

# **GUIDANCE NOTE ON CORPORATE SOCIAL RESPONSIBILITY**



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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## PREFACE

Organisations use resources that belongs to the society and it is expected that they should operate in a sustainable manner and spend some amounts for preservation and sustainability of resources which belong to the society. Going with this ideology, Governments across the world have been using different forms of regulations to improve corporate behaviour so as to promote increased accountability, disclosures and transparency.

The philosophy of giving back to the society has been an integral part of the Indian culture and ethos, which has also been imbibed in traditional Indian businesses since time immemorial. With the enactment of the Companies Act 2013 ("the Act"), Corporate Social Responsibility (CSR) became a norm in India.

CSR provision enshrined under the Act, being a unique provision of law, listed India amongst one of the few countries in the world where CSR is mandated under the Statute.

Introduction of CSR provisions under the Act was a significant legislative effort undertaken to involve corporates as partners in the social development process of the country and in strengthening the social responsibility of businesses.

The recent amendments brought into the CSR provisions have significantly evolved the legal framework of CSR. The effectiveness of the CSR framework adopted by organisations can be improved to a large extent by addressing the legal issues connected with the subject.

To facilitate the stakeholders, the ICSI has recently issued "FAQs on CSR" based on the queries received during the webinar on "New dimensions: Corporate Social Responsibility" conducted by the ICSI. While the FAQs on CSR were the outcome of the said webinar, the Guidance Note on CSR provides detailed and comprehensive guidance on various aspects of CSR.

I am pleased to share that this Guidance Note on CSR, besides covering the legal issues and providing guidance thereon, also includes the related statutory provisions and reporting framework of CSR to facilitate compliance of law both in letter and spirit. Apart from considered views on the various facet of CSR, the Guidance Note also provides few illustrations to facilitate easy understanding of the concept.

I place on record my sincere thanks to all the members of Secretarial Standards Committee (SSC) and Expert Group on Secretarial Standards, for their valuable contribution made during formulation and finalisation of this Guidance Note on CSR, under the leadership of CS B. Narasimhan and CS Satwinder Singh. My special thanks to CS Makarand Joshi (Group Convener) for his immense contribution on the subject.

I commend the dedicated efforts put in by CS Rakesh Kumar, Assistant Director under the guidance of CS Banu Dandona, Joint Director in bringing out this Guidance Note under the stewardship of CS Asish Mohan, Secretary, ICSI.

I am sure that this Guidance Note will be immensely useful for all readers interested in the subject and will be of practical value to those entrusted with the compliance of CSR provisions.

I request my professional colleagues to ensure compliance of CSR provisions and promote good corporate governance in the light of this Guidance Note.

Improvement is a continuous process and equally applicable to this Guidance Note. I would personally be grateful to the readers to offer their suggestions/ comments for further advancement of this publication.

Place: New Delhi

**CS Nagendra D. Rao**

Date: 15<sup>th</sup> June, 2021

*President*

*The Institute of Company Secretaries of India*

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## CONTENTS

	<b>Pg. No.</b>
INTRODUCTION	1
SCOPE	2
DEFINITIONS	2
GUIDANCE NOTE	4
1. Concept of CSR	4
2. CSR – The Indian Scenario	4
3. Principles of CSR	5
4. CSR in Indian Legislation	6
5. Business Responsibility Reports by Listed Companies	67
6. Guidelines on CSR and Sustainability for Central Public Sector Enterprises (CPSEs)	69
7. CSR in Insurance Companies	77
8. CSR in Banking Companies	78
9. CSR and Sustainable Development Goals	79
10. CSR and Corporate Governance	81
11. CSR as Organizational Brand Building	82
12. Factors influencing CSR	83
13. Social Stock Exchange	84
<b>ANNEXURES</b>	
<i>Annexure-I</i> Summary of the recommendations made by the HLC-2018	86
<i>Annexure-II</i> Extracts of Principles from National Guidelines on Responsible Business Conduct, 2018 (NGRBC)	90

<i>Annexure-III</i>	List of CSR Activities under Schedule VII to the Act	100
<i>Annexure-IV</i>	Comparison of Role of CSR Committee and Board of Directors	102
<i>Annexure-V</i>	Model Corporate Social Responsibility Policy	107
<i>Annexure-VI</i>	Specimen of CFO Certificate for utilisation of funds disbursed for CSR activities	114
<i>Annexure-VII</i>	Format for annual report on CSR Activities (as provided in CSR Rules)	115
<i>Annexure-VIII</i>	Specimen of Board Resolutions to be passed with respect to CSR provisions	124





# **GUIDANCE NOTE ON CORPORATE SOCIAL RESPONSIBILITY**

## **INTRODUCTION**

Augmenting profits is no longer the sole business performance indicator for the corporates and they have to play the role of responsible corporate citizens by undertaking activities for betterment of the society and the environment under the umbrella of Corporate Social Responsibility (CSR).

