

CSR Compliance in India

An overview



CENTRE FOR ADVANCEMENT OF PHILANTHROPY
Compliance consultancy for nonprofit organisations and corporate social initiatives

The Law

- Section 135 of The Indian Companies Act 2013 (Effective 1st April 2014)
- The Companies (CSR Policy) Rules 2014 (Effective 27th February 2014)
- Circulars, Notifications and FAQs
- The Companies (CSR Policy) Amendment Rules 2021 (Effective 22nd January 2021) and FAQ

Section 135(1)

Every company having:

- Net Worth of Rs. 500/- crore (Rs. 5 Billion) or more or
- Turnover of Rs. 1,000/- crore (Rs. 10 Billion) or more or
- Net Profit of Rs. 5 crore (Rs. 50 Million) or more ...

... during the immediately preceding financial year shall constitute a **Corporate Social Responsibility (CSR) Committee of the Board** consisting of 3 or more directors, **out of which** at least one director shall be an independent director

Section 135(2)

The **Board's Report** should disclose:

1. the composition of the CSR Committee
2. details about the policy developed and implemented by the company on CSR initiatives undertaken during the year

Section 135(3)

The CSR Committee shall:

- (a) formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on CSR activities ; and
- (c) monitor the CSR Policy of the company from time to time

Section 135(4)

The Board of every company shall:

- (a) after taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website.
- (b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

Section 135(5)

- The Board of every company shall ensure that the company spends, in every financial year, at least 2 per cent of the average net profits of the company made during the 3 immediately preceding financial years, **or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years** in pursuance of its CSR Policy:
- Provided that the company shall give **preference to the local area and areas around it where it operates,** for spending the amount earmarked for CSR activities:
- Provided further that if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount **and, unless the unspent amount relates to any ongoing project transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year**

Section 135(6)

- Any amount remaining unspent, shall be transferred by the company **within a period of thirty days from the end of the financial year** to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the **"Unspent CSR Account"**, and such amount shall be spent by the company in pursuance of its obligation towards the CSR **within a period of three financial years from the date of such transfer**,
- Failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

Section 135(6)

If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount unspent as the case may be, or one crore (ten million) rupees, whichever is less,

And every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount unspent as the case may be, or two lakh rupees, whichever is less.

Specified CSR Activities Under “Schedule VII”



Specified CSR Activities Under Schedule VII

- i. Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation ***("including contribution to the *Swachh Bharat Kosh* set-up by the Central Government for the promotion of sanitation")** and making available safe drinking water;
- ii. Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and differently abled and livelihood enhancement projects;

***(Inserted by Gazette Notification: 24th October 2014)**

Specified CSR Activities Under Schedule VII

- iii. Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;

- iv. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water ***("including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river *Ganga*")**;

*** (Inserted by Gazette Notification: 24th October 2014)**

Specified CSR Activities Under Schedule VII

- v. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional arts and handicrafts;

Specified CSR Activities Under Schedule VII

- vi. Measures for the benefit of armed forces veterans, war widows and their dependents, **Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;**

- vii. Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports; **(Inserted Vide Gazette Notification: 23rd June 2020)**

Specified CSR Activities Under Schedule VII

viii. Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund), or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.

(Inserted vide Gazette Notification 26th May 2020 and shall come into force from 28th March 2020)

Specified CSR Activities Under Schedule VII

ix. *Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defense Research and Development Organization (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).*

(Inserted vide Notification G.S.R. 776 (E) dated 11th October 2019)

Specified CSR Activities Under Schedule VII

x. Rural development projects.

xi. Slum area development (inserted vide Notification dated August 06, 2014)

'slum area' shall mean: "any area declared as such by the central government or any state government or any other competent authority under any law for the time being in force."

