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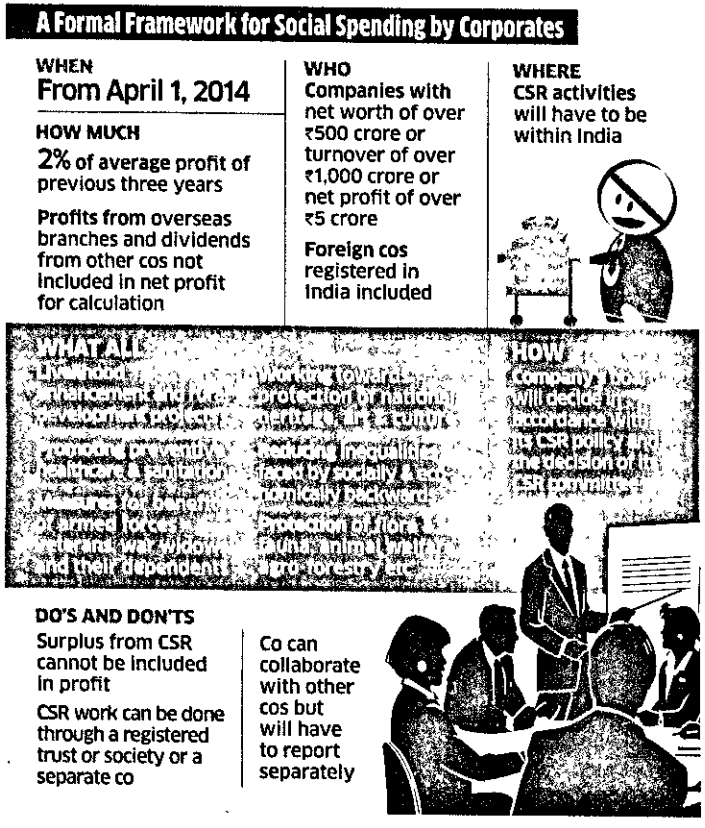
Rules for CSR Spending Notified

Political funding out of ambit; no discretionary powers for co boards



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The government has notified the rules for corporate social responsibility (CSR) spending under the new companies law, putting in place the much-debated plan aimed at encouraging companies to spend a portion of their profits on projects that benefit society. Under the plan, companies above a certain threshold have to spend 2% of average profit of the previous three years on CSR activities specified by the government, which does not include political funding. Companies that are unable to do so have to give reasons for falling short.

The government has amended Schedule VII of the Act to include more activities under CSR than what had been defined earlier, but has withdrawn the discretion promised to boards earlier. "CSR will include all the programmes and activities undertaken by the board of directors... subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act," said the notification by the ministry on Thursday.

Areas that have been defined by the government in the CSR policy include eradicating hunger, poverty and malnutrition; promoting preventive healthcare and sanitation; and the Prime Minister Relief's Fund, among others.

The policy will also consider measures for the benefit of armed forces veterans, war widows and their dependents, homes and hostels for women and orphans, old-age homes, day-care centres and other such facilities for senior citizens as coming under CSR.

"Including new items under CSR is a welcome move as it would help divert corporate spending to areas which are otherwise neglected," senior company law expert Vinod Kothari said.

"The CSR policy will now be different from conventional policy statements as the rule stipulates the requirement of listing the projects/programmes and also the monitoring process for such programmes," said Santhosh Jayaram, technical director, sustainability, KPMG India.

Companies having a net worth of at least ₹500 crore or a minimum turnover of ₹1,000 crore or those with a net profit of at least ₹5 crore are covered by this policy.

India Inc. doesn't seem to be too enthused about the latest rules.

"Precluding the corporate boards from determining what would constitute CSR goes against the very premise of the Act, which is built on self-governance and enhanced disclosures," said Chandrajit Banerjee, director general of the Confederation of Indian Industry lobby group.

S Santhana Krishnan, chairman of the corporate laws committee of the chartered accountants' institute and member of the rule committee of the corporate affairs ministry, said the board of a company will have to work within the broad framework prescribed by the CSR rules. "It will not have the freedom to pick and choose a new area outside the broad guidelines. I feel the new rule will enable companies to continue their spend on CSR activities," he said.

The rules also clarify that any private company that does not have independent directors can form CSR committees without such directors.

Interestingly, the government has excluded state government funds from Schedule VII after the Chhattisgarh government interpreted the law uniquely, asking firms to deposit their contributions to the Chief Minister's Community Development Fund rather than undertake CSR projects on their own.

The rules were finalised after the ministry examined over one lakh suggestions from various stakeholders.