Organisations use resources that belongs to the society and it is expected that they should operate in a sustainable manner and spend some amounts for preservation and sustainability of resources which belong to the society.

Over the last two decades, significant economic growth and integration has taken place in the global economy, resulting in several changes in the way businesses operate. Governments across the world have been using different forms of regulations to improve corporate behavior so as to promote increased accountability, disclosures and transparency from them. Gone are the days when Milton Friedman, the reputed Economics Nobel laureate, opined in 1960s that companies have no responsibility towards the society and that their objective was primarily the enhancement of shareholders' wealth.

With the enactment of the Companies Act, 2013, CSR became a norm in India. India is perhaps one of the few countries in the world where CSR is mandated under the Statute. Since this is undoubtedly a unique provision of law, it has given rise to many concerns amongst the stakeholders during the initial period of implementation. A High Level Committee was constituted by the Ministry of Corporate Affairs (MCA) in 2015 ("HLC-2015") under the Chairmanship of Shri Anil Bajjal to suggest measures for monitoring and to help the Government to strengthen the CSR framework. The HLC-2015 was of the view that the first couple of years, would be a 'learning experience' for all stakeholders including the Government, companies, implementing agencies, auditors, etc. after which an in-depth analysis may be done based on disclosures from the filings made

by the companies with respect to CSR provisions. HLC-2015 recommended that another Committee be set up after three years to revisit the CSR framework.

It is in this overall context that another High Level Committee was set up on 28<sup>th</sup> September 2018 (HLC-2018) under the Chairmanship of Shri Injeti Srinivas, the then Secretary, Ministry of Corporate Affairs (MCA), to review the CSR framework and make recommendations to develop a more robust and coherent CSR regulatory and policy framework and underlying ecosystem.

The HLC-2018 identified specific issues arising out of the provisions of section 135 of the Act and rules made thereunder, Schedule VII to the Act and associated operational challenges. The HLC-2018 submitted its report on 7<sup>th</sup> August, 2019. A summary of the recommendations made by HLC-2018 is placed at **Annexure-I**.

The effectiveness of the CSR framework adopted by organisations can be improved to a large extent by addressing the legal issues connected with the subject. Hence, this Guidance Note on CSR, besides covering the legal issues and providing guidance thereon, also includes the related statutory provisions and reporting framework of CSR to facilitate compliance of law both in letter and spirit.

## **SCOPE**

This Guidance Note covers the relevant provisions of the following:

- Companies Act, 2013 read with the Rules made thereunder
- Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
- Guidelines issued by sector specific regulators such as Department of Public Enterprises /Insurance Regulatory and Development Authority of India/Reserve Bank of India

This Guidance Note is prepared on the basis of the above stated laws and regulations as amended from time to time. If due to subsequent changes, any part of the Guidance Note becomes inconsistent with any of the applicable laws, rules and regulations, the applicable laws, rules and regulations shall prevail.

## **DEFINITIONS**

The following terms are used in this Guidance Note with the meanings specified:

“Act” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

“CSR Committee” means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act.

“CSR Rules” means the Companies (Corporate Social Responsibility Policy) Rules, 2014 framed under the Companies Act, 2013 and as amended from time to time.

“HLC-2018” means the High Level Committee on CSR constituted by the Ministry of Corporate Affairs on 28<sup>th</sup> September 2018.

