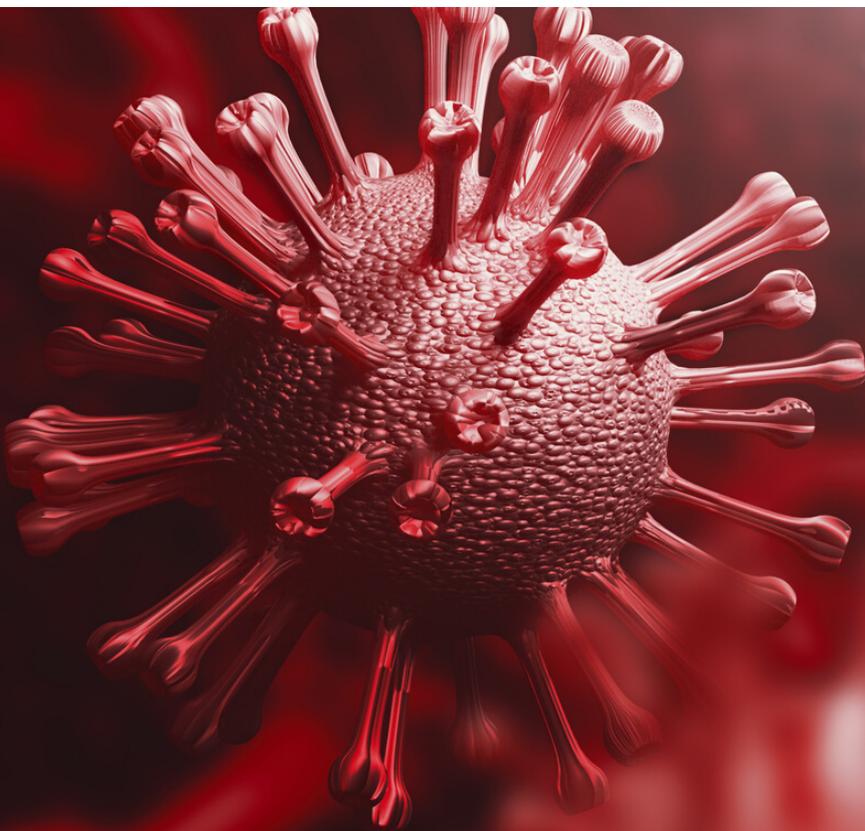


1st April, 2020

Pandemic Legal intelligence For Corporates
CSR in COVID-19- A Ready Referencer



Legal intelligence Series - COVID | VIII

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Corporate Social Responsibility (CSR) can be understood as a Company's responsibility towards to the society, the environment and the community within which it operates.

There are various ways in which a Corporate fulfils its CSR obligations as mandated by law. At present, CSR is not seen merely as a charity but also as a way for a Corporate to be visible for doing public good.

CSR can also be seen as a company's way of increasing its goodwill while ensuring that it gives back to the society.



In a developing country like India, the need for CSR can never be too emphasized but more so during these testing times of the pandemic COVID - 19.

The State can use as much help as it gets from these profit making Corporates to ensure enough financial viability for fighting this unprecedented situation.

Therefore, contributions by companies for fighting COVID - 19 have been included under CSR. This also brings along certain genuine queries in the minds of the companies which we have tried to answer below:



1. Who has to spend towards Corporate Social Responsibility (CSR)?

Answer: As per Section 135 of the Companies Act, 2013, companies with a net worth of at least Rs. 500 crore or revenue of Rs. 1,000 crore or net profit of Rs. 5 crore during any financial year have to spend at least 2% of their net profit on CSR.

If they fail to do so, it should be explained in their annual financial statement.



2. Does spending of funds toward COVID-19 be considered as a CSR Activity for compliance under Section 135 of the Companies Act, 2013?

Answer: As per General Circular No. 10/2020, Reference No. 05/01/2019-CSR dated 23.03.2020 issued by the Ministry of Corporate Affairs, since the Government of India has notified the ongoing COVID-19 Pandemic as a natural disaster, any spending toward COVID-19 by Companies shall be considered as contribution toward Corporate Social Responsibility in compliance with Section 135 of the Companies Act, 2013.

Funds may be spent for COVID-19 for activities under item nos. (i) and (xii) of Schedule VII of the Companies Act to be considered as spending toward CSR.

It has also been clarified by the Ministry of Corporate Affairs in Office Memorandum no. F. No. CSR-05/1/2020-CSR-MCA dated 28.03.2020 that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act, 2013.



3. Is there a limitation on the amount of funding toward COVID-19 that can be considered as spending toward a CSR Activity?

Answer: No.

There is **no cap** or **limitation** specified by any authority with regard to the maximum or minimum amount of funding toward COVID-19 that can be considered as spending toward CSR Activity.



4. Under Section 135 of the Companies Act, 2013 or General Circular No. 10/2020, Reference No. 05/01/2019-CSR dated 23.03.2020 or Office Memorandum no. F. No. CSR-05/1/2020-CSR-MCA dated 28.03.2020, whether it has been specified as to how or in what manner or proportion these funds are to be spent toward COVID-19 in order to be considered as a CSR Activity?

Answer: No.

There is no specification as to the manner in which such funds can be spent for COVID-19 to be considered as spending toward CSR.

The Companies are free to choose the manner and proportion of such spending. The only specification is that spending should be for COVID-19 for activities under item nos. (i) and (xii) of Schedule VII of the Companies Act to be considered as spending toward CSR.



5. Whether CSR fund expense by corporates for hospitals, government or anyone can be treated as CSR expense? What would be the treatment under Income Tax Act, 1961?

Answer: CSR activities and expenses are subject to Schedule VII of the Companies Act, 2013 and further depends on respective company policy. Providing aid to hospitals or the government or any organization to fight COVID-19 would be considered as an expense under CSR.

As far as taxation aspect is concerned, Income Tax Act, 1961 does not allow the treatment of expenses on CSR as donation. As per section 37(1) of Income Tax Act, 1961 the expenses incurred by the companies on CSR are taxable.



ABOUT US

AMLEGALS is a multi-specialised law firm. We would love to hear your views, queries, feedback and comments on covid19@amlegals.com or rohit.lalwani@amlegals.com.

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