

Corporate Social Responsibility



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Understanding Corporate Social Responsibility

- ▶ CSR - Philosophy of giving back to the society;
- ▶ Not a new concept in terms of Indian tradition, customs and scriptures;
- ▶ Indian corporate houses like tata's / RIL are doing the same voluntarily since ages;
- ▶ In 2014, India become the first country to legally enforce it on the companies meeting certain financial criteria;

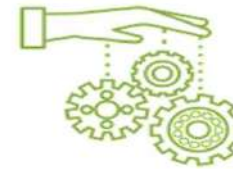


Legal Framework

- ▶ Section 135 of the Companies Act, 2013 as amended from time to time;
- ▶ Companies (CSR Policy) Rules, 2014 as amended by Amendment Rules 2021 effective January 22, 2021;
- ▶ Schedule VII - Activities which may be included by companies in their CSR Policies/Activities
- ▶ Clarifications issued by MCA from time to time
- ▶ Case laws
- ▶ Advisory/guidance notes/faq issued by ICSI/ICAI/ICWAI



CSR - Legal Requirement



Every Company having (in immediately preceding FY)		To constitute	To spend or transfer	If fails to spend or transfer	
Net Worth	Rs. 500 Crore or more	CSR Committee (having 3 or more directors) (ID must, if co is required to have ID)	2% of Avg Net Profits during immediately preceding 3 FYs	penalty shall be twice the amount required to be transferred by the company or Rs.1 crore whichever is less, and penalty to every officer in default shall be 1/10th of the amount required to be transferred by the company or Rs.2 Lakh , whichever is less	
Turnover	Rs. 1000 Crore or more				
Net Profits	Rs. 5 Crore or more				
CSR Committee	To formulate, recommend and monitor the policy and amount of exp	Subject & Activities	Preference to	Administrative Overhead Exp	
The Board of Directors	To approve, disclose and ensure implementation	As per Schedule VII (liberal interpretation)	Local Area (only in India)	Not to exceed 5% of total CSR exp for the FY	

When fails to spend - Transfer



- ▶ specify the reasons for not spending the amount AND

In case of ongoing project (the CSR committee and board can declare a project as Ongoing Project)	Transfer within 30 days from the end of FY to a special account in any scheduled bank to be called the Unspent CSR Account, and such amount to be spent within a period of 3 FYs from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within 30 days from the date of completion of the third financial year.
Not a 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.

IF FAILS TO TRANSFER - penalty shall be twice the amount required to be transferred by the company or Rs.1 crore whichever is less, and penalty to every officer in default shall be 1/10th of the amount required to be transferred by the company or Rs.2 Lakh , whichever is less

Non compliance of CSR provisions has been notified as a Civil wrong effective Jan 22, 2021

Ongoing Project

- ▶ “Ongoing Project” means
- ▶ a multi-year project
- ▶ undertaken by a Company in fulfilment of its CSR obligation
- ▶ having timelines not exceeding 3 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;**



Where to transfer

- ▶ Rule 10 - Until a fund is specified in Schedule VII for the purposes of Sec 135 (5) & (6), the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.
- ▶ Funds specified under Schedule VII :
 - ▶ Eradicating hunger, poverty and malnutrition, promoting health care and sanitation including contribution to the Swachh Bharat Kosh and making available safe drinking water.
 - ▶ 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.
 - ▶ contribution to the prime minister's national relief fund or PM CARES Fund;



Best CG practices in CSR

- Conducting ground level surveys regarding the need and requirement;
- Creating own capabilities and departments dedicated to identify, implement and monitor projects
- Due diligence of the implementing agencies (past performances / related party exposure / ;
- Regular monitoring and reporting;
- Nominees on the board of the implementing agencies
- Escrow accounts / joint accounts / document based/trigger/target based funding;
- CFO / third party independent audit / certifications
- Impact assessment once the project is executed;



Importance of CSR Policy

- CSR policy holds an important value in the scheme of things;
- It acts as a guiding light for the board of directors/CSR committee/ CSR department and all the people involved in the process.
- It should be suitably drafted and reviewed from time to time for making changes/amendment as to keeping pace with changing time and priorities/focus areas/legal amendments.
- Schedule VII of the Co Act, provide some light on the focus areas, the management can choose areas that align with their business model/ geographical presence / local needs etc.
- It should be displayed on the website for wide reach to all stakeholders;
- CSR policy got more display / attention when the projects under the said policy get implemented. So it is better done than said.