“Implementing Agency” means an entity amongst the following categories and having unique CSR registration number issued by MCA:

- (i) A company established under section 8 of the Companies Act, 2013 with section 12A and section 80G registrations under the Income Tax Act, 1961, established by the company, either singly or along with any other company OR having an established track record of at least three years in undertaking similar activities.
- (ii) Registered Public Trust with section 12A and section 80G registrations under the Income Tax Act, 1961, established by the company, either singly or along with any other company or having an established track record of at least three years in undertaking similar activities.
- (iii) Registered Society with section 12A and section 80G registrations under the Income Tax Act, 1961, established by the company, either singly or along with any other company or having an established track record of at least three years in undertaking similar activities.
- (iv) Company established under section 8 of the Companies Act, 2013 or Registered Trust or Registered Society established by the Central Government or State Government.
- (v) Entity established under an Act of Parliament or State Legislature.

“Listing Regulations” means the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

Words and expressions used and not defined herein shall have the same meaning respectively assigned to them under the Act and the Listing Regulations, as may be applicable.

## **GUIDANCE NOTE**

### **1. Concept of CSR**

CSR emerges from different sociological settings of each era to influence the way businesses adopt a more considerate and responsible behavior. Earlier businesses used to conduct these activities through especially dedicated charities. Later on the concept developed to welfare programs and activities in the nature of social responsibility. The concept of CSR has evolved during the last few decades from simple philanthropic activities to integrating the interest of the business with that of the community which is being served by such business. By exhibiting socially, environmentally and ethically responsible behaviour in governance of its operations, business can generate value and long term sustainability for itself while making positive contribution towards the betterment of the society.

CSR is a concept whereby companies not only to consider their profitability and growth, but also interests of society and the environment by taking responsibility for the impact of their activities on the society, environment and communities in which they operate.

CSR aims to fulfill expectations that society has from business and it is viewed as a comprehensive set of social policies, practices and programs that are integrated throughout the business operations. The concept of CSR has evolved over the years and it is now used as a strategy and a business opportunity to earn stakeholders' goodwill.

### **2. CSR – The Indian Scenario**

The philosophy of giving back to the society has been an integral part of the Indian culture and ethos, which has also been imbibed in traditional Indian businesses since time immemorial. The principle of doing good to society is enshrined in our holy scriptures. India's ancient wisdom, which is still relevant today, inspires people to work for the larger objective of the well-being of all stakeholders. Indian business has traditionally been socially responsible and some of the business houses have demonstrated their efforts on this front in a laudable manner. Even today the foresight of Kautilya and his remarks in Arthashastra that "birds flock to a tree which yields fruits" is the ethos which reverberates across the organisations. However, the culture of social responsibility needs to go deeper in the governance of all business entities.

In order to integrate CSR into the core business philosophy, the Government of India has mandated companies, those meeting certain thresholds in terms of turnover, net worth or net profit to set apart at least 2% of their average

previous three years net profit for CSR activities. Broadly, this mandate has been aligned with national priorities such as public health, education, food, water conservation, natural resource management, etc.

### **3. Principles of CSR**

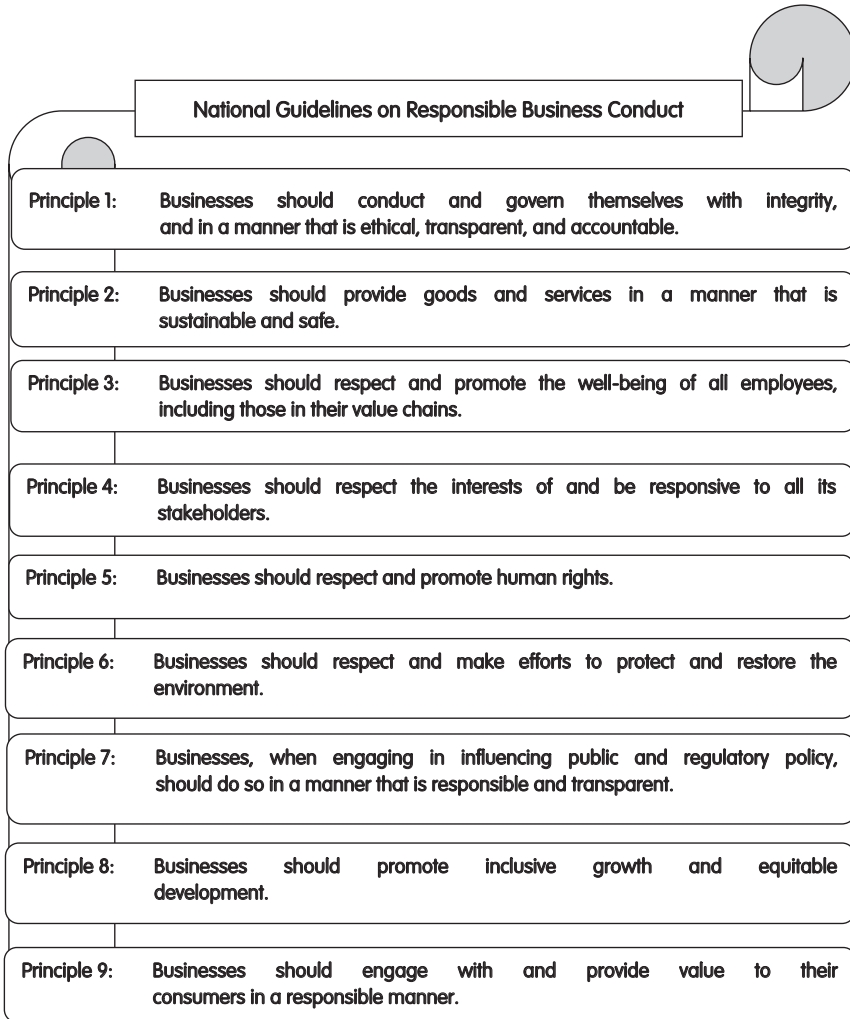
In 2009, the Ministry of Corporate Affairs (MCA), Government of India issued the 'Voluntary Guidelines on Corporate Social Responsibility' as a precursor towards mainstreaming the concept of business responsibility. In June 2011, the United Nations Human Rights Council (UNHRC) adopted the United Nations Guiding Principles on Business and Human Rights (UNGPs) which India has endorsed.

