CSR Law for NGOs

- CSR Laws
- FAQ: Corporate Social Responsibility (CSR)

CSR Laws

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Got questions about CSR Laws? Ask them on the forum!

https://www.youtube.com/embed/qzQ8I2emhcc?si=unlDfgi0s9ZbHU9s

S.135 of Companies Act, 2013-Corporate Social Responsibility (CSR)

1. Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.
2. The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
3. The Corporate Social Responsibility Committee shall,—
   - formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
   - recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

- monitor the Corporate Social Responsibility Policy of the company from time to time.

4. The Board of every company referred to in sub-section (1) shall,—
   - after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
   - ensure that the activities in CSR Policy of the company are undertaken by the company.
5. The Board of every company referred to in sub-section (1), shall ensure that the:
   - company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility 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 Corporate Social Responsibility activities.
   - Provided further that if the company fails to spend such an amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Schedule VII-See Sec 135

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:

1. Eradicating hunger, poverty and malnutrition, [‘‘promoting health care including preventive health care’’] and sanitation [including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation] and making available safe drinking water.
2. Promoting education, including special education and employment enhancing vocational skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
3. 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.

4. Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, 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].
5. 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 art and handicrafts;
6. Measures for the benefit of armed forces veterans, war widows and their dependents, 9[Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows];
7. Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports
8. Contribution to the prime minister's national relief fund 8[or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)] or any other fund set up by the central govt. for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
9.
   - Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and
   - Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defence Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).]
10. Rural development projects

11. Slum area development.
12. Disaster management, including relief, rehabilitation and reconstruction activities.

Note: only funds mentioned here are eligible for CSR contribution

Section 135 of Companies Act-changes effective Jan 2021

Paradigm shift in CSR regime-Spend or explain to Mandatory

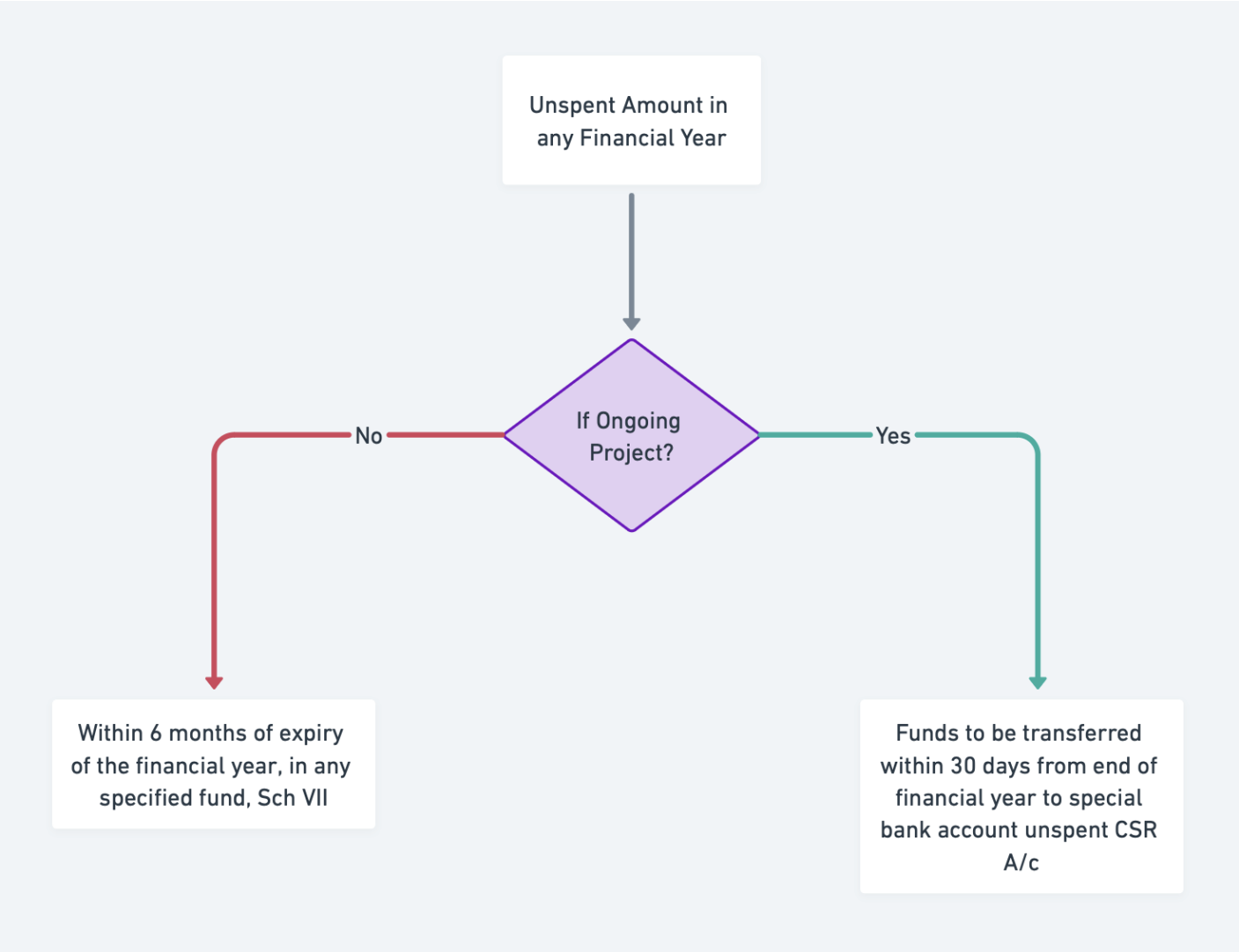
• Company fails to spend required CSR amount in any financial year,

a. The unspent amount is required to be transferred to any fund specified in Schedule VII, within a period of six months of the expiry of the financial year (in the case there is no ongoing project).

b. The unspent amount is to be transferred to a special account to be opened by the company in a scheduled bank to be called the unspent CSR account within 30 days from the end of the financial year (in the case of an ongoing project).