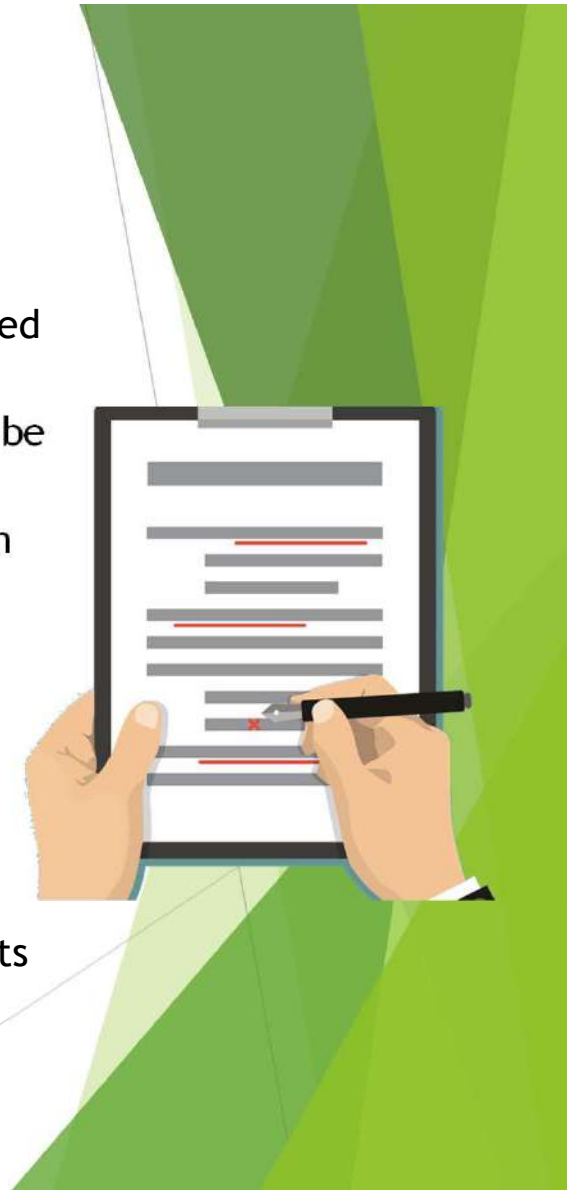
CSR Policy Defⁿ

- ▶ "CSR Policy" means
- ▶ a statement containing
- ▶ the **approach** and **direction** given by the Board of a company,
- ▶ taking into account the **recommendations** of its CSR Committee, and
- ▶ includes **guiding principles** for
- ▶ **selection, implementation and monitoring** of activities as well as
- ▶ **formulation of the annual action plan;**



Mandatory to amend CSR Policy?

- ▶ Issue: Is it mandatory to amend the CSR Policy after the amendments notified in CSR Rules on 22nd January 2021?
- ▶ View: If existing CSR Policy covers the following items, CSR Policy need not be amended:-
 - ▶ A. Approach and direction approved by the Board based on recommendation of CSR Committee
 - ▶ B. Guiding principles for
 - ▶ (i) Selection of CSR projects / programmes / activities
 - ▶ (ii) Implementation of CSR projects / programmes / activities
 - ▶ (iii) Monitoring of CSR projects / programmes / activities
 - ▶ (iv) Formulation of the annual action plan
- ▶ Otherwise, the CSR Policy needs to be amended to include the above aspects
- ▶ Also, it may be amended before adopting annual action plan for the next financial year by the Board.



CSR Committee - Role



- ▶ 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;
 - ▶ the **manner of execution** of such projects or programmes;
 - ▶ the **modalities of utilisation of funds and implementation schedules** for the projects or programmes;
 - ▶ **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;
- ▶ Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

CSR Committee - Composition

- ▶ Co's meeting the criteria need to form a CSR Committee of the Board consisting of 3 or more directors, out of which at least one director shall be an independent director.
- ▶ Where a Co is not required to appoint an independent director, it shall have in its CSR Committee two or more directors.
- ▶ With respect to a foreign Co covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall Resident Director and another person shall be nominated by the foreign company.
- ▶ Where the amount to be spent by a Co does not exceed INR 50 lakh, the requirement to form CSR Committee is not applicable. Functions of such Committee can be discharged by the BoD of such Co.



CSR Committee - should be dissolved?

- ▶ Issue: X Ltd. is having a profit of Rs. 10 crore during the preceding financial year and its CSR obligation during the preceding three financial years is less than Rs. 50 lakh. Can X Ltd. dissolve the CSR Committee immediately?
- ▶ View: Rule 3(2) of CSR Rules provides that Every company which ceases to be a company covered under section 135(1) of the Act for three consecutive financial years shall not be required to constitute a CSR Committee.
- ▶ On the other hand section 135(9) of the Act provides that where the amount to be spent by a company under 135(5) of the Act does not exceed Rs. 50 lakh, the requirement of constituting the CSR Committee shall not be applicable and the functions of such Committee shall, in such cases, be discharged by the Board of Directors of such company.
- ▶ Hence in the given scenario, X Ltd. can consider to dissolve the CSR committee and the functions of such committee can be directly discharged by the Board of such company so long the amount to be spent does not exceed Rs. 50 lakh.
- ▶ However, as a part of good CG practice, the CSR Committee can continue to render services even for CSR spends less than 50 lakh.



CSR Committee - Quorum?

- ▶ Issue: What should be the quorum for meeting of CSR Committee?
- ▶ View: Co Act does not specifically specify quorum requirement of CSR Committee.
- ▶ Paragraph 3.5 of Secretarial Standards on Meetings of the Board of Directors (SS-1) issued by the ICSI provides as under:
 - ▶ “Unless otherwise stipulated in the Act or the Articles or under any other law, the Quorum for Meetings of any Committee constituted by the Board shall be as specified by the Board. If no such Quorum is specified, the presence of all the members of any such Committee is necessary to form the Quorum.”
- ▶ Thus, it is prudent CG practice to specify quorum for the CSR committee at the time of its constitution.



One CSR committee - for group companies ?

- ▶ Issue: Can a group of fifteen companies constitute a single CSR Committee with representative of all such companies?
- ▶ View: No. The applicability of CSR provisions under the Act is company specific.
- ▶ Hence every company fulfilling the criteria laid down in section 135(1) of the Act, should constitute a CSR committee for itself.
- ▶ However, the company may align its CSR Policy and initiatives as per the group policy, which should be in accordance with the provisions of the Act.
- ▶ As part of the good CG practice, the group companies can work in tandem to achieve a common goal.



Maintenance of records/minutes

- ▶ The CSR committee should maintain proper records (including minutes of the meetings) evidencing / supporting its functioning.
- ▶ The number of meetings held during the year and number of such meetings attended during the year by members of the committee is required to be disclosed in the Annual Report on CSR Activities (Annexure II to Rules)





Implementation

- ▶ CSR Project can be implemented
 - ▶ directly by the company
 - ▶ In collaboration with other companies (if able to report separately)
 - ▶ Through implementing agency
 - ▶ Company Owned/ Government owned - Sec 8 Co, Reg Trust/Society
 - ▶ 3rd party - Sec 8 Co, Reg Trust/Society - having established track record of 3 years in undertaking similar projects
 - ▶ Every entity, who intends to undertake any CSR activity, is require to register itself by filing the form CSR-1 w.e.f April 1, 2021. (not applicable on CSR projects or program approved prior to the April 1, 2021.)
 - ▶ CSR Registration Number will be issued to such entity.

Company 'owned' / 'established' meaning?

