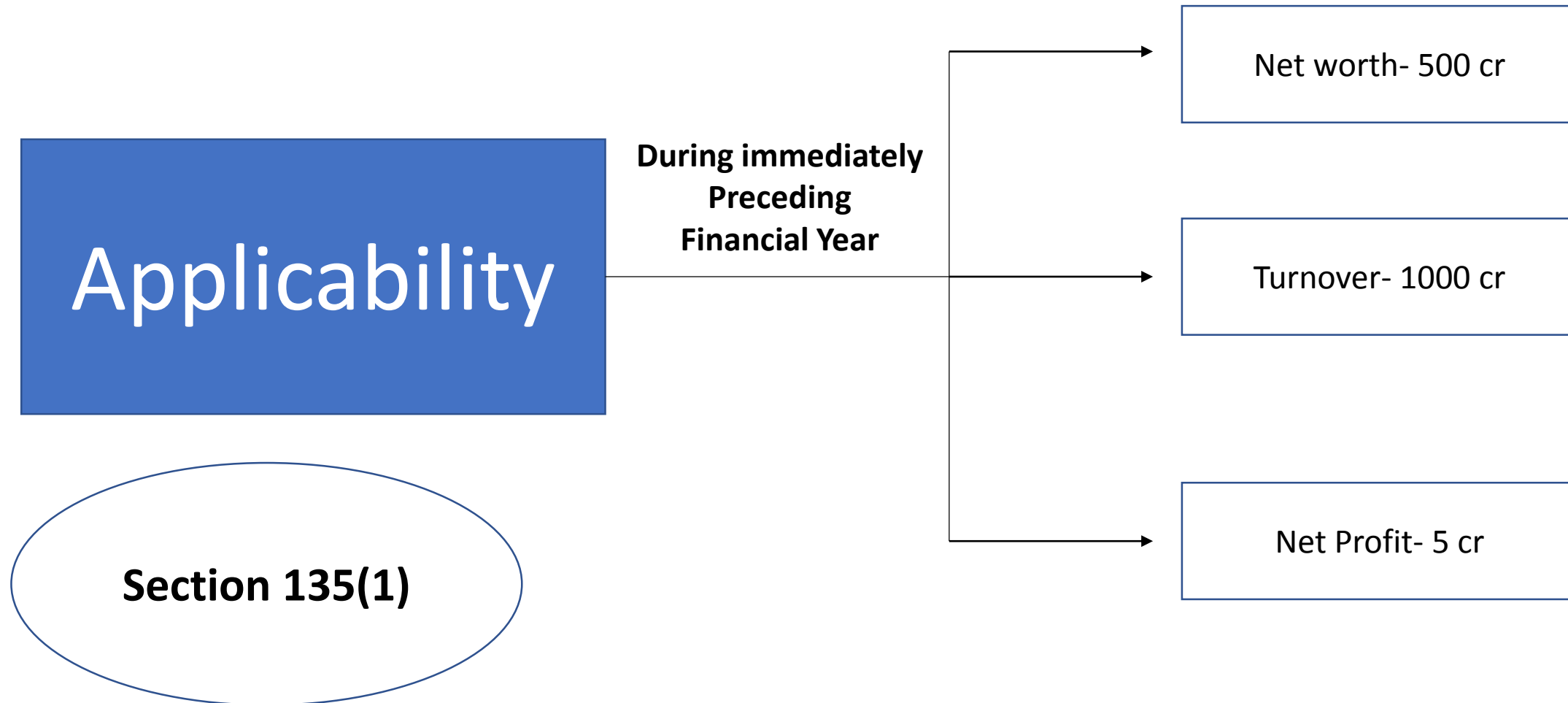


Untangling the provisions around CSR

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10th November 2022

Applicability



Companies Covered

Public Companies

Private Companies

Foreign Companies

Is Section 8 Company covered?

High Level Committee Report 2018

Yes it is applicable, as Section 8 Company may not be formed only for Charitable Purpose.
Like anyother Company, they may also have profits. **MCA FAQ- 1.3**

Basic Requirements

**Section
135 (2)
to (6)**

Constitute CSR
Committee

Formulate CSR Policy

Spend 2% of average net profit during the three immediately preceding financial years or from incorporation

Holding Company does not meet the criteria under Section 135. However, subsidiary meets. Is Holding Company required to comply with provisions of Section 135?