Such amount shall be spent on CSR activities within three financial years failing which the unspent amount is required to be transferred to any fund specified in Schedule VII, within 30 days.

Introduction of penal provisions: Penalty of twice the unspent CSR or INR 1 crore, whichever is less may be imposed on the company, and penalty of 1/10th of unspent CSR or INR 2 lakh, whichever is less may be imposed on all officers in default.



Illustrated:

Unspent Amount in any Financial Year:

- *If Ongoing Project?*
  - *Yes: Within 6 months of expiry of the financial year, in any specified fund, Sch VII*
  - *No: Funds to be transferred within 30 days from end of financial year to special bank account inspect CSR A/c*

Definition of CSR

Activities permitted under Section 135 of Companies Act 2013Exclusions:

- 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 benefiting employees of the company as per Code on Wages (apprentices not included)
- 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.

Note-corpus donation, kind contribution, activities outside India except training of sports person is not CSR

Companies (CSR Policy) Rules 2021

Modes for undertaking CSR: CSR activities can now be undertaken by the company itself or through

- Section 8 company/registered public trust/registered society-12A and 80G registration under Income-tax Act, 1961 established by the company, either singly or along with any other company, or
- Section 8 company/registered trust/registered society established by the government; or
- Any entity established under an Act of Parliament or a state legislature; or
- Section 8 company/registered public trust/registered society, (with 12A and 80G registration under Income-tax Act, 1961) having an established track record of at least three years in undertaking similar activities.

URN and Form CSR-1

From 01 April 2021, every entity who intends to undertake any CSR activity, shall register itself with the Central Government by filing Form CSR-1 electronically with the Registrar of Companies (ROC).

- On successful submission of Form CSR-1, a unique CSR Registration Number shall be generated by system automatically.
- No timeline specified for registration. Only registered entities will be able to undertake CSR activity from 1.4.21
- Applicable for 4 eligible entity types for getting CSR Funding
- Following documents are required for filing Form CSR-1 on MCA portal:
  - Copy of PAN Card of the NGO
  - Details of Directors/BOT/Chairperson/CEO/Secretary/Authorised Rep
  - Copy of Registration Certificate
  - Digital Signature of the Authorised Person with his PAN Number
- Certification by Practising Professional

Companies (CSR Policy) Rules 2021

- Companies may now engage international organisations for designing, monitoring and evaluating the CSR projects and for capacity building of their personnel for CSR. Notified by CG under this Act.
- Administrative overheads have been defined and capped to 5% of total CSR expenditure. Admin OH means any expenditure for general management and administration for CSR function but designing, implementation, monitoring and evaluation of CSR projects will not be part of admin overheads

CSR Committee

- CSR Committee mandatory if CSR spend is more than Rs.50 lakhs in a year or there is unutilised CSR fund otherwise discharged by BOD
- The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:
  - the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
  - b the manner of execution of such projects/programmes as specified in rule 4;

    - the modalities of utilization of funds and implementation schedules for the projects;
    - monitoring and reporting mechanism for the projects or programmes; and
    - details of need and impact assessment, if any, for the projects undertaken by the company:
- Annual Report format on CSR activities from 1.4.2020 (Annexure II) to be appended to the company AR-unspent, impact asstt. Admin OH, capital assets, location of CSR projects etc

Surplus arising out of CSR projects

- 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.
- This means in case the project is income generating by way of fees etc., such income should be ploughed back into the same project but not form part of the business profit of the company.

Creation of assets from CSR expenditure

- The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by:
    - 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
    - beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
    - a public authority:
- Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility 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.

- The asset will be transferred and the exp needs to be considered CSR exp

Visibility and UC by CFO

- Display of CSR activities on company website. The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.
- UC by CFO of the company that the CSR funds have been spent as per AAP not the CSR Committee

Carry forward and set off of excess spend

- Any excess CSR spend beyond requirement in a year can be set off in the next 3 FYs.
- Board resolution

Impact assessment

- Rule 8: Companies having an average CSR obligation of INR 10 crore or more in three immediately preceding financial years will be required to do impact assessment, through an independent agency
- CSR projects having outlays of INR 1 crore or more
- Completed not less than one year before undertaking the impact study.
- Ceiling 2% or Rs.50 lakhs per FY whichever is higher
- Cost to be budgeted in the year of undertaking impact assessment

Advisory by ICAI to companies to which CSR provisions apply (May 2020)

- ICAI has prescribed the format of auditors report and UC format to be issued by auditor for CSR funds implemented by NGOs/third party
- Advisory link: https://csr.icai.org/wp-content/uploads/2020/07/Advisory-for-Independent-Practitioners-Report-on-Utilization-of-CSR-Funds_hosted.pdf

CSR, ESG and Sustainability overlap

- **Sustainability:** The outcome achieved by balancing the social, environmental and economic impacts of business. It is the process that ensures that business goals are pursued without compromising any of the three elements (source: NGRBC).
- Sustainability is the umbrella for **ESG** (BRSR) and **CSR**, both are ways business demonstrate commitment to sustainable business practices.
- CSR is the starting point of ESG.
- CSR strategy can be refined to fit into ESG (BRSR) metrics.
- BRSR lends credibility to CSR by quantifying it.