- ▶ Sec 8 Company - Company should be a subscriber to MOA
- ▶ Trust - Company should be settler
- ▶ Society - Company should be a subscriber to the MOA

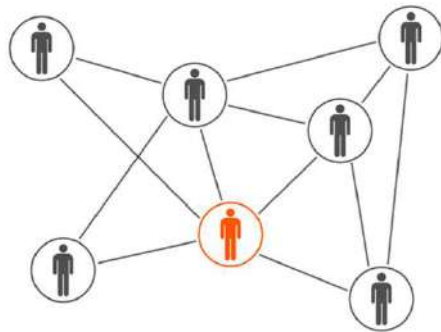


CG recommended practices for IAs

- ▶ Ground / base level study;
- ▶ Related party check;
- ▶ Due diligence of the IA and its network/partners (if any);
- ▶ Explicit documentation - clear of role/expectation /timelines and funding conditions;
- ▶ Target / performance / trigger / escrow based funding;
- ▶ Submission of documents / invoices / evidences / photographs of expenses / made;
- ▶ Periodic reporting requirements;
- ▶ Self / third party / IT based monitoring / agencies
- ▶ Third party audit / certifications;
- ▶ Impact assessment obligations / reporting;
- ▶ Punitive / deterring covenants to ensure timely performance;
- ▶ Timeline extension / return of money / debar from further projects

Implementing trust - Related Party?

- ▶ Issue: If a company forms a trust for the purpose of CSR spends whether the said trust shall be treated as a related party and disclosure of such transactions required be made in financial statements?
- ▶ View: Yes, the trust shall be considered as a related party under IND AS 24 / AS 18, as the trust has been formed and settled by the company and the company shall disclose such transactions e.g. contribution to trust formed by the company in relation to CSR expenditure as per applicable accounting standards. If the company happens to be a listed company, it shall be a related party and hence approval of Audit Committee would be required.



Specimen Agreements

- ▶ **GAIL :**
https://gailonline.com/pdf/CSR/CSR_Agreement_review_comte.pdf
- ▶ **IIT Kanpur :** <https://iitk.ac.in/dora/csr-details.php>
- ▶ **National Mission for Clean Ganga (NMCG) :**
<https://nmcg.nic.in/csr/pdf/mou06102017.pdf>
- ▶ **IIT Madras :** <http://ia.iitm.ac.in/wp-content/uploads/2019/11/Scholarship-Agreement-CSR.pdf>



Changes Wrt - Expenditure

- ▶ Administrative Overhead Definition added :
“Administrative overheads” means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility 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 programme;
- ▶ Administrative overheads - Cannot exceed 5% of total CSR Exp of the co in 1 FY.(rule7)
- ▶ Impact Assessment - expenditure on impact assessment study not to exceed 5% of the total CSR expenditure for that financial year or 50 lakh rupees, whichever is less.
- ▶ So in conclusion 5% cap is for admin exp, 5% for impact assessment but no cap on designing, implementation, monitoring, and evaluation of a particular CSR project.



Latest MCA FAQ on admin expense*

- ▶ Administrative overheads generally comprise of 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

**MCA General Circular 14/2021 dated Aug 25,2021*

5% Admin exp cap applicable to Implementing agency?

- ▶ Issue: Whether the limit of administrative overheads is applicable only at company level or for administrative overheads incurred at company level as well as Implementing Agencies level?
- ▶ *View: The intent behind keeping a cap on the administrative expenses is that there should be minimum of 95% of the funds allocated towards cost of the project excluding administrative expenses, be it at the company level or at the Implementing Agency level. Thus, the view is that the limit of 5% administrative overheads should be applicable for expenses incurred at company level as well as at the level of the Implementing Agencies.



*ICSI Guidance note on CSR dated June 15, 2021

MCA FAQ view on the issue...

- ▶ *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

**MCA General Circular 14/2021 dated Aug 25,2021*

CSR Asset Ownership

- ▶ Rule 7(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -
 - ▶ Sec 8 Co / a Registered Public Trust / Registered Society, having charitable objects and CSR Registration Number; 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 January 22, 2021 shall within a period of 180 days from Jan 22, 2021 (i.e. on or before July 22, 2021) comply with the requirement of this rule, which may be extended by a further period of not more than 90 days (i.e. on or before October 20, 2021) with the approval of the Board based on reasonable justification.



Exp related to capital asset transfer?

- ▶ Whether expenses related to transfer of capital asset as provided under rule 7(4) of Companies (CSR Policy) Rules, 2014, will qualify as admissible CSR expenditure?
- ▶ Yes, the expenses relating to transfer of capital asset such as stamp duty and registration fees, will qualify as admissible CSR expenditure in the year of such transfer.*

**MCA General Circular 14/2021 dated Aug 25,2021*

CFO Certification

- ▶ CFO or the personal responsible for financial management shall certify:
- ▶ CSR funds so disbursed have been utilised for the purposes and
- ▶ In the manner as approved by BoD
- ▶ Such certificate to be placed before the CSR Committee/ BoD
- ▶ Onus on CFO/Finance department to check its authenticity or get a counter certificate from IA / third party evaluation team/auditor.
- ▶ It is upto the BoD to set up the frequency of such CFO certification - eg per tranche of funding; per project ; half yearly ; yearly and so on...



If contribution only to funds prescribed - whether CFO certification required?

- ▶ Issue: If a company spends only by way of contribution to PM Relief Fund or PM Cares Fund, whether monitoring and CFO certification needed for the same?
- ▶ View: In such cases, the Board would have only approved the contribution to be given to PM Relief Fund or PM Cares Fund and no other project. Hence, the CFO only needs to certify that the funds have been contributed to these funds.



CFO certification - frequency?

- ▶ Issue: At what frequency should CFO certify to the Board about utilization of CSR funds disbursed through Implementing Agencies?
- ▶ View:
- ▶ Rule 4(5) of CSR Rules says that the Chief Financial Officer (CFO) or the person responsible for financial management shall certify to the Board to the effect that the funds disbursed by the Board for CSR implementation have been utilised for the purposes and in the manner as approved by the Board.
- ▶ It is not prescribed at what frequency the CFO should certify to the Board. Hence the CFO may certify separately for each CSR activity or may collectively certify to the Board at every quarter / half year / annual basis. It is recommended that annual CFO certification be placed at Board meeting where Board's Report containing annual report on CSR is placed for its approval.



