth of rupees 500 crore or more or a turnover of rupees 1,000 crore or more or a net profit of rupees 5 crore or more should mandatorily spend at least 2% of last 3 years' average net profits on CSR activities as specified in Schedule VII of the Companies Act, 2013 and as amended from time to time. The rules came into effect from 1 April 2014.

SEBI, as per its notification on August 13, 2012, has mentioned that enterprises are accountable to the larger society and "adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance". SEBI has mandated the inclusion of Business Responsibility Reports as part of the annual reports of the Top 100 listed entities based on market capitalisation at BSE and NSE. These reports has to made available in the websites of the companies. For companies that do not belong to Top 100, inclusion of Business Responsibility Reports is not mandatory, though SEBI encourages its inclusion in the annual report and website

CONCLUSION

The New Act's CSR requirements will increase the costs of doing business in India and add to existing administrative and reporting burdens. Unfortunately, the sheer amounts of money that must now be spent on CSR in India have increased substantially the dangers of violating U.S. and U.K. law, and we expect that there will be close scrutiny of companies' CSR payments by United States and U.K. authorities. Because of these risks, foreign companies with operations in India should seek the advice of counsel in structuring the CSR programs and establishing internal controls.

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