Reporting compliance for corporates on Sustainability

- Form CSR 2
- Annual Action Plan (AAP)
- Annual CSR Report (Annexure II) appended to Board Report
- Business Responsibility Report (BRR)-discontinued
- Business Responsibility and Sustainability Report (BRSR)
- BRSR Core-July 2023- subset of BRSR requiring mandatory disclosure on select key performance indicators on ESG like upstream and downstream value chenin partners with

reporting by 150 companies from 23-24 to all by 26-27 and guidelines for assurance providers

CSR 2-CSR Report

- Introduced in Feb 2022 effective 20-21
- Applicable to companies covered under 135(1)
- e CSR 2 information-(capture most details that we have covered in section 135 and required in Rules). It includes details of triggers, spend on ongoing and other than ongoing projects, unspent CSR amount, set off, assets created, impact assessment
- Filed within 30 days of holding of AGM as addendum to AOC 4

Journey of ESG (BRSR) in India

- In 2011, MCA issued the National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business
- In 2012, SEBI mandated the top 100 companies (extended to 500 companies) by market cap submit BRR to report compliance with NVGs
- In 2017, SEBI recommended Integrated Reporting for BRR-together on financial and sustainable matters in single reporting
- In 2018, MCA issued national Guidelines on Responsible Business Conduct (NGRBC) to improve on NVGs
- In 2021, SEBI introduced improved BRRF requiring in form of BRSR applicable to top 1000 companies by m-cap from 22-23

Business Responsibility and Sustainability Reporting

NGRBC contain 9 principles and core elements

- Principle 1: **Ethical Business Conduct**-Businesses should **conduct and govern** themselves with integrity and in a manner that is ethical, transparent and accountable.
- Principle 2: **Produced Responsibility**-Businesses should provide **goods and service** in a manner that is sustainable and safe.
- Principle 3: **Employee Welfare**-Businesses should respect and promote the well-being of all **employees**, including those in their value chains.
- Principle 4: **Stakeholder engagement**-Businesses should respect the interests of and be responsive to all its **stakeholder**s
- Principle 5: **Human Rights**-Businesses should respect and promote **human rights**.
- Principle 6: **Environmental Responsibility**-Businesses should respect and make efforts to protect and restore the **environment**.
- Principle 7: **Public Policy Engagement**-Businesses, when engaging in **influencing public and regulatory policy**, should do so in a manner that is responsible and transparent.
- Principle 8: **Inclusive Growth**-Businesses should promote **inclusive growth and equitable development**
- Principle 9: **Consumer engagement**-Businesses should engage with and provide value to their **consumers** in a responsible manner.

BRSR

- Each principle of NGRBC has core elements which enhance the operationalisation and objectivity of the principles
- BRSR is part of SEBI’s Listing Obligation and Disclosure Regulations (LODR)
- BRSR format:
  - General information
  - Management & Policy disclosures
  - Principle wise performance disclosure-essential indicators and leadership indicators
- Voluntary BRSR permitted

Resources for new business for reference

Websites of corporates

- National CSR Portal https://www.csr.gov.in/content/csr/global/master/home/home.html
- National CSR eXchange https://www.csrxchange.gov.in
- MCA website
- FAQ by MCA attached with this PPT

For funding and proposal writing:

- NGOBox
- CSRBox
- Fundsforngos.org
- ProposalsforNGOs.com
- Devnetjobsindia.org
- Terravivagrants.org
- Tamuku

Websites of Ministries and Donors other than CSR

- Ngosindia.com
- Pandadoc.com
- Ngochrome.com

FAQ: Corporate Social Responsibility (CSR)

> Disclaimer: This document is intended solely for educational purposes. The content herein is subject to change based on evolving finance trends and any relevant rulings by the Government of India. Readers are advised to consult with qualified professionals for specific guidance related to their individual circumstances.

1. Applicability of CSR

Q1. Which companies qualify for CSR under the Companies Act, 2013?

A company satisfying any of the following criteria during the immediately preceding financial year is required to comply with CSR provisions specified under section 135(1) of the Companies Act, 2013 read with the Companies (CSR Policy) Rules, 2014 made thereunder: (i) net worth of rupees five hundred crore or more, or (ii) turnover of rupees one thousand crore or more, or (iii) net profit of rupees five crore or more.

Q2. Do CSR provisions apply to a company that has not completed the period of three financial years since its incorporation?

Yes. If the company has not completed three financial years since its incorporation, but it satisfies any of the criteria mentioned in section 135(1), the CSR provisions including spending of at least two per cent of the average net profits made during immediately preceding financial year(s) are applicable.

2. CSR Framework

Q1. What are the functions of the CSR Committee?