No, the compliance with CSR requirements is specific to each company. [MCA FAQ- 1.2](#)

- On CSR Activities specified under Schedule VII

Does Net Profit mean profit before tax or profit after tax?

What does Net profit mean under Section 135(1) and Section 135(5)? Is there a difference?

Net Profit

Explanation to Section 135(5)

- For the purposes of this section "net profit" shall not include such sums as may **be prescribed**, and shall be calculated in accordance with the provisions of [section 198](#)

Rule 2 (1) (h)

- Net Profit as per Financial Statements- excludes profits from overseas branches and dividend from other Indian company, complying with provisions of Section 135

MCA FAQ

- The average net profit for the purpose of determining the spending on CSR activities is to be computed in accordance with the provisions of section 198 of the Act and will also be exclusive of the items given under rule 2(1)(h) of the Companies (CSR Policy) Rules, 2014. 198 of the Act specifies certain additions/deletion (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).

Does Net Profit mean ? profit before tax or profit after tax?
Profit Before tax- Section 135(5), Rule 2 (h) (1) and **MCA FAQ 3.1**

What does Net profit mean under Section 135(1) and Section 135(5)? Is there a difference?

Not Different

High Level Committee Report- 2015

It is implied therefore, that 'net profit' for the purposes of both subsection (1) and (5) of section 135 is computed as per Section 198; and rule 2 (1) (f) of the CSR Policy Rules needs to be read in conjunction with this statutory explanation provided at the end of Section 135 of the Act.

Calculation of Net Profit

Profits as per the Balance Sheet
Less: Adjustments under Section 198 (A)
Add: Adjustments under Section 198 (B)
Less: Income from foreign branch Office (C)
Less: Dividend from Indian Company complying with Section 135 (D)

198(2) & (4) – allowed income and expenditures

- Bounties/subsidies by Govt.
- Remuneration to directors.
- Charitable contributions
- CSR Expenditures

Additions- Section 198(5)- Deduction shall not be allowed

- Income Tax
- Voluntary payment of compensation for damages
- Loss on sale of capital assets including. Difference in WDV and scrap value allowed.
- Change in carrying amount of assets or liability

Subtractions from Profit-Section 198(3) - No credit will not be given.

- Profit on sale of Investments- other than investment company unless it is investment Company
- Profit on forfeiture of shares.
- Profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof, fixed assets and immovable assets. However, profit made above WDV allowed.
- Change in carrying amount of assets or liability.

Calculation of Net Profit

Particulars	Add/Subtract	Balance (Rs in Cr)
Net Profit After Tax as per balance Sheet- Rs 150 cr	-	150
Managerial Remuneration- Rs 1 Cr	NA	150
CSR expenditure during FY- Rs 10 lakh	NA	150
Income Tax – Rs 20 Cr	(+)	170
Profit on sale of shares – Rs 10 Cr	(-)	160
Dividend income from Company complying with Section 135 – Rs 1 Cr	(-)	159
Profit made by all the subsidiaries on consolidated level- Rs 35 Cr	NA	159

CSR Committee

Section 135(1) read with Rule 5- Composition

Public Company

3 or more Director. 1 ID if required

Private Company

3 or more director.
2 in case there are only 2 on Board

Foreign Company

2 persons. One should be person
who is authorised to receive notice

No requirement to constitute CSR Committee if the amount of CSR spent is less than 50 Lakh- 135(9)

Case Study

Case Study-1

What should be composition of privately placed debt listed Private Company (not high value)?

- a. 3 or more directors- no requirement of ID
- b. 3 or more director- ID required because listed entities are mandated to have IDs

Rule 2 A of Companies (Specifications of Definition Rules), 2014

For purpose of 2(52), following shall not be considered as listed entity:

- Public Company and Private Company having privately placed debt securities

Answer- a

Case Study

Case Study-2A

As per financials of XYZ Company it had net profit exceeding Rs 5 cr for FY 2020, 2021. However, for FY 2022, the net profit fell below Rs 5 cr and XYZ did not meet any other criteria specified under Section 135(1).