Impact Assessment



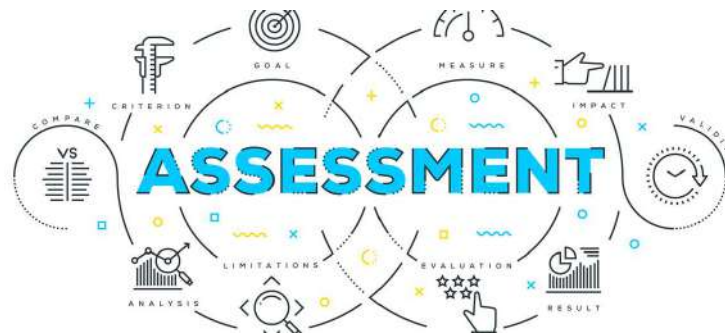
- ▶ Impact assessment is a process of analyzing, monitoring and managing the intended and unintended social consequences both positive and negative of planned interventions (such as policies/program/plan or project)
- ▶ The latest amendment specify - Every Co having average CSR obligation of INR 10 crore or more in the 3 immediately preceding FYs, is required to undertake impact assessment, through an independent agency, of their CSR projects having outlays of INR 1 crore 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.
- ▶ As part of good CG practice the Annual Action Plan of the company should detail out the Impact Assessment requirement - projects / timelines / entities / budgeting etc.

Check points for IA study

- ▶ Define the impact area;
- ▶ Identify the information / data requirement and its sources;
- ▶ Involve all affected stake holders /diverse public;
- ▶ Conduct screening / consider the issues / public concerns that really count not those that are just easy to count;
- ▶ Carry out scoping in the field/ define how the assessment is conducted/ what assumptions / how significance is determined ;
- ▶ Prepare a socioeconomic profile of baseline conditions;
- ▶ Survey of host population;
- ▶ Identify and assess the impacts;
- ▶ Develop a correction / mitigation plan
- ▶ Feedback to project planners / so that problems can be solved with changes

Who can conduct Impact assessment?

- ▶ Issue: Who can conduct the impact assessment?
- ▶ View: There are no qualifications or criteria prescribed as to who can conduct the impact assessment. However, it is advisable that the impact assessment should be done by an independent entity not related to Implementing Agency or the company.
- ▶ The Board has the prerogative to decide on the eligibility criteria for selection of the independent agency for impact assessment. [Response to Q9.4 General Circular no 14/2021 Dated Aug 25, 2021]



Impact Assessment - timeline ?

- ▶ Issue: Can a company prescribe the frequency at which impact assessment is to be carried out for the project(s)?
- ▶ View: As per rule 8(3) of CSR Rules, if average CSR obligation of a company for immediately preceding three financial years is Rs. 10 crore or more and it has CSR projects which have outlays of Rs. 1 crore or more and which have been completed not less than one year, impact assessment is to be done for such projects.
- ▶ Rule 8(3) of CSR Rules is silent about the maximum timeline within which impact assessment is to be done by companies for such completed projects and it also does not say that impact assessment is to be done in the immediate next financial year in which the above-referred projects get completed.
- ▶ Moreover the timeline within which a CSR project will have its impact may vary from project to project. Rule 8(3) of CSR Rules prescribes one year as a minimum benchmark post completion of project after which impact assessment should be done for that project. However for some projects longer post completion period may be needed, for the impact assessment to be effective.
- ▶ Hence, it is the responsibility of the company to get the impact assessment done within a reasonable period of time considering the nature of project. Accordingly, a company may prescribe the frequency at which impact assessment is to be carried out for the completed project(s).



Impact Assessment cost - CSR spend?

- ▶ Issue: If impact assessment is done voluntarily, whether cost incurred on the same will qualify as CSR expenditure?
- ▶ View: The provisions regarding impact assessment given in rule 8(3)(a),(b) and (c) of CSR Rules are to be read together and harmoniously and therefore, if impact assessment is done voluntarily, the cost of the same will not qualify towards CSR expenditure.

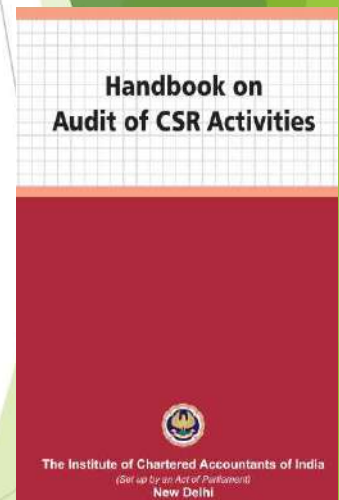


Utilization Certificate - Independent Practitioner's Report on Utilization of CSR Funds - Mandatory ?

- ▶ As per law it is a Non Mandatory requirement.
- ▶ However, it is highly recommended to ensure deployment for a cause and to avoid any leakage / misuse. Thus, the company as a prudent CG practice can build the same in its CSR projects.
- ▶ ICAI has issued Advisory on Issuance of Utilization Certificate including the draft Independent Practitioner's Report on Utilization of CSR Funds for its members taking into account different aspects.

CSR Audit - Mandatory ?

- ▶ Requirement of audit of CSR activities seems not to be mandatory as per Companies Act 2013. However, various provisions of the Companies (Company Social Responsibilities Policy) Rules 2014 require the monitoring and reporting mechanism for CSR activities.
- ▶ In this direction, the CSR Committee of ICAI has brought out Handbook on Audit of CSR Activities to provide detailed guidance on the auditing aspects of CSR spends and the roles and responsibilities of members of ICAI.
- ▶ The publication will be a useful guide for the complying with auditing requirements as per the Companies (Company Social Responsibilities Policy) Rules, 2014.
- ▶ <https://csr.icaai.org/wp-content/uploads/2021/01/Handbook-on-Audit-of-CSR-Activities-Final.pdf>



Reporting

- ▶ The Board's Report to include an annual report on CSR containing particulars specified in Annexure I or Annexure II of CSR Rules, as applicable;
- ▶ The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- ▶ To 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.