The Corporate Social Responsibility Committee shall —

(i) formulate and recommend the CSR policy to the Board;

(ii) recommend the amount of expenditure to be incurred on CSR activities;

(iii) monitor the CSR policy of the company from time to time; and

(iv) formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the items as mentioned in rule 5(2) of the Companies (CSR Policy) Rules, 2014.

Q2. What are the responsibilities of the Board in relation to the CSR provisions?

CSR is a Board-driven process. The responsibilities of the Board of a CSR-eligible company, inter-alia, include the following —

(i) approve the CSR policy; (ii) disclose contents of such policy in its report and also place it on the company's website, if any; (iii) ensure that the activities included in the CSR policy are undertaken by the company; (iv) ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years; (v) satisfy itself regarding the utilisation of the disbursed CSR funds; and (vi) if the company fails to spend at least two per cent of the average net profits of the company, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and transfer the unspent CSR amount as per provisions of sections 135(5) and 135(6) of the Act.

Q3. What are the mechanisms for monitoring the CSR process?

CSR is a Board-driven process, and the Board of the company is empowered to plan, decide, execute, and monitor the CSR activities of the company based on the recommendation of its CSR

Committee. The CSR architecture is disclosure-based and CSR-mandated companies are required to file details of CSR activities annually in the MCA21 registry. Companies are required to make necessary disclosures in the financial statements regarding CSR including non-compliance. The existing legal provisions such as mandatory disclosures, accountability of the CSR Committee and the Board, and provisions for audit of accounts of the company provide sufficient mechanisms for monitoring.

3. CSR Expenditure

Q1. How is CSR expenditure computed?

It is 2% of the average net profit for the past 3 financial years computed in accordance with the provisions of section 198 of the Companies Act and will also be exclusive of the items given under rule 2(1)(h) of the Companies (CSR Policy) Rules, 2014. Section 198 of the Act specifies certain additions/deletions (adjustments) to be made while calculating the net profit of a company (mainly it excludes capital payments/receipts, income tax, set-off of past losses). Profit Before Tax (PBT) is used for computation of net profit under section 135 of the Act.

Q2. What is the meaning of the term ‘administrative overheads'? What is the maximum permissible limit for administrative overheads?

Administrative overheads are the expenses incurred by the company for ‘general management and administration’ of CSR functions. However, the expenses which are directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme, shall not be included in the administrative overheads. Administrative overheads generally comprise items such as employee costs, utilities, office supplies, legal expenses, etc. However, expenses which are attributed to the project implementation shall be included in project cost only. Example: Salary and training for the employees working in the CSR division of a company, stationery cost, travelling expenses, etc. may be categorised as administrative overheads. However, salary of school teachers or other staff, etc. for education-related CSR projects shall be covered under education project cost. The maximum permissible limit for administrative overheads is five per cent

of the total CSR expenditure of the company for the financial year.

Q3. Are administrative overheads applicable only for expenses incurred by the company, or can they be applied to expenses incurred by the implementing agency as well?

According to rule 2(1)(b) of the Companies (CSR Policy) Rules, 2014, administrative overheads mean the expenses incurred by the company in the general management and administration of CSR functions in the company. Therefore, expenses incurred by implementing agencies on the management of CSR activities shall not amount to administrative overheads and cannot be claimed by the company.

Q4. What is the meaning of surplus arising from CSR activities?

How can this surplus be utilised? Surplus refers to income generated from the spend on CSR activities, e.g., interest income earned by the implementing agency on funds provided under CSR, revenue received from the CSR projects, disposal/sale of materials used in CSR projects, and other similar income sources. The surplus arising out of CSR activities shall be utilised only for CSR purposes.

Q5. Are contributions to the corpus of an entity qualify as admissible CSR expenditure?

No, the provision relating to contribution to corpus as admissible CSR expenditure has been amended and the contribution to corpus of any entity is not an admissible CSR expenditure w.e.f. 22nd January, 2021.

Q6. Can expenses related to transfer of capital assets as provided under rule 7(4) of Companies (CSR Policy) Rules, 2014, qualify as admissible CSR expenditure?

Yes, the expenses relating to transfer of capital assets such as stamp duty and registration fees, will qualify as admissible CSR expenditure in the year of such transfer.

Q7. If a company spends more than the requirement provided under section 135, can that excess amount be set off against the mandatory 2% CSR expenditure in succeeding financial years?

Yes, the excess amount can be set off against the required 2% CSR expenditure up to the immediately succeeding three financial years subject to compliance with the conditions stipulated under rule 7(3) of the Companies (CSR Policy) Rules, 2014. This position is applicable from 22nd January, 2021 and has a prospective effect. Thus, no carry forward shall be allowed for the excess amount spent, if any, in financial years prior to FY 2020-21.

Q8. Whether it is mandatory for companies to carry out CSR in their local areas?

The first provision to section 135(5) of the Act provides that the company shall give preference to local areas and the areas around where it operates. Some activities in Schedule VII such as welfare activities for war widows, art and culture, and other similar activities, transcend geographical boundaries and are applicable across the country. With the advent of Information & Communication Technology (ICT) and emergence of new age businesses like e-commerce companies, process-outsourcing companies, and aggregator companies, it is becoming increasingly difficult to determine the local area of various activities. The spirit of the Act is to ensure that CSR initiatives are aligned with the national priorities and enhance engagement of the corporate sector towards achieving Sustainable Development Goals (SDGs). Thus, the preference to local area in the Act is only directory and not mandatory in nature and companies need to balance local area preference with national priorities.