Is it required to constitute CSR Committee in FY 2023?

Section 135(1)

Every company having During the immediately preceding financial year shall constitute CSR Committee

No. However, company having any amount in its Unspent Corporate Social Responsibility Account as per **sub-section (6)** of section 135 shall constitute a **CSR Committee** and comply with the provisions contained in sub-sections (2) to (6) of the said section- Proviso to Rule 3

20th September 2022

Case Study

Case Study-2B

As per financials of XYZ Company it had net profit exceeding Rs 5 cr for FY 2020, 2021. However, for FY 2022, the net profit fell below Rs 5 cr and XYZ did not meet any other criteria specified under Section 135(1).

Is it required to comply with other provisions?

No. However, company having any amount in its Unspent Corporate Social Responsibility Account as per sub-section (6) of section 135 shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section- Proviso to Rule 3- Sep 2022

Rule 2(1)(f) A Statement Containing:

- approach and direction by the board on recommendation of CSR Committee
- guiding principles for selection, implementation and monitoring including Annual Action Plan

Rule 5(2) Annual Action Plan Contains:

- List of projects approved to be undertaken as per Schedule VII
 - Manner of execution- Direct or through various agencies
 - Modalities of utilisation of funds
 - Implementation schedule
 - Details of need and impact assessment

Areas of CSR Expenditure

Har Ghar Tiranga- mass scale production- MCA Circular 26 July 2022

COVID related spending qualify as CSR under disaster management or preventive healthcare

PM Care Fund
Chief Minister Fund/State Fund- not to qualify as CSR

Promoting Health, including preventive health

Promoting education, including vocational training

Promoting gender equality, old age homes for old and hostels for women

Flora and Fauna, Animal Welfare etc

Protection of national Heritage, Rural Development

Welfare of armed force vetrans, war widow etc

Training on rural, national sports, Paralympics, Olympics

Contribution to incubator or research in field of science, technology, CG, SG, PSU etc

Contribution to public funded university, IIT, DAE, DBT, DST, AYUSH, DRDO, ICMR, CSIR for science, technology, SDG

Not qualify as CSR Expense

Rule 2(1)(d)

Salary to employees/casual workers- MCA circular 10th April 2020. Ex-gratia payment for COVID will qualify

Normal Course of Business

Activity outside India, except training of Indian sports personnel

Contribution to political party

Benefit of employees

Activity on sponsorship basis deriving marketing benefit

Activity carried out for fulfilment of statutory obligation

Exception-normal course of business

Company engaged in research and development activity of new vaccine, drugs and medical devices

Rule 2(1)(d)

Undertake R&D activity of new vaccine, drugs and medical devices related to COVID-19 for financial years until 2022-23.

R&D in collaboration with institutes such as IIT, ICMR, CISR etc

Disclosed separately on Annual Report of CSR

FAQ on CSR Expenditure

Can contribution to corpus qualify as 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. [MCA- FAQ 3.5](#)

Can CSR Expenditure claimed as expenditure under income tax Act?

No, 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.

Can CSR expenditure be in kind?

No, 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- FAQ 3.12](#)

FAQ on CSR Expenditure

Can involvement of employee of a company in CSR project be monetized as 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. [MCA FAQ 3.18](#)

Can sponsorship activity qualify as CSR?

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..

[MCA FAQ 4.3](#)