Accordingly, MCA released a set of new guidelines in 2011 titled as National Voluntary Guidelines on the Social, Environmental and Economic Responsibilities of Business (NVGs). These guidelines were expected to provide guidance to businesses on what constitutes responsible business conduct.

In order to align the NVGs with the Sustainable Development Goals (SDGs) and the United Nations Guiding Principles (UNGP), the process of revision of NVGs was started in 2015. After revision and updation, the new principles were called the National Guidelines on Responsible Business Conduct, 2018 (NGRBC). As with the NVGs, the NGRBC has been designed to assist businesses to perform above and beyond the requirements of regulatory compliance.

In NGRBC, the nine thematic pillars of business responsibility are referred to as principles. Each principle is introduced as a statement and followed by a brief description of the essential aspects of the principle. A plain reading of each principle and brief description provides a clear idea of the essential spirit and intent of the principle. Each principle is accompanied by a set of requirements and actions that are essential to the operationalisation of the principle, referred to as the core elements. All principles of the NGRBC are equally important, inter-related, interdependent and non-divisible, and businesses should adopt them to demonstrate their commitment to being a responsible business, and accrue the full benefits of sustainable business strategies.

While the highest governance structure, in the case of companies and corporations is the Board, the responsibility for adoption of the NGRBC in proprietorships, partnerships, and other types of business is assumed in the present context to rest with the owner/s, partner/s, and/or, any other body responsible for the highest level of decision-making and governance functions in the business.



The details of principles envisaged under the NGRBC are placed at **Annexure-II**.

#### **4. CSR in Indian Legislation**

Though the legislature over a period of time has tried to address the basic responsibilities of a corporate towards its employees and environment by enacting various labour and environmental laws, the introduction of CSR provisions under the Act is a significant legislative effort undertaken to involve corporates as partners in the social development process of the country and in strengthening the social responsibility of businesses.

#### **4.1 Companies Act, 2013**

Companies Act, 2013 is a legislation which officially embarked on one of the world's largest experiments of introducing the concept of CSR as a mandatory provision. CSR is an important and progressive concept for socio economic development. The inclusion of CSR is an attempt by the Government to engage businesses with the national development agenda. With the introduction of CSR provisions in the Act, there is a statutory responsibility on the corporates to take initiatives towards social, environmental and economic obligations.

Section 135 of the Act and the CSR Rules framed thereunder form the legal framework of CSR in India. The detailed provisions are explained below:

#### **4.2 Definition of CSR**

As per rule 2(d) of the CSR Rules as amended "Corporate Social Responsibility" means the activities undertaken by a company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in CSR Rules, but shall not include the following, namely:-

- (i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that –

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
  - (b) details of such activity shall be disclosed separately in the annual report on CSR included in the Board's Report;
- (ii) 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;
  - (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 clause (k) of section 2 of the Code on Wages, 2019;
- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India.