Q9. Can CSR expenditure of a company be claimed as a business expenditure?

No, the amount spent by a company towards CSR cannot be claimed as business expenditure. Explanation 2 to section 37(1) of the Income Tax Act, 1961 which was inserted through the Finance

Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

Q10. What tax benefits can be availed under CSR?

No specific tax exemptions have been extended to CSR expenditure. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure.

Q11. Can contributions in kind be monetized to be shown as CSR expenditure?

The requirement comes from section 135(5) that states that “The Board of every company shall ensure that it spends…” Therefore, CSR contributions cannot be in kind and monetized.

Q12. Can CSR expenditure be incurred on activities beyond Schedule VII?

No, CSR expenditure cannot be incurred on activities beyond Schedule VII of the Act. The activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The items listed in Schedule VII of the Act are broad-based and are intended to cover a wide range of activities. The entries in the said Schedule VII must be interpreted liberally to capture the essence of the subjects enumerated in the said Schedule.

Q13. What are the different modes of incurring CSR expenditure?

CSR expenditure can be incurred in multiple modes: (i) ‘Activities route’, which is a direct mode wherein a company undertakes the CSR projects or programmes as per Schedule VII of the Act, either by itself or by engaging implementing agencies as prescribed in Companies (CSR Policy) Rules, 2014. (ii) ‘Contribution to funds route', which allows the contributions to various funds as specified in Schedule VII of the Act. (iii) Contribution to incubators and R&D projects, as specified in

item (ix)(a) and contribution to institutes/organisations, engaged in research and development activity, as specified under item (ix)(b) of Schedule VII of the Act.

Q14. Which are the funds specified in Schedule VII of the Act for the purpose of CSR contribution?

Contributions to the following funds shall be admissible as CSR expenditure: (i) Swachh Bharat Kosh (ii) Clean Ganga Fund (iii) Prime Minister’s National Relief Fund (PMNRF) (iv) Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) (v) Any other fund set up by the Central Government and notified by the Ministry of Corporate Affairs, for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.

Q15. Will contribution to any other fund set up for carrying out the activities mentioned in Schedule VII of the Act, be an admissible CSR expenditure?

No, the Act does not recognise any contribution to any other fund, which is not specifically mentioned in Schedule VII, as an admissible CSR expenditure.

Q16. Can CSR funds be utilised to fund Government schemes?

The objective of CSR provisions is to involve the corporates as partners in the social development process. Use of corporate innovations and management skills in the delivery of ‘public goods’ is at the core of CSR implementation by the companies. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Schemes. However, the Board of the eligible company may undertake similar activities independently subject to fulfilment of Companies (CSR Policy) Rules, 2014.

Q17. Can involvement of employees of a company in their CSR projects be monetized and accounted for under the head of ’CSR expenditure’?

No, involvement of employees in CSR projects of a company cannot be monetized. Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies, therefore, should be encouraged to involve their employees in CSR activities.

4. CSR Activities

Q1. Which activities do not qualify as eligible CSR activity?

Rule 2(1)(d) of the Companies (CSR Policy) Rules, 2014 defines CSR and the following activities are specifically excluded from being considered as eligible CSR activity: (i) Activities undertaken in pursuance of normal course of business of the company (ii) Activities undertaken outside India, except for training of Indian sports personnel representing any State or Union Territory at national level or India at international level; (iii) Contribution of any amount, directly or indirectly, to any political party under section 182 of the Act; (iv) Activities benefitting employees of the company as defined in section 2(k) of the Code on Wages, 2019; (v) Sponsorship activities for deriving marketing benefits for products/services; (vi) Activities for fulfilling statutory obligations under any law in force in India.

Q2. Can the companies undertake any CSR activity mentioned under Schedule VII of the Act for the exclusive benefit of their employees, workers and their family members?

Rule 2(1)(d)(iv) of the Companies (CSR Policy) Rules, 2014 states that any activity benefiting employees of the company shall not be considered as eligible CSR activity. As per the rule, any activity designed exclusively for the benefit of employees shall be considered as an “activity benefiting employees” and will not qualify as permissible CSR expenditure. The spirit behind any

CSR activity is to benefit the public at large and the activity should be non-discriminatory to any class of beneficiaries. However, any activity which is not designed to benefit employees solely, but the public at large, and if the employees and their family members are incidental beneficiaries, then, such activity would not be considered as “activity benefiting employees” and will qualify as eligible CSR activity.

Q3. What is the meaning of sponsorship activities deriving marketing benefits for a company's products or services?

Sponsorship activities of an event are done with an aim of deriving marketing benefits for a company’s product or services. The intent of CSR is to encourage companies to undertake the activities in a project or programme mode rather than as a one-off event. Companies shall not use CSR purely as a marketing or brand building tool for their business, but brand building as a collateral benefit does not vitiate the spirit of CSR.

Q4. Are activities undertaken by companies outside India for the benefit of resident Indians, permitted as eligible CSR activity?

Rule 2(1)(d)(ii) of the Companies (CSR Policy) Rules, 2014 clearly states that any activity undertaken by the company outside India shall not be an eligible CSR activity. The only exception is training of Indian sports personnel representing any State or Union Territory at national or international level.

Q5. How can companies with small CSR funds take up CSR activities in a project mode?