FAQ on CSR Expenditure

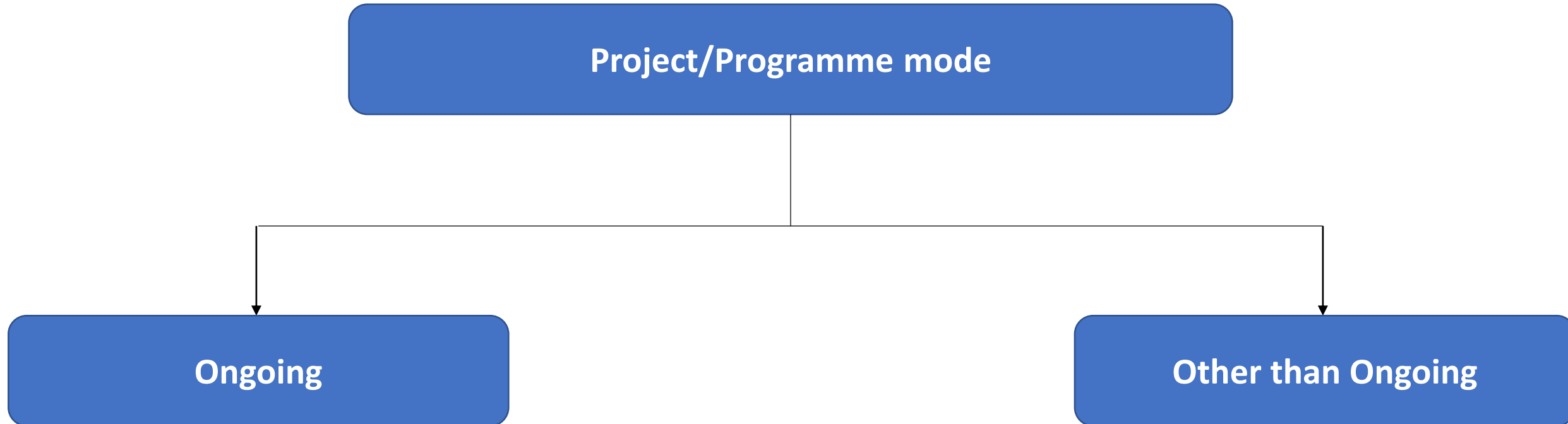
Will activity conducted outside India for resident in India qualify as CSR?

No, 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. [MCA FAQ 4.4](#)

Will donation of medicine/drugs qualify as CSR? Or will it be treated as activity in normal course of business

It should qualify as CSR. MCA Affidavit submitted on 28th March 2014 in Mohd. Ahmed (Minor) vs Union Of India & Ors. 4 in Delhi High Court:

“a pharmaceutical company donating medicines/drugs within section 135 read with Schedule VII to the Act is a CSR Activity, as the same is not an activity undertaken in pursuance of its normal course of business which is relatable to health care or any other entry in Schedule VII”



- multi-year project undertaken
- not exceeding three years excluding the financial year in which it was commenced
- initially not multi-year project - duration extended beyond one year by the board based on reasonable justification

Project

A group of related tasks execution under a certain financial budget restrain and limited time period.

Programme

Set of actions clearly defining the key allocation of resources, the main objective, the main workers involved and their respective work load

Unspent CSR Amount

Ongoing Project

Transfer to Unspent CSR Account- **30 day from end of FY**

Utilise it within 3 FY

Transfer to Fund established under Schedule VII- **30 days from end of 3 FY**

Other than Ongoing Project

Transfer to Fund established under Schedule VII- **6 months from end of FY**

Explain reason for not spending the amount in Board Report

Funds specified under Schedule VII for transfer of unspent amount

- Swachh Bharat Kosh
- Clean Ganga Fund
- Prime Minister's National Relief Fund (PMNRF)
- Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)
- 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.

Can the unspent amount on other than ongoing project be utilised for other CSR activity in the intermittent period of 6 months?

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.

MCA FAQ 7.2

Will disbursement of funds to implementation agency at the end of financial year sufficient compliance?

No, the CSR Committee and Board should ensure that CSR fund 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 disbursement of funds for implementation of a project does not amount to spending unless the implementing agency utilizes the whole amount. **MCA FAQ 7.4**