The definition of CSR has been amended vide Companies (CSR Policy) Amendment Rules, 2021 notified on 22<sup>nd</sup> January 2021.

Prior to the amendment, the term was defined in rule 2(c) of CSR Rules as “Corporate Social Responsibility” means and includes but is not limited to:

- (i) Projects or programs relating to activities, areas or subjects specified in Schedule VII to the Act; or
- (ii) Projects or programs relating to activities undertaken by the Board of Directors of a company in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will include activities, areas or subjects specified in Schedule VII to the Act.

On comparison of the earlier and new definitions of CSR, it can be seen that the earlier definition was an inclusive definition, whereas the new definition is exhaustive.

As per the earlier definition also, it was clear that CSR refers to projects or programs relating to activities undertaken by the company pursuant to Schedule VII to the Act.

The amended definition is an exhaustive one which says “CSR means activities undertaken by the company....”, wherein, it has been made abundantly clear that companies should undertake activities in pursuance of CSR Policy and Schedule VII to the Act. Contribution to specific funds covered under Schedule VII to the Act will also form part of CSR.

However, merely making contribution to an Implementing Agency would not be part of CSR unless such activities are undertaken by the Implementing Agency in pursuance of CSR Policy of the company.

List of CSR Activities under Schedule VII to the Act are placed at **Annexure-III**.

## 4.3 Applicability

### 4.3.1 Applicability Thresholds

As per section 135 (1) of the Act, the CSR provisions will be applicable to companies which fulfill any of the following criteria during the immediately preceding financial year:

- (i) Net worth of Rs. 500 crore or more; or
- (ii) Turnover of Rs. 1000 crore or more; or
- (iii) Net profit of Rs. 5 crore or more

Every such company is required to constitute a CSR committee of the Board.

Rule 3(1) of CSR Rules requires compliance of CSR provisions by holding and subsidiary companies, as well as by foreign companies having branches or project offices in India, which fulfill the criteria specified under section 135(1) of the Act.

Rule 3(2) of the 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 -

- (i) constitute a CSR Committee; and
- (ii) comply with the CSR provisions

till such time it meets the criteria specified in sub-section (1) of section 135.

The HLC-2018 in its report observed that the section 135(1) of the Act provides criteria for CSR eligibility of a company. The Companies (Amendment) Act, 2017 has amended the eligibility criteria to be based on financial parameters for the 'immediately preceding' financial year instead of the three immediately preceding financial years as prevalent until the above amendment. Rule 3(2) of CSR Rules specifies that companies which cease to be eligible under section 135(1) of the Act for three consecutive financial years shall not be required to comply with provisions of section 135. In view of the aforesaid amendment, rule 3(2) of CSR Rules has been rendered infructuous. Hence, the HLC-2018 had recommended that the rule 3(2) of CSR Rules be deleted.

However, the said rule 3(2) of CSR Rules has not been deleted even in the latest amendments brought in by the Companies (CSR Policy) Amendment Rules, 2021 notified on 22<sup>nd</sup> January 2021. Hence, the recommendation of HLC-2018 for deletion of rule 3(2) of CSR Rules has not been implemented by the MCA

and accordingly, section 135(1) of the Act and rule 3(2) of CSR Rules need to be read harmoniously.

**1. Issue:** Are CSR provisions applicable to private / section 8 companies?

**View:** Yes, if such companies fulfill the criteria prescribed under section 135(1) of the Act.

**2. Issue:** Are CSR provisions applicable to joint venture companies? What if such companies have no business projects in India?

**View:** Any company incorporated under the Act including joint venture company will come within the purview of CSR provisions if it fulfill the criteria prescribed under section 135(1) of the Act.

Even if a company incorporated under the Act is carrying on business activities outside India and has no business activities in India, it still needs to comply with the CSR provisions if it fulfills the criteria prescribed under section 135(1) of the Act.

**3. Issue:** ABC Private Ltd., a wholly owned subsidiary of Z Ltd., does not fulfill the criteria prescribed under section 135(1) of the Act while its holding company meets the said criteria. Will it be mandatory for ABC Private Ltd. to spend on CSR by virtue of CSR Rules which covers holding as well as subsidiary company?