A well-designed CSR project can be managed with small CSR funds as well. Further, there is a provision in the Companies (CSR Policy) Rules, 2014 that enables such companies to collaborate with other companies for undertaking CSR activities by way of pooling their CSR resources. (Refer rule 4(4) in Companies (CSR Policy) Rules, 2014).

5. CSR Implementation

Q1. What are the different modes of implementation of CSR activities?

Pursuant to rule 4 of the Companies (CSR Policy) Rules, 2014 a company may undertake CSR activities through following three modes of implementation: (i) Implementation by the company itself (ii) Implementation through eligible implementing agencies as prescribed under sub-rule (1) of rule 4. (iii) Implementation in collaboration with one or more companies as prescribed under sub-rule (4) of rule 4.

Q2. Which entities are eligible to act as an implementing agency for undertaking CSR activities?

Rule 4(1) of the Companies (CSR Policy) Rules, 2014 provides the eligible entities which can act as an implementing agency for undertaking CSR activities. These are: (i) Entity established by the company itself or along with any other company – 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. (ii) Entity established by the Central Government or State Government – a company established under section 8 of the Act, or a registered trust or a registered society. (iii) Statutory bodies – any entity established under an Act of Parliament or a State legislature. (iv) Other bodies – 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.

Q3. Are all three types of entities – a company established under section 8 of the Act, or a registered public trust, or a registered society, required to have income-tax registration u/s 12A as well as 80G of the Income Tax Act, 1961?

Yes, as per rule 4(1) all three types of entities – a company established under section 8 of the Act, or a registered public trust, or a registered society are required to have income-tax registration u/s 12A as well as 80G of the Income Tax Act, 1961 to act as implementing agency, except for any entities established by Central or State Government.

Q4. What is meant by ’registered public trusts’ in states where registration is not mandatory?

Registered public trust (as referred to in rule 4(1) of the Companies (CSR Policy) Rules,2014) would include trusts registered under the Income Tax Act, 1961 in respect of those states where registration of public trusts is not mandatory.

Q5. What is the purpose of registration of the implementing agency on the MCA21 portal?

The identification of suitable implementing agencies is a major concern for companies. Registration of implementing agencies on MCA21 portal is aimed at creating a database of such agencies for companies who may want to engage them. Further, this will bring accountability and transparency in the implementation of CSR activities and thereby strengthen the CSR eco-system.

Q6. Is it mandatory for every implementing agency to register on the MCA21 portal?

Yes, every implementing agency mentioned in rule 4(1) of the Companies (CSR Policy) Rules, 2014 shall mandatorily register itself in the MCA21 portal w.e.f. 01st April 2021 in order to enable it to undertake CSR activities on behalf of the company.

Q7. Whether registration of an implementing agency by filing e-form CSR-1 is mandatory in case the company carries out CSR activities directly?

No. The question of filing e-form CSR-1 does not arise in case the company carries out CSR activities directly.

Q8. Can international organisations act as an implementing agency?

No, an international organisation cannot act as an implementing agency.

Q9. What is the role of international organisations in the context of CSR?

Pursuant to rule 4(3) of the Companies (CSR Policy) Rules, 2014, a company can engage international organisations for the limited purposes of designing, monitoring, and evaluation of the CSR projects or programmes, or for capacity building of personnel of the company involved in CSR activities.

6. Ongoing Project

Q1. What is the meaning of an ‘ongoing project’?

Which projects can be considered as ongoing? Ongoing project has been defined under rule 2(1)(i) of the Companies (CSR Policy) Rules, 2014 as:

(i) a multi-year project, stretching over more than one financial year;

(ii) having a timeline not exceeding three years excluding the year of commencement;

(iii) includes such project that was initially not approved as a multi-year project but whose duration has been Page 14 of 21 extended beyond one year by the Board based on reasonable justification. The project should have commenced within the financial year to be termed as ‘ongoing’. The intent is to include a project which has an identifiable commencement and completion dates. After the completion of any ongoing project, the Board of the company is free to design any other project related to operation and maintenance of such completed projects in a manner as may be deemed fit on a case-to-case basis.

Note: The term ‘year’ refers to the financial year as defined in section 2(41) of the Act.

Q2. When will an ongoing project be regarded as ‘commenced’?

An ongoing project will have ‘commenced’ when the company has either issued the work order pertaining to the project or awarded the contract for execution of the project.

Q3. What is the maximum permissible time period for any ongoing project?

Can the time period of an ongoing project be extended beyond the permissible period? As per the definition of an ongoing project, the maximum permissible time period shall be three financial years excluding the financial year in which it commenced i.e., (1+3) financial years. Under no circumstances shall the time period of an ongoing project be extended beyond its permissible limit.

Q4. What are the responsibilities of the Board in case ongoing projects are undertaken by the company?

In case of ongoing projects, the major responsibilities of the Board, inter-alia, include: (i) identification of the ongoing projects; (ii) year-wise allocation of funds; (iii) transferring the unspent money to a separate bank account as prescribed under sub-section (6) of section 135; (iv) monitoring the implementation of the projects with reference to the approved timelines and year-wise allocation; and (v) making modifications, if any, for smooth implementation of the projects within the overall permissible time period.

Q5. Can ongoing projects be implemented through implementing agencies?

Yes, once the Board approves a project as an ongoing project, then it can choose to implement the project either itself, or through any of the implementing agencies as mentioned in rule 4(1) of the Companies (CSR Policy) Rules, 2014.