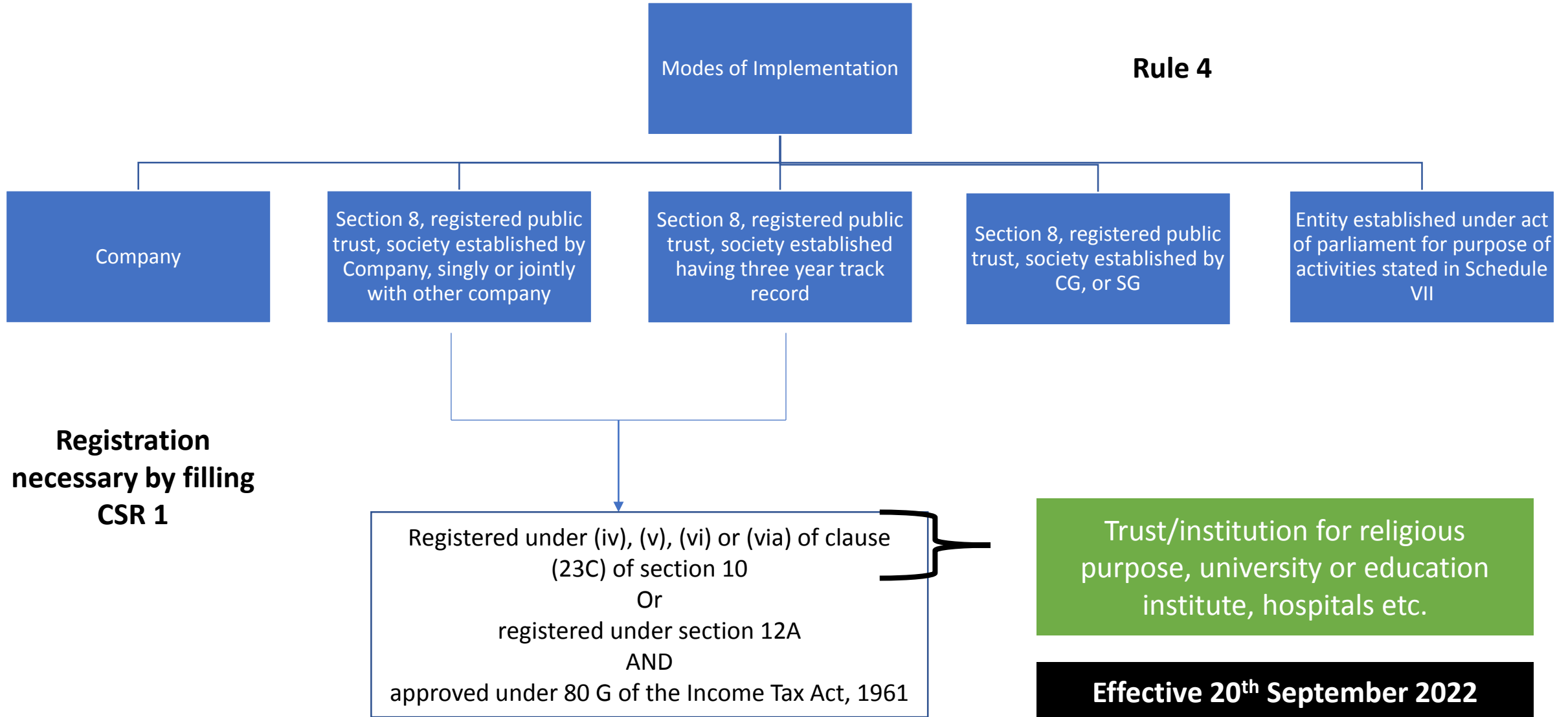
Is it necessary to open separate bank accounts for each of the ongoing CSR Project for unspent amount

No. **MCA FAQ 7.5**

Is it necessary to open unspent CSR account for ongoing projects for each financial year?

Yes, [MCA FAQ 7.5](#)

Implementation Mode



Role of International Organisation* Rule 4(3)

Designing

Monitoring

Evaluating

Training for capacity building

**Notified by Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947.*

Is a Company required to register by filing Form CSR-1 if it undertakes CSR activity directly ?

No, [MCA FAQ 5.8](#)

Can international organisation act as implementing Agency?

No, Need to meet criteria under Rule 4. International Organization can only provide services provided under Rule 4(3)

Administrative overheads

Rule 2(1)(b)

Means the expenses incurred by the company for '**general management and administration**' of Corporate Social Responsibility functions in the company **and does not include direct expense**:

Designing

Monitoring

Evaluating

Implementation

Maximum Cap on CSR expenditure

5% of total CSR Expenditure (Rule 7(1))

Administrative overheads

Examples of Administrative overheads- **MCA FAQ- 3.2**

Utilities

Office supplies

Legal

Travel Expense

**Employee Cost- Salary and
Training working in CSR
division**

Can the overhead expenses by implementation Agency be claimed as admin expense by Company?