Disclosure on Co website

- ▶ Issue: Whether projects approved by Board as per annual action plan but spending on which yet to done, are required to be disclosed on website of the company?
- ▶ View: Yes, CSR projects approved by the Board (as part of annual action plan or otherwise) need to be hosted on the website irrespective of spending has been done or not.
- ▶ Issue: Whether the projects approved by Board for financial year 2020-21 also need to be hosted on website?
- ▶ View: The requirement of hosting CSR projects on website is prescribed under amended rule 9 effective from 22nd January, 2021. Hence, CSR projects approved by the Board for financial year 2020-21 also need to be hosted on website, irrespective of whether spending has been done or not.
- ▶ Issue: As per rule 9 of the CSR Rules, 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 its website, if any, for public access. Do the companies need to disclose the amount of expenditure to be incurred on each project or is it sufficient to disclose the names of the projects on its website?
- ▶ View: It is mandatory to disclose the details of the projects approved by the Board. It would be a good practice to give the amount of expenditure incurred / to be incurred on each project while giving the details of the projects on the website.

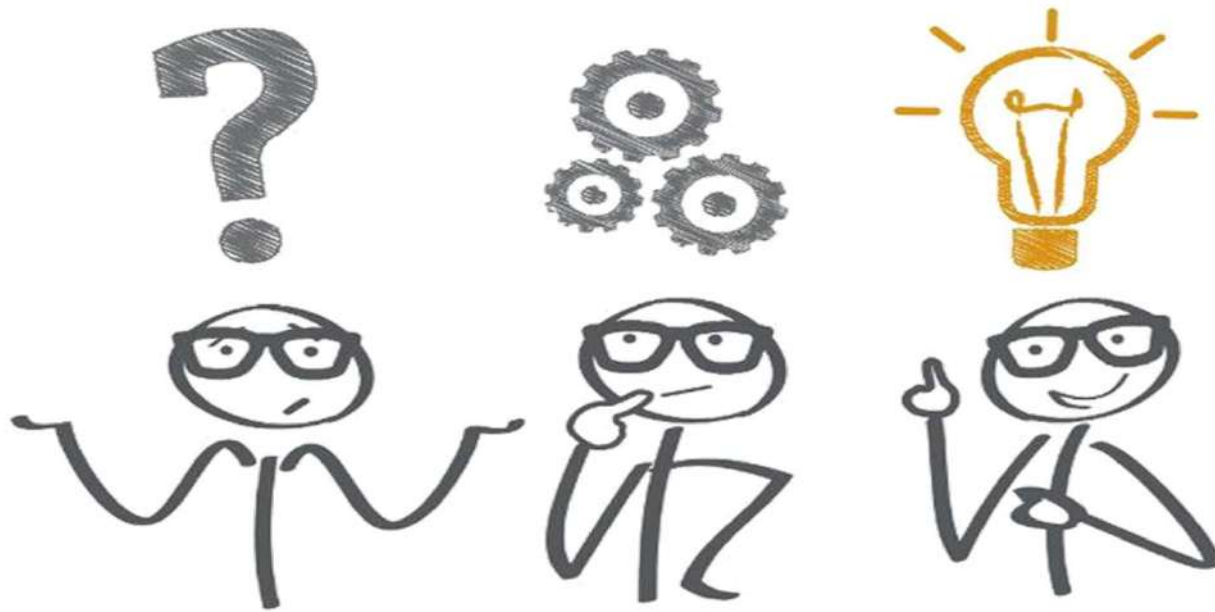


Additional Disclosure - Form CSR 2 (w.e.f. Feb 11, 2022)

- ▶ Effective **Feb 11, 2022** MCA notified one more amendment in the Companies (Accounts) Amendment, Rules 2022, requiring Co's covered U/s 135 to furnish a report on its CSR in (a 11-page form) form CSR -2 to the ROC for the preceding financial year 2020-2021 and onwards as an addendum to Form AOC 4 (or AOC 4 XBRL or AOC 4 NBFC as the case may be).
- ▶ Please note that for the FY ended 31st March 2021, CSR 2 shall be filed separately in form CSR -2 on or before 31st March 2022.
- ▶ The due date for filing form CSR-2 for F.Y. 2020-21 was extended to May 31, 2022 and then to June 30, 2022.



Permissible Activities





What is not a CSR?

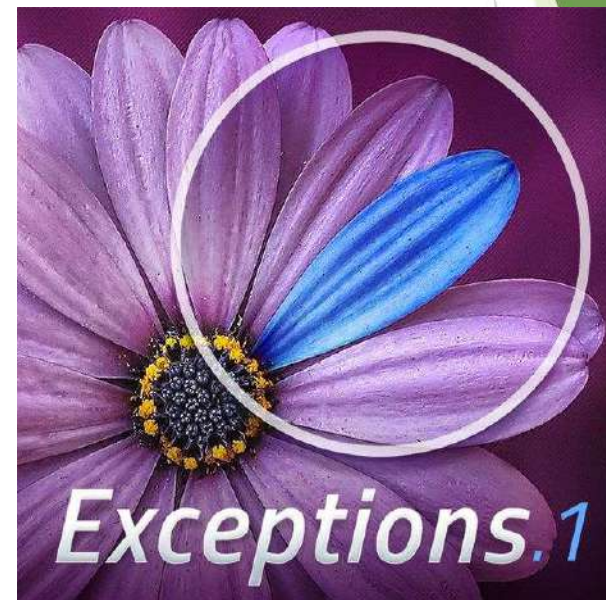
- ▶ activities undertaken in pursuance of **normal course of business** of the company:

Provided that any Co engaged in R&D activity of new vaccine, drugs and medical devices in their normal course of business may undertake R&D 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 R&D 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;
- ▶ any activity undertaken by the company **outside India** except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
- ▶ contribution of any amount directly or indirectly to any **political party**;
- ▶ 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;

Exceptions

- ▶ **Normal Course of Business** - Any activity covered under Schedule VII and not done with profit motive amounts to a CSR activity, even if it is a part of the Core business of the company.
- ▶ **Employees** - does not cover **ex-employees / group companies employees / apprentices** (covered under the Apprentice Act, 1961) (expenditure incurred on apprentice training can be booked as CSR)
- ▶ **Employees** - if the main beneficiaries of the activity are the employees, then, the activity may not be covered by CSR. However, if the employees forms a small portion of the beneficiaries, then, the expenditure may be considered as CSR activity.