Q6. Does the Board have the power to abandon or modify an ongoing project within the permissible period of three years?

As per provisions of the CSR Rules, the Board may abandon or modify an ongoing project, partially or wholly, under exceptional circumstances, during the prescribed project period as per the recommendation of its CSR Committee, and by providing reasonable justification to that effect. It is important to keep in mind that the maximum permissible period for an ongoing project is three years excluding the year of its commencement.

Q7. Can funds earmarked for one project be used for another project?

Yes, the budget outlay dedicated for one project can be used against another project. In such a case, the Board and CSR Committee should appropriately record the alteration in the target spending and modify the same in accordance with the actuals.

7. Treatment of Unspent CSR Amount

Q1. What actions need to be taken if a company spends less than the amount required to be spent under CSR obligation in a particular year?

If a company spends less than the amount required to be spent under their CSR obligation, the Board shall specify the reasons for not spending in the Board’s report and shall deal with the unspent amount in the following manner: Nature of unspent amount Action required Timelines Unspent amount pertains to ‘ongoing projects’ Transfer such unspent amount to a separate bank account of the company to be called as ‘Unspent CSR Account’. Within 30 days from the end of the financial year. Unspent amount pertains to ‘other than ongoing projects’ Transfer unspent amount to any fund included in Schedule VII of the Act. Within 6 months from the end of the financial year.

Q2. Where the company was unable to meet its CSR obligation, but transferred the said unspent amount to any fund included in Schedule VII of the Act, will the same be considered as compliance under section 135?

The compliance of CSR is fulfilled when the company spends the prescribed amount as per its obligation. However, in case the company fails to spend the requisite amount within the financial year, it shall fulfil its obligation by transferring the unspent amount to any fund included in Schedule VII of the Act. The same will be considered as compliance with section 135(5) of the Act. Further, the Board of the company is required to give the requisite disclosure in the Board report and annual report on CSR.

Q3. A company has been given six months' time to transfer the unspent CSR amount, other than the amount pertaining to ongoing projects, to any fund included in Schedule VII of the Act. Can the company spend this amount in the said period of six months on any CSR activity?

No, companies are not permitted to spend the unspent CSR amount, other than the amount pertaining to ongoing projects, on any CSR activity during the intervening period of six months after the end of the financial year. Such unspent CSR amount is required to be transferred to any fund included in Schedule VII of the Act.

Q4. Will disbursal of funds by a company to the implementing agency for the implementation of projects be considered as spent under section 135(5) and rules made there under?

Section 135(5) of the Act prescribes minimum spending obligation for the company. The company may fulfil its CSR spending obligation directly by itself or through engaging an implementing agency. The implementing agency acts on behalf of the company and mere disbursal of funds for implementation of a project does not amount to spending unless the implementing agency utilises the whole amount. In the annual action plan, the CSR Committee of the company is required to provide for modalities of utilisation of funds. The CSR Committee shall recommend to the Board on budget allocation for any CSR project including modalities of utilisation of funds in every project. Further, as per rule 4(5) of the Companies (CSR Policy) Rules, 2014, the Board of a company shall satisfy itself that the funds so disbursed have been utilised 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. Accordingly, the CSR Committee and Board should ensure that CSR funds should be disbursed to implementing agencies, partially or wholly, in such a manner so that they can be utilised by them during the financial year. Mere disbursal of funds for implementation of a project does not amount to spending unless the implementing agency utilises the whole amount.

Q5. Should a company open a separate ’Unspent CSR Account’ for each ongoing project?

No, a company can open a single special account, called ‘Unspent Corporate Social Responsibility Account’, for a financial year in any scheduled bank, to transfer the unspent amount w.r.t ongoing project(s) of that financial year. A company needs to open a separate ’Unspent CSR Account’ for each financial year but not for each ongoing project.

Q6. Can the amount transferred to ‘Unspent CSR Account’ of the company be utilised for regular business of the company?

No, the provisioning of a separate special account, namely the ‘Unspent CSR Account’, in any scheduled bank is to ensure that the unspent amount, if any, is transferred to this designated account and used only for meeting the expenses of ongoing projects, and not for other general purposes of the company. The special account cannot be used by the company as collaterals or creating a charge or any other business activity.

Q7. Can an ongoing project initiated by a company in any previous financial year (for instance in FY 2019-20) be classified as an ongoing project under section 135(6) of the Act. Is the unspent amount of previous financial years also required to be transferred to the Unspent CSR Account?

No, the provisions related to ongoing projects have come into effect from 22nd January 2021, i.e., from FY 2020-21 onwards. The said provisions are prospective in effect and not applicable to projects of previous financial years. Further, the Board of the company is free to decide the

treatment of the unspent CSR amount of previous financial years prior to FY 2020-21. The Board can either transfer the amount to ‘Unspent CSR Account’ or continue as per the previous accounting practices adopted by the company.

8. CSR Enforcement

Q1. What are the penal provisions for noncompliance with the provisions regarding transfer of unspent amount?

The said non-compliance is a civil wrong and shall attract the following penalties: Company Twice the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, as the case may be, or one crore rupees, whichever is less. Every Officer in Default 1/10th of the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, or two lakh rupees, whichever is less.