No, it has to be directly spent by Company. [MCA FAQ 3.3](#)

Can the administrative expense relating to one project be set off by other?

Yes, Rule 7(1), states that administrative expense shall not exceed 5% of **total** CSR expenditure.

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

Can the ongoing project be abandoned or modified?

Yes, by providing reasonable justification. 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. [MCA FAQ 6.6](#)

Can the funds earmarked for one project be used for other?

Yes, Appropriately record the reason [MCA FAQ 6.7](#)

Applicability- Rule 8(3)

- **CSR Obligation – average 10 crore in preceding 3 financial year**

Case Study

A Company has Following CSR Obligations during last 3 financial years:

1. Rs 50 Cr
2. Rs 5 Cr
3. Rs 1 Cr

Is the Company required to conduct impact assessment?

**Yes, average CSR obligation during last 3 FY is
~ Rs 18 cr.**

Impact Assessment mandate- Rule 8(3)

- Impact Assessment through **Independent Agency**
 - for project with spent of **1 crore or more**
 - completed not less than **1 year before** undertaking impact assessment.
- Impact Assessment Report to be placed before the Board and **summary to be annexed in Board report along with link of the website where report is uploaded**

Effective 20th September 2022

Impact Assessment expenditure to the tune of **higher (earlier Lower) of 2% (earlier 5%) of total CSR expenditure** or Rs 50 Lakh can be claimed as CSR expenditure.

Effective 20th September 2022

Are we required to conduct impact assessment for projects completed before January 2021?

No,

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. [MCA FAQ 9.3](#)

Treatment of Excess of CSR Spent

Rule 7(3) read with Section 135(5)

Set off against the CSR Spend for three succeeding financial years

Subject to:

Shall not include spent due to surplus amount arising out of CSR activity

Approval of Board is taken to set off

Treatment of Surplus arising out of CSR

Rule 7(2)

Shall not Form Part of business profits

Ploughed back in same CSR Project

Transfer to unspent CSR Account

Transfer to fund established under Schedule VII

**What can qualify as
Surplus?**

Interest income earned

Revenue earned

Disposal/Sale of material

Case Study on Excess of CSR Spent and Surplus

Details of CSR obligation and spent in FY 22:

Obligation: Rs 10 cr

Direct CSR Spent: 11 Cr

Surplus arising out of CSR ploughed in CSR-
Rs 1 Cr

How much amount can be carried forward
for set off.

A Rs 1 Cr

B Rs 2 Cr

Rs 1 Cr.

**Surplus cannot be considered as excess of
spent**

Case Study on Excess of CSR Spent and Surplus



Details of CSR Activity relating to education

CSR Obligation: Rs 5 Cr

Activity :

Books Purchased: Rs 2 Cr

Salary to teachers and staff: Rs. 3.05 Cr

Old books sold: Rs 10 Lakh

Has the Company complied with CSR obligation?

If not what should be your suggestion?

Not complied. The total pool for CSR activity should be CSR obligation + the Surplus arising out of CSR activity. In this case it is Rs 5 Cr + Rs 10 Lakh (Surplus on account of sale)= 5.10 cr. The Company has spent only 5.05 Cr.

Advise to Company

- **Transfer the money to unspent CSR account if relates to ongoing project**
- **Transfer the money Schedule VII if relates to other than ongoing**

Rule 7(4)

Can be established Under:

