

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
RAJYA SABHA
UN-STARRED QUESTION NO. 1655
ANSWERED ON Tuesday, 6th AUGUST, 2024
15 Shravana, 1946 (Saka)**

**CORPORATE GOVERNANCE
QUESTION**

1655 Shri Ayodhya Rami Reddy Alla:

Will the Minister of CORPORATE AFFAIRS be pleased to state:

- (a) whether Government plans to strengthen the enforcement mechanisms of the Ministry and the Securities and Exchange Board of India (SEBI) to prevent corporate frauds and protect investor interests, if so, the details thereof;**
- (b) the measures Government is taking to ensure that Corporate Social Responsibility (CSR) is not merely a box-ticking exercise, but a genuine commitment to social and environmental sustainability; and**
- (c) the steps Ministry is taking to promote corporate governance in the unlisted and private company sector, which accounts for a significant portion of country's economy?**

ANSWER

Minister of State in the Ministry of Corporate Affairs; Minister of State in the Ministry of Road Transport and Highways
(Shri Harsh Malhotra)

(a) From time to time enforcement mechanisms of the Ministry of Corporate Affairs (MCA) have been strengthened for effective and transparent working of companies and LLPs while administering Companies Act, 2013 and LLP Act 2008. This is governed through the powers under the Companies Act, 2013 to undertake inquiries by calling information from the companies; inspection of books of accounts of the company and investigation into the affairs of companies and LLPs, where the Central Government is of the opinion that investigations can also be assigned to Serious Fraud Investigation Office (SFIO) under section 212 of the Companies Act. Further, the Companies Act seeks various compliances from companies under different Sections through mandatory filings by companies.

In case of any violation of Companies Act, 2013, proceedings of adjudication, fine and prosecution, as the case may be, are also initiated for such violations by the concerned jurisdictional RoCs against such companies or LLPs or their directors/partners, KMPs, auditors, etc.

The Companies Act, 2013 provides various measures to curb and prevent corporate frauds viz;

- (i) 'Fraud' as a substantive offence has been defined under section 447 of the Companies Act, 2013;**
- (ii) For fraud and default in repayment of public deposit prosecution actions under sections 447, 73 to 76 of the Companies Act, 2013 are initiated.**

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(iii) Every existing or prospective directors need to obtain a “Directors Identification Number” (DIN);

(iv) In case of incorporation of a new company or change of address of an existing company, it is made mandatory for professionals to verify details of the company and to personally visit premises and certify that the premises are at the disposal of the company;

(v) Duties have been cast on auditor to report fraud under Section 143 (12) of the Companies Act, 2013. Similarly, Cost Accountant for cost audit under section 148 of the Act and Company Secretary in practice for conducting Secretarial audit under section 204 of the Act are required to report fraud to the Central Government under section 143(14) of the Companies Act 2013;

(vi) KYC norms for company and director have been introduced;

For Investor Awareness, the Investor Education and Protection Fund (IEPF) has been established under section 125(1) of the Act to take pre-emptive measures aimed at sensitizing people. For this, investors awareness programmes are held in association with the professional institutes in various places to educate and create awareness among the investors.

Under section 132(1) of the Act, NFRA has been established for monitoring and to enforce compliance of accounting standards and audit standards; to oversee quality of service of professionals associated with ensuring compliances of such standards. NFRA also has power to investigate under section 132(4) (a) of the Companies Act regarding professional misconduct of Chartered Accountants as prescribed under the rules and has power to impose penalty and debar members or the firm of auditor under section 132(4)(c) of the Act.

SEBI also investigates allegations of fraud, diversion/ siphoning or misappropriation of funds; material misstatement in financial statements, etc. resulting in violations of SEBI Act 1992, SCRA 1956, and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (PFUTP Regulations, 2003). Based on the findings of the investigation, appropriate enforcement action is initiated under Sections 11, 11 B and 15HA, 15HB of SEBI Act, 1992.

(b)The legal framework for Corporate Social Responsibility (CSR) has been provided under Section 135 of the Companies Act, 2013 ('Act'), Schedule VII of the Act and Companies (CSR Policy) Rules, 2014. It mandates every company having net worth of Rs. 500 crore or more, or turnover of Rs. 1000 crore or more, or net profit of Rs. 5 crore or more during the immediately preceding financial year, to spend at least two per cent of the average net profits of the company made over immediately preceding three financial years towards CSR as per the CSR Policy. Board of directors the company is empowered to plan, decide, execute and monitor CSR activities based on the recommendations of its CSR Committee.

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Under Rule 4(5) of the Companies (CSR Policy) Rules, 2014 the Board of the company has to satisfy itself that the funds so disbursed have been utilized for the purposes and in the manner as approved by it, and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

Further, CSR framework is disclosure based to disclose the contents of its CSR Policy in its report and place it on the company's website, if any. The same is also required to file in MCA 21 registry with their financial statements. Further, expenditure on CSR activities is required to be audited by the statutory auditors of the company. Ministry has notified the Companies (Auditor's Report) Order, 2020, ("CARO, 2020") applicable from FY 2021-22 which requires auditors to state details of any unspent CSR amount. Accordingly there are adequate safeguards for CSR implementation. However, in case of violation of CSR provision is reported, action against such non-compliant Companies are initiated.

(C) Corporate governance principles are also encouraged in unlisted/private companies too, while listed companies often have more stringent requirements due to their public nature. There are several provisions aimed at improving governance in unlisted and private companies. Some of the important significant requirements under Companies Act are as under:

- (a) Defining role and duties of the Board of directors of the company;**
- (b) To prepare annual financial statements in compliance with accounting standards and disclosures as required under the Act;**
- (c) To get the annual financial accounts duly audited;**
- (d) Timely filing of the Annual returns and financial statements with the Registrar;**
- (e) To file with Registrar about appointment of director and his resignation thereof;**
- (f) To file details about appointment of Statutory Auditor and his resignation;**
- (g) To protect the rights of minority shareholders, including the right to access certain company records and to be informed about major decisions;**
- (h) To hold annual general meetings (AGMs) with transparent and fair voting procedures;**