Q2. Will the penal proceedings apply even after the unspent amount has been transferred to the Unspent CSR Account or to the funds mentioned in Schedule VII of the Act?

The penalty does not relieve the company from the obligations under the law, and the penalty is over and above the obligated amount required to be transferred under section 135(5) or 135(6). The penalty is the consequence of not abiding by the law, and not an alternative for the same.

Q3. Is the penal provision in section 135(7) specific to non-transference of the unspent CSR amount?

Yes, section 135(7) clearly states the penalty for default in complying with the provisions of sub-section (5) or subsection (6) only. 8.4 What are the penal provisions relating to noncompliance with provisions other than section 135(5) and 135(6) of the Act? In case of non-compliance with any other provisions of the section or rules, the provisions of section 134(8) or general penalty under section 450 of the Act will be applicable. Further, in case of non-payment of penalty within the

stipulated period, the provisions of section 454(8) will be applicable.

9. Impact Assessment

Q1. What is the objective of providing impact assessment of CSR activities?

The purpose of impact assessment is to assess the social impact of a particular CSR project. The intent is to encourage companies to take considered decisions before deploying CSR amounts and assess the impact of their CSR spending. This not only serves as feedback for companies to plan and allocate resources better but shall also deepen the impact of CSR. 9.2 Which companies are required to undertake impact assessment? Rule 8(3) of the Companies (CSR Policy) Rul

Q2. Which companies are required to undertake impact assessment?

Rule 8(3) of the Companies (CSR Policy) Rules, 2014 mandates following class of companies to conduct impact assessment: (i) companies with minimum average CSR obligation of Rs. 10 crore or more in the immediately preceding 3 financial years; and (ii) companies that have CSR projects with outlays of minimum Rs. 1 crore and which have been completed not less than 1 year before undertaking impact assessment. Impact assessment shall be carried out project-wise only in cases where both the above conditions are fulfilled. In other cases, it can be taken up by the company on a voluntary basis.

Q3. Are companies required to undertake impact assessment for FY 2020-21?

The provisions for impact assessment have come into effect from 22nd January, 2021. Accordingly, the company is required to undertake impact assessment of the CSR projects completed on or after January 22, 2021. However, as a good practice the Board may undertake impact assessment of completed projects of previous financial years.

Q4. Who can conduct an impact assessment?

Rule 8(3) of the Companies (CSR Policy) Rules, 2014 requires that the impact assessment be conducted by an independent agency. The Board has the prerogative to decide on the eligibility criteria for selection of the independent agency for impact assessment.

Q5. Is expenditure on impact assessment over and above the administrative overheads of 5%, or included in the same?

Yes, the expenditure incurred on impact assessment is over and above the specified administrative overheads of 5%. Expenditure up to a maximum of 2% of the total CSR expenditure for that financial year or 50 lakh rupees (whichever is higher) can be incurred separately for impact assessment.

Q6. Can impact assessment reports of all the CSR projects be annexed to the annual report on CSR?

Rule 8(3)(b) of the Companies (CSR Policy) Rules, 2014 provides that impact assessment reports shall be placed before the Board and shall be annexed to the report on CSR?

It is clarified that web-link to access the complete impact assessment reports and providing executive summary of the impact assessment reports in the annual report on CSR, shall be considered as sufficient compliance of the said rule.

Q7. Whether impact assessment reports of all the CSR projects shall be annexed to the annual report on CSR?

Rule 8(3)(b) of the Companies (CSR Policy) Rules, 2014 provides that impact assessment reports shall be placed before the Board and shall be annexed to the report on CSR?

It is clarified that web-link to access the complete impact assessment reports and providing executive summary of the impact assessment reports in the annual report on CSR, shall be considered as sufficient compliance of the said rule.

Q8. When two or more companies collaborate for implementation of a CSR project, should the impact assessment carried out by one company be shared with other companies?

Yes, in case two or more companies choose to collaborate for the implementation of a CSR project, then the impact assessment carried out by one company for the common project may be shared with the other companies for the purpose of disclosure to the Board and in the annual report on CSR. The sharing of the cost of impact assessment may be decided by the collaborating companies subject to the limit as prescribed in rule 8(3)(c) of the Companies (CSR Policy) Rules, 2014 for each company.

10. CSR Reporting & Disclosure

Q1. Whether reporting of CSR is mandatory in the Board's Report?

Yes, as per rule 8(1) of the Companies (CSR Policy) Rules, 2014, the Board’s Report pertaining to any financial year, for a CSR-eligible company, shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the said rules, as applicable.

Q2. Is it mandatory for foreign companies to give reports on CSR activities?

Yes, as per rule 8(2) of the Companies (CSR Policy) Rules, 2014, in case of a CSR-eligible foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the said rules, as applicable.

Q3. What are the disclosure requirements on the website of the company?

As per rule 9, the Board of Directors of the company shall mandatorily disclose the following on their website, if any, for public access: (i) Composition of the CSR Committee; (ii) CSR Policy; and (iii) Projects approved by the Board.

Q4. Whether every CSR project irrespective of outlay and percentage to the total CSR expenditure of the company needs to be disclosed on the website of the respective company in terms of rule 9 of the Companies (CSR Policy) Rules, 2014?

Yes, as per rule 9 of the Companies (CSR Policy) Rules, 2014, all CSR projects approved by the Board are required to be disclosed on the website of the company, if any, for public