Section 8, Registered Public Trust & Society

Public Authority

Beneficiaries of the CSR Projects- Self help groups, collective entities etc

Rule 9

CSR
Committee
Composition

CSR Policy

Projects
approved by
Board

Report on
impact
assessment

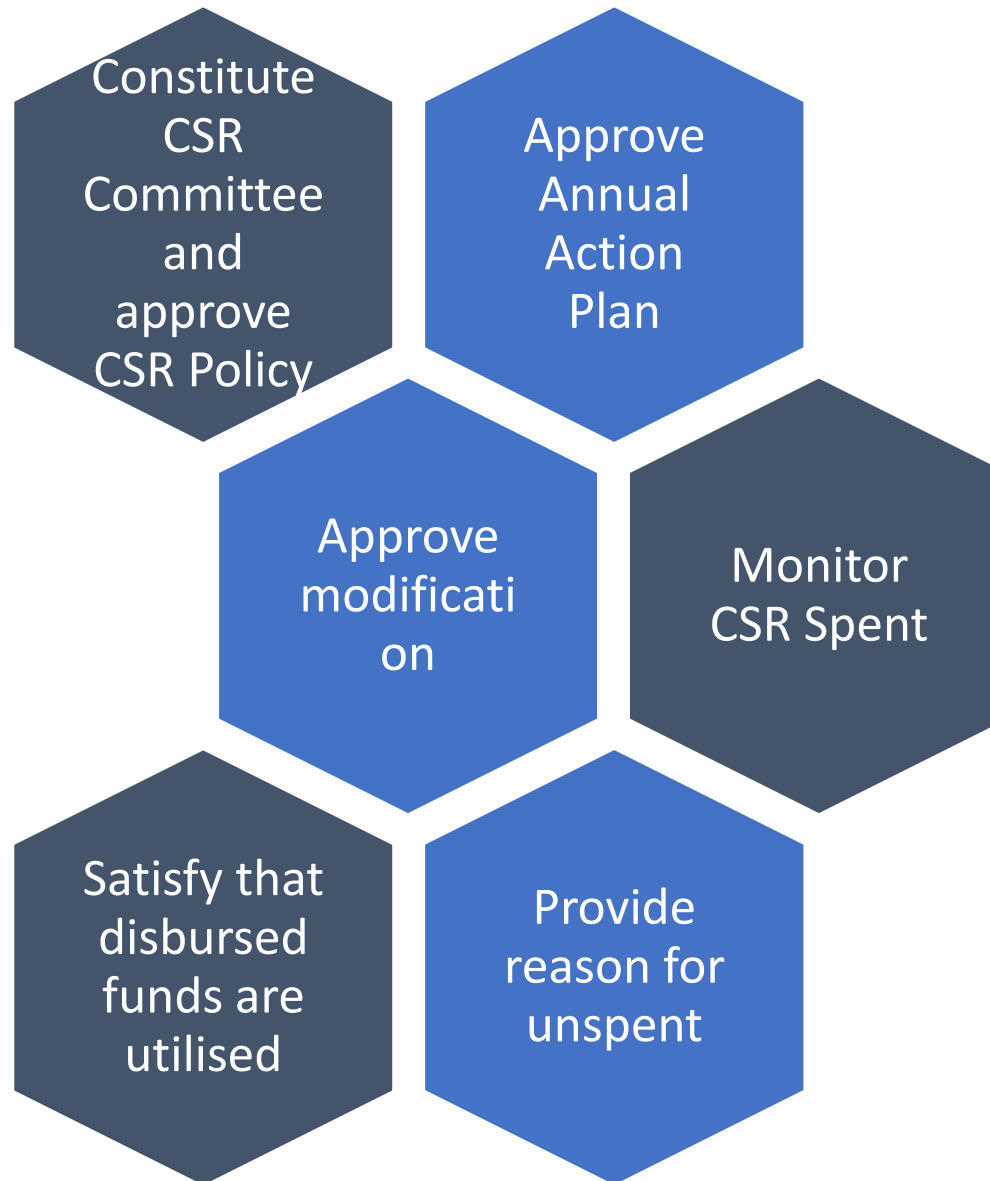
**Annexure II to CSR Rules- CSR Report
Rule 12(1B) of Companies (Accounts) Rules, 2014**

While the format of CSR Report has been simplified effective September 2022. The details of CSR are required to be given in Form CSR 2

**For FY 2021-22- should be filed separately by 31 March
2023**

**From Next year onwards with AOC-4/ AOC-4 XBR/AOC-4-
NBFC**

Role of Board



Chief Financial Officer or the person responsible for financial management shall certify that funds have been utilized