**View:** Section 135 (1) of the Act applies to every company which fulfills the criteria prescribed therein. Rule 3 (1) of CSR Rules does not extend the applicability of section 135 of the Act to such companies which are otherwise not covered therein. Any company incorporated under the Act, which fulfills the criteria on standalone basis, irrespective of its status of holding or subsidiary, needs to comply with CSR provisions. Hence ABC Private Ltd. need not comply with the requirements relating to CSR.

**4. Issue:** Is it mandatory for foreign company to give report on CSR activities even if there is no need to prepare director's report by such company?

**View:** Rule 8(2) of CSR Rules provides that in case of a foreign company, the balance sheet filed by it under section 381(1)(b) of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

#### 4.3.2 Net Profit

The term "net profit" has been referred to in section 135(1) of the Act, as regard

applicability of CSR provisions is concerned and in section 135(5) of the Act with respect to the calculation of amount prescribed for spending in any particular financial year.

As per explanation to section 135(5) of the Act, "net profit" shall not include such sums as may be prescribed and it shall be calculated in accordance with the provisions of section 198 of the Act.

As per rule 2(h) of CSR Rules, "Net profit" means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following:

- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under CSR Rules, net profit means the net profit of such company as per profit and loss account prepared in terms of section 381(1)(a) read with section 198 of the Act.

Hence, it should be noted that for ascertaining the applicability of CSR provisions and for calculation of the prescribed spending, the net profit shall be calculated as per section 198 of the Act and the relevant adjustments shall be made to the same as stated above under rule 2(h) of the CSR Rules.

**5. Issue:** While calculating net profit for the purpose of section 135, whether dividend received from every company in India is to be excluded?

**View:** Rule 2(h) of CSR Rules says "*any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act shall not be included*". Hence, it can be said that dividend received from each and every company in India cannot be excluded. However, if the dividend is received from such company which is covered under section 135(1) of the Act and is complying with the requirements under section 135(5) of the Act, such dividend amount shall not be included for the purpose of calculation of "net profits" for the purpose of section 135 of the Act. It would be necessary for the company receiving dividend to ascertain from the dividend paying company whether the latter is covered under section 135(1) of the Act and is compliant therewith.

## **4.4 CSR Committee**

### **4.4.1 Composition of CSR Committee**

Every company covered under section 135(1) of the Act is required to constitute a CSR committee of the Board consisting of at least three or more directors with at least one independent director.

As per proviso to section 135(1) of the Act, where a company is not required to appoint an independent director under section 149(4) of the Act, it shall have in its CSR Committee two or more directors.

In addition, rule 5(1) of CSR Rules exempts unlisted public companies and private companies that are not required to appoint an independent director from having an independent director as a part of their CSR Committee. Further, in case where a private company has only two directors on the Board, the CSR Committee can be constituted with these two directors. The CSR Committee of a foreign company shall comprise of at least two persons wherein one or more persons should be resident in India and the other person nominated by the foreign company.

Section 135 (9) of the Act as introduced by the Companies (Amendment) Act, 2020 provides for an exemption from the requirement to constitute a CSR Committee where the amount to be spent by the company under section 135(5) of the Act does not exceed Rs. 50 lakh in a financial year. In such cases, the functions of CSR Committee as provided under section 135 of the Act shall be discharged by the Board of Directors of such company.

The wording of the section 135(9) of the Act is “where the amount to be spent by the company under section 135(5) of the Act, does not exceed Rs. 50 lakh”. Hence it may be said that when such expenditure is mandatory, then only the constitution of CSR committee is mandatory.

Section 135(2) of the Act requires that the composition of the CSR Committee shall be disclosed in the Board’s Report.

Further, in terms of rule 9 of CSR Rules, following details should be displayed on the website of the company, if any, for public access:

- (i) Composition of the CSR Committee;
- (ii) CSR Policy, and
- (iii) projects approved by the Board

Though legally there is no obligation to provide the project outlays on the website, as a good disclosure practice, it is advisable to also mention the amount allocated for the projects as approved by the Board.

**6. Issue:** If a company has only partly spent its CSR obligation during preceding three financial years, which is less than Rs. 50 lakh in each of these three financial years, though the quantum of prescribed 2% CSR was more than Rs. 50 lakh, will section 135(9) of the Act be applicable to