Clarifications by MCA (June 18, 2014)

- ▶ Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.
- ▶ One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV prog etc. - Not a CSR;
- ▶ What is the meaning of sponsorship activities deriving marketing benefits for company's products or services?
- ▶ MCA View (Aug 25, 2021) 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.



Clarifications by MCA (June 18, 2014)

- ▶ Salaries paid by co's to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure.
- ▶ Amended view by MCA (Aug 25, 2021) : 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.



Clarifications by MCA (FAQ)

- ▶ CSR exp cannot be claimed as business expenditure - The Finance Act, 2014
- ▶ Computation of net profit for CSR - NET PROFIT BEFORE TAX.
- ▶ No specific tax exemptions for CSR expenditure. However, contribution to Swatch Bharat Kosh, Clean Ganga Fund, PMNRF, PM Care fund provide 100% tax exemption.
- ▶ Training of enforcement personnel is established function of government - cannot be covered in CSR.



Clarifications/Amendments - Covid19



- ▶ Spending of CSR Funds for COVID19 - Eligible CSR activity - March 23, 2020
- ▶ If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception - April 10, 2020
- ▶ Contribution to 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' - not admissible as CSR expenditure - April 10, 2020
- ▶ Contribution to State Disaster Management Authority to combat COVID-19 - Allowed as CSR - April 10, 2020
- ▶ Carrying out awareness campaigns/programs for public outreach campaigns on COVID-19 vaccination program is an eligible CSR Activity - Jan 13, 2021
- ▶ Setting up makeshift hospitals and temporary COVID Care facilities is an eligible CSR activity - April 22, 2021
- ▶ 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19' or similar such activities - eligible CSR activities - May 5, 2021
- ▶ contribution to specified R&D projects as well as contribution to public funded universities and certain Organizations engaged in conducting research in science, technology, engineering, and medicine - eligible CSR activities - May 5, 2021
- ▶ Vaccination of persons other than employees and their families - eligible CSR activity - July 30, 2021

Employee vaccination - CSR expense?

- ▶ Not a CSR spend - if the funds used exclusively for employee vaccination.
- ▶ *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 benefitting employees” and will qualify as eligible CSR activity



**MCA General Circular 14/2021 dated Aug 25,2021*

Group co employee - eligible for CSR?

- ▶ Issue: Can employees deputed by the group companies who are not on the payroll of the company be the beneficiaries of CSR projects?
- ▶ View: The words in the definition of 'CSR' are 'activities benefitting employees of the company....'. CSR obligations are company specific. Hence, it might be argued that employees who are on the payroll of group companies are not employees of the company.
- ▶ However, if activities done for the benefit of group companies are considered as CSR, it may defeat the objectives of CSR which is to cater to the benefit of society, and hence, such activities should not be covered under CSR as per prudent CG practice.

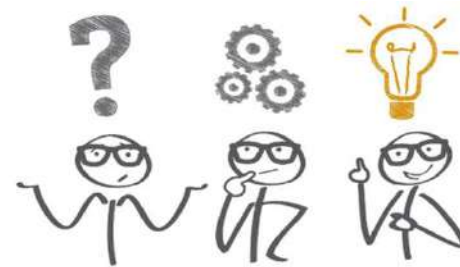


Vendor vaccination - CSR expense?

- ▶ 19. Issue: Whether companies organising preventive health camps or awareness programmes exclusively for its dealers, vendors and business associates can be considered as CSR activities?
- ▶ View: Any activities where beneficiaries are exclusively the persons who are associated with the business of the company may be considered as activity in the normal course of business and hence in such cases it may not be considered as CSR.*



**ICSI Guidance note on CSR - June 2021 - Page 29 - Issue 19*



CSR in kind - Allowed?

- ▶ S135 prescribes “...shall ensure that company spends...”.The company has to spend the amount. - MCA FAQ
- ▶ MCA submitted to HC in one of the legal matter¹ - “pharma companies will get benefit under CSR rules if they donate medicines to poor patients who are afflicted by life threatening or other diseases and can't afford expensive treatment”
- ▶ Technical Guide on Accounting for Expenditure on CSR Activities issued by ICAI in June 2020 provide as under for “CSR in kind” (Para 24) - ***any activity done even in normal course of business ‘but without any profit motive’, amounts to a CSR Activity.***

Question (Sl. no 4 on page 4) during the webcast on CSR Law, Accounting and Taxation on April 29, 2020

ICAI committee on CSR responded

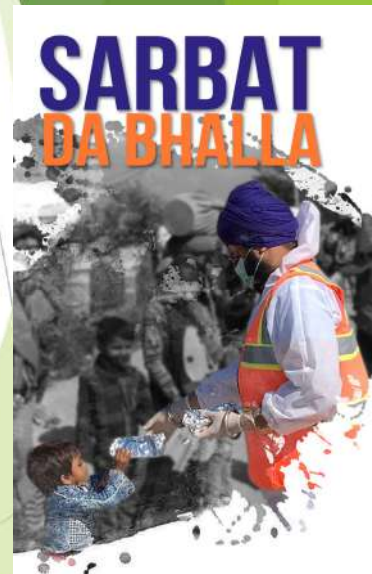
Suppose we are in Diagnostic industry and would like to donate testing instruments to NGO or Government lab for free. Will that be considered as a part of CSR contribution? If Yes - then contribution amount will be at sale price or only at cost price of instrument.

It should be considered as CSR spend. The CSR spend would be cost or Net Realisable Value (NRV) whichever is lower as per AS 2 / Ind AS 2.