Role of CSR Committee

Formulate and
Recommend CSR
Policy

Recommend
Annual Action
Plan

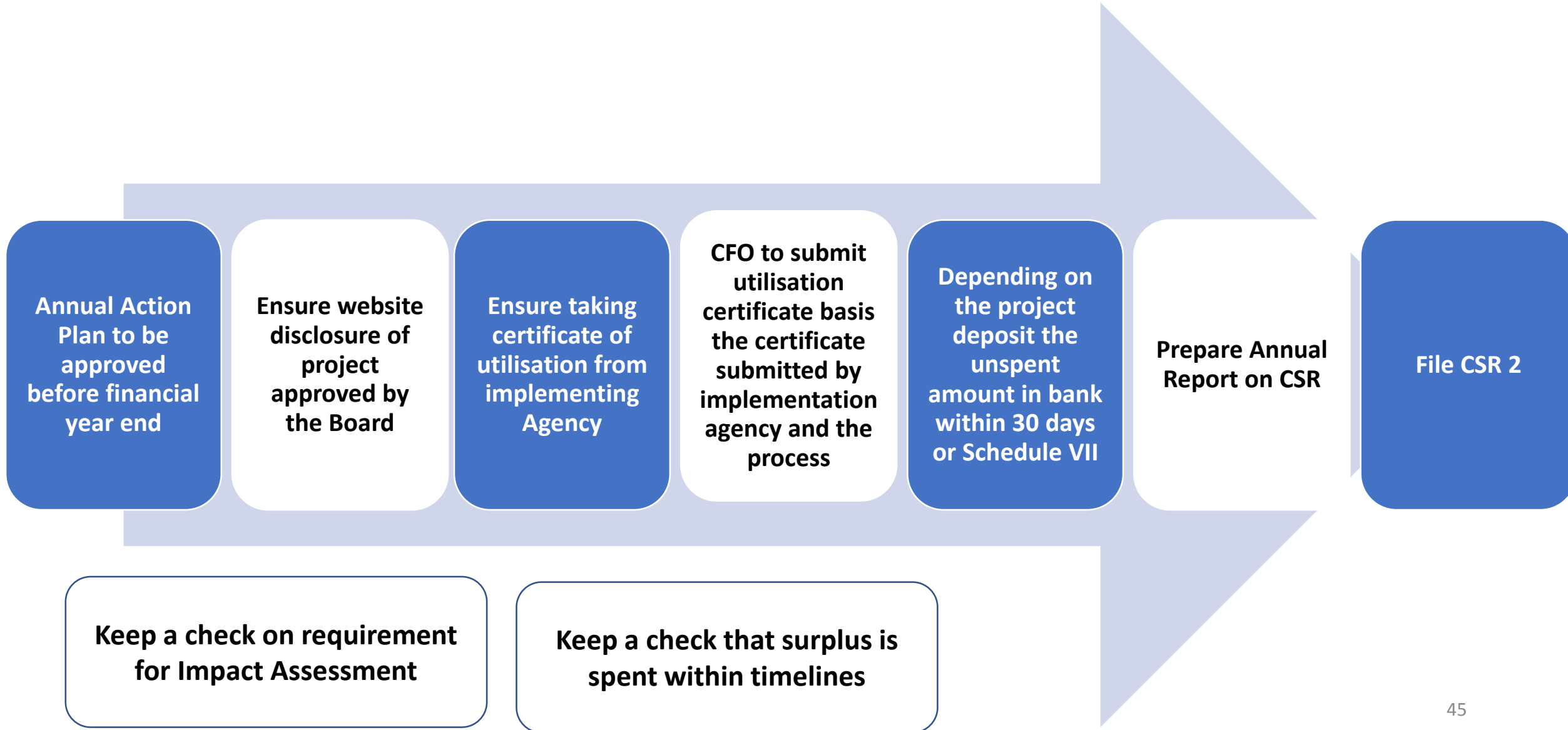
Monitor
implementation

Finalise implementation Agency

Approve CSR
Report

Review and strengthen the governance around CSR
evaluation, designing, monitoring and implementation

Focus on Process



- **Project wise no of beneficiaries and % belonging to marginalised/vulnerable section**
- **Projects taken under aspirational districts**

Section 135 (7)

Particulars	Amount
Company	Lesser of 2 times amount required to be transferred to Fund under Schedule VII or uspent CSS Account Or One Crore
Officer in default	Lesser of 1/10 of amount required to be transferred to Fund under Schedule VII or uspent CSS Account Or Two lakh

Special Thanks

Mr Rajendra Chopra



Thank You

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