Specified CSR Activities Under Schedule VII

xii. Disaster management, including relief, rehabilitation and reconstruction activities

(inserted vide Notification G.S.R. 390 (E) dated 30th May 2019)

Companies (CSR Policy) Amendment Rules, 2021

Notified by MCA on 22nd January 2021

'Administrative overheads'

Rule 2(b) "Administrative overheads" means:

- the expenses incurred by the company for 'general management and administration' of CSR functions in the company
- but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or program;

Rule 7 (CSR Expenditure)

- The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

CSR activity to include R & D for new vaccine, medicines and medical devices

“CSR” will now include activities undertaken in pursuance of **normal course of business** of the company **PROVIDED that** any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 **subject to the conditions that:**

- (a) such research and development activities **shall be carried out in collaboration with** any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
- (b) **details of such activity shall be disclosed separately in the Annual report on CSR included in the Board’s Report.**

Schedule VII (ix)

"incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, or public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defense Research and Development Organization (DRDO), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine."

What would not be considered CSR expenditure?

- activities undertaken in pursuance of normal course of business of the company;
- contribution of any amount directly or indirectly to any political party under section 182 of the Act;
- activities benefitting employees of the company;
- activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- activities carried out for fulfilment of any other statutory obligations under any law in force in India.

Amendment to Rule 4(1) (CSR Implementation)

The Board shall ensure that the CSR activities are undertaken by the company itself or through:

- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
- (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
- (c) any entity established under an Act of Parliament or a State legislature; or
- (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

CSR Registration Number

(CSR-1 after 1st April 2021 mandatory)

- Every entity, covered under Rule 4(1), which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form **CSR-1 electronically** with the **Registrar**, with effect from the 01st day of April 2021:
- Provided that the provisions of this sub-rule shall not affect the CSR projects or programs approved prior to the 01st day of April 2021.
- Form CSR-1 shall be signed and submitted electronically by the entity and shall be **verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.**
- On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

E-Form

Please go to: <http://www.mca.gov.in/MinistryV2/companyformsdownload.html>

Incorporation Services

Description	e-Form with Instruction kit	e-Form	Form Version updated on
Registration of Entities for undertaking CSR Activities	Form CSR-1 [zip] (537 KB)	Form CSR-1 [zip] (214 KB)	01-Apr-2021

Form CSR-1

- i. Tick Nature of the Entity (Trust, society, section 8 company etc.)
- ii. Whether the Entity is established by any company or group of companies
- iii. Date of incorporation and address
- iv. Details of Directors / Board of Trustees / Chairman / CEO / Secretary / Authorized Representatives of the entity with Name, Designation, DIN/PAN Email ID
- v. Copy of Certificate of Registration
- vi. Copy of PAN of entity

Rule 4(3) Engaging 'International Organizations'

- A company may engage international organisations for **designing, monitoring and evaluation** of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR
- 'International organization' means an organisations notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and Immunities) Act, 1947
- (E.g. World Health Organization (WHO), International Labour Organization (ILO), Food and Agriculture Organization, United Nations Educational, Scientific and Cultural Organization (UNESCO))

Note: Designing, monitoring and evaluation of the CSR projects or programmes does NOT fall under 'Administrative Overheads' and not capped either under admin or impact assessment.

Rule 7(2) Surplus arising out of CSR Activities

Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project

or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company

or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

Institute of Company Secretaries of India

FAQ on CSR – April 2021

Q. 46: How is surplus from CSR project is generated?

A. 46: Surplus from CSR projects may be generated in various forms, for e.g. interest on temporarily parked funds, revenue received from the completed CSR projects, etc.

The said surplus arising out of CSR activities has to be utilized for CSR activities only.

Such expenditure can't be set off against future CSR expenditure

Rule 8 - CSR Reporting to include Impact Assessment

- Every company having average CSR obligation of ten crore rupees or more in pursuance of Section 135(5) of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
- The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- A Company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

Monitoring Ongoing Project

- In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.
- ‘Ongoing project’ means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification

Excess CSR spends may be set off

- Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 **up to immediate succeeding three financial years** subject to the conditions that the excess amount available for set off shall not include the surplus arising out of the CSR activities and the Board of the company shall pass a resolution to that effect.

Acquisition of capital assets

The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by:

(a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under Rule 4(2); or

(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

(c) a public authority:

- Provided that **any capital asset created by a company prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2021**, shall within a period of one hundred and eighty days from such commencement comply with the requirement of **this Rule**, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

Rule 10 - Transfer of unspent CSR amount

- Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.”

Q & A