Mohd. Ahmed (Minor) vs Union Of India & Ors. on 17 April, 2014

CSR in Kind - Examples as per ICAI guidance note

- ▶ A company acquires / purchases goods, etc. and distributes / uses the same in its CSR project, which is allowed under current CSR provisions as CSR spend.
- ▶ A hospital rendering free medical services to 25% patients as per local government guidelines may not be considered as CSR spend; however free medical services rendered beyond 25% may be considered as CSR spend.
- ▶ A company manufacturing goods distributes / sells goods other than those which it manufactures in the normal course of business. For example, a manufacturer of steel rods, manufactures steel medical beds. If these beds are sold (irrespective of cost incurred), then it is not a CSR spend. However, giving it free of charge would be a CSR spend as it would not be an activity undertaken in the normal course of business.



MCA view on CSR in kind..

- ▶ 3.12 Whether contribution in kind can 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 contribution cannot be in kind and monetized.

[*MCA General Circular 14/2021 dated Aug 25,2021]

Different View : Rule 7(4) states that the CSR amount may be spent by the company for **creation or acquisition of a capital asset** which shall be held by persons specified in the said rule. Thus, the rule itself envisages on acquisition of any asset in kind by the company and its contributions.

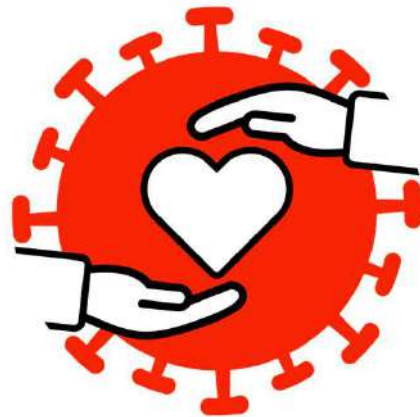
Important aspect :

Deduction under 80G is not available in respect of expenditure in kind.



Covid support to Employees - CSR?

- ▶ Query: To support employees on COVID-19, company spends on activities such as sanitization of the office premises including the areas appurtenant thereto, distribution of PPEs, masks, gloves, hand sanitizers to company employees, contract employees, etc. So whether these expenses will be covered as CSR expenditure?
- ▶ Reply: No. Expenses made solely for the benefit of the employees does not qualify as CSR expenditure.



CSR - contribution to political party

- ▶ Issue: How can one evaluate contribution of any amount indirectly given to any political Party?
- ▶ View: High Level Committee 2018 recommends exercise of due diligence over the Implementing Agencies. It is advised that companies should undertake proper due diligence to evaluate nexus of Implementing Agencies with political party, if any.
- ▶ Suitable clauses prohibiting direct or indirect contributions to any political party may be included in the CSR agreement. As a part of good CG practice an undertaking to this effect may be insisted upon from the Implementing Agency.



CSR in local area - mandatory?



- ▶ Issue: Is it mandatory to spend CSR funds on projects or activities within the local area where the company operates?
- ▶ ICSI guidance note view: As per the MCA circular dated 28th May 2018 the first proviso to section 135(5) of the Act lays down 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, which may be followed in letter and spirit. Further as stated in the Report of HLC-2018, the emphasis on local area in the Act is only directory and not mandatory in nature. Further for a company which has a pan-India presence, there may not really be a local area of operation.
- ▶ Hence, while preference should be given to local areas, there is no explicit prohibition to spend CSR funds outside the local areas of operation. Therefore, it is recommended that appropriate guidance on selection of activities / location of project be given in the CSR Policy and annual action plan for respective years.
- ▶ *MCA View : 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 *MCA General Circular 14/2021 dated Aug 25,2021

FD for unspent amount - possible?

- ▶ Issue: Can the unspent amount earmarked towards an on-going project be kept in fixed deposit?
- ▶ View: The requirement under section 135(6) of the Act is to keep the unspent amount earmarked towards an on-going CSR project in a separate bank account. Hence, after keeping such unspent CSR amount in a separate bank account, if the company creates fixed deposit of such amount, through that separate bank account only, there is no violation of any provisions of the Act.
- ▶ However, it must be noted that any interest received on such fixed deposit will be considered as surplus arising out of CSR projects and hence such interest should be dealt with any one of the following manner:-
 - ▶ (1) It shall be ploughed back into the same projectOR
 - ▶ (2) It shall be transferred to the Unspent CSR Account, and shall be spent in pursuance of CSR Policy and annual action plan of the companyOR
 - ▶ (3) It shall be transferred to a fund specified in Schedule VII to the Act, within a period of six months of the expiry of the financial year.
- ▶ In case of any surplus spent on CSR, such interest amount shall not be available to set off against future CSR expenditure.



Separate bank account for separate projects?

- ▶ Issue: If a company has more than one on-going project, and CSR obligation is unspent for both the projects, whether separate bank accounts need to be opened for each of the projects?
- ▶ View: The wordings in section 135(6) of the Act are “Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred.... to a special account to be opened by the company in that behalf for that financial year.... ” Hence, for any on-going project, a special account for that financial year is needed.
- ▶ So, for separate on-going projects, separate accounts need not be opened.



Amount outstanding on March 31, to be transferred ?

- ▶ Issue: Whether a company that has unspent CSR amount and has made appropriate provision for CSR expense in financial statements for the year ended at 31st March 2021, is required to comply with the provisions of section 135(5) or section 135(6) of the Act with regard to transfer of unspent amount to separate bank account or fund specified in Schedule VII to the Act?
- ▶ View: Any provision on CSR spending made in the financial statement of previous year(s), if it remains outstanding as on 31st March, 2021, should be transferred to a separate bank account or fund specified in Schedule VII to the Act, as the case may be.



Transfer of Unspent funds for previous years



- ▶ Q : If a company has unspent CSR amount for the financial years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20, is the company required to transfer the entire unspent amount for the said years in the financial year ended 31st March, 2021?
- ▶ Ans: The applicability of this amendment is prospective and therefore the unspent amount for the financial year 2020-21 onwards shall be transferred to the fund specified in Schedule VII within six months of the expiry of the said financial year, unless the same pertains to any ongoing project.
- ▶ However, if the Company has created a provision for unspent CSR obligation for the financial years 2014-15, 2015,-16, 2016- 17, 2017-18, 2018-19 and 2019-20, and if such provision remains outstanding as on 31st March, 2021, such amount should be transferred to separate bank account or Fund specified in Schedule VII, as the case may be. - ICSI FAQ (no 23) issued April 28, 2021

Transfer of Unspent funds with implementing agency

- ▶ Q: Whether a company is required to direct the implementing agency to refund to the Company the unutilized amounts at the year end and then contribute it to the unspent CSR Account?
- ▶ Ans : It is immaterial that whether the implementing agency refunded the money or not, it's the responsibility of the company to transfer such unspent money to the specified fund in Schedule VII or separate bank account, as the case may be. - ICSI FAQ (no 32) issued on April 28, 2021



Can company spend the unspent amount till Sep 30?

- ▶ Issue: Can a company keep the CSR unspent amount (not relating to any on-going project) for the financial year 2020-21 in a separate bank account and spend till 30th September 2021 as per its CSR Policy and claim it as CSR expenditure for financial year 2020-21?
- ▶ View: If the Board has not approved any on-going project and has not commenced it in financial year 2020-21, the company should transfer the amount within six months to any funds specified in Schedule VII to the Act only.



Set off available for excess spend in previous years ?

- ▶ Issue: The provision relating to set off has been inserted w.e.f. 22nd January 2021. So if excess amount is spent in years prior to financial year 2020-21, can set-off be claimed for the same from financial year 2020-21 onwards?
- ▶ ICSI Guidance note View: There is no explicit mention in section 135 of the Act or the CSR Rules for set off of excess amount spent prior to commencement of third proviso to section 135(5) of the Act. Hence as laid down in various judgements, an amendment of substantive law is not retrospective unless specifically laid down.
- ▶ Hence excess amount spent in years prior to financial year 2020-21 may not be available for set off against future CSR obligations.
- ▶ *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.**MCA General Circular 14/2021 dated Aug 25,2021*



Can the CSR 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.

[Response to Q6.7 in General Circular no 14/2021 dated Aug 25, 2021]



Can CSR funds be utilized to fund the Government Schemes?

- ▶ The objective of CSR provisions is to involve the corporates as partners in the social development process. Use of corporate innovation 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 the fulfillment of Companies (CSR Policy) Rules, 2014.

[Response to Q 3.17 in General Circular No 14/2021 dated Aug 25, 2021]



Schedule VII



- ▶ Eradicating hunger, poverty and malnutrition, promoting health care and sanitation including contribution to the Swach Bharat Kosh and making available safe drinking water.
- ▶ promoting education, employment enhancing vocation skills and livelihood enhancement projects.
- ▶ 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.
- ▶ 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.
- ▶ protection of national heritage, art and culture; setting up public libraries; promotion and development of traditional art and handicrafts;
- ▶ measures for the benefit of armed forces veterans, war widows and their dependents, CAPF and CPMF;
- ▶ training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports
- ▶ contribution to the prime minister's national relief fund or PM CARES Fund;
- ▶ contribution to incubators or R&D 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; IITs; National Laboratories and autonomous bodies established under DAE; DBT; DST; AYUSH; MEIT, DRDO; ICAR; ICMR and CSIR, engaged in conducting research in science, technology, engineering and medicine aimed at promoting SDGs.
- ▶ rural development projects]
- ▶ slum area development.
- ▶ disaster management, including relief, rehabilitation and reconstruction activities.

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HOME / INDUSTRY

Govt allows firms to spend CSR funds on 'Har Ghar Tiranga' campaign

According to a circular by the ministry of corporate affairs, the campaign is aimed invoking patriotism among people and promote awareness about the Tricolour.



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ECONOMY

Social audit of CSR spend may become must

Agencies



While this will be used mainly for NGOs and not-for profit organisations, this could also be used for the broader impact assessment under CSR spending as well.

Synopsis

Officials in the Ministry of Corporate Affairs (MCA) said the social audit will begin with public sector undertakings (PSUs) and then extended to all the corporate entities. One of the officials said markets regulator Securities

Govt sanctioned prosecution in 366 cases related to CSR norms violations: Nirmala Sitharaman

"Whenever any violation of CSR provisions is reported, action against such non-compliant companies are initiated as per provisions of the Act after due examination of records and following due process of law. All CSR related defaults are compoundable."

PTI

AUGUST 02, 2021 / 05:57 PM IST



FM Nirmala Sitharaman

<https://www.moneycontrol.com/news/business/govt-sanctioned-prosecution-in-366-cases-related-to-csr-norms-violations-nirmala-sitharaman-7263261.html>



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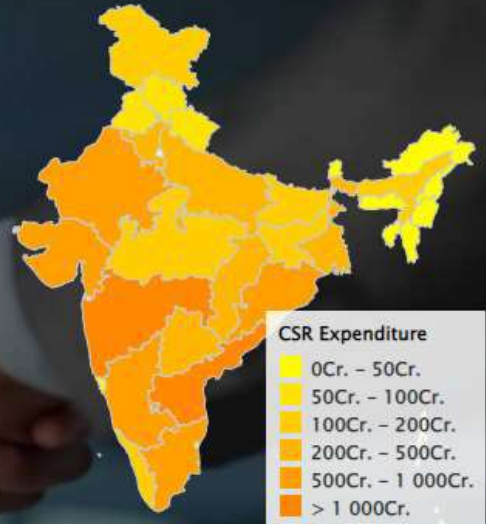
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To apply to Corporates CSR Project Proposal

To list Projects to raise funds from Corporates

To manage CSR Projects through the Portal

CSR Spent Data FY 2015-16



agencies to strategize, implement and manage their CSR projects.

Launch Gallery

Implementing a CSR Project In CSR Exchange Portal (Corporate)

CSR Expenditure

State Development Sector

Thank you !!

For any further query or clarification please feel free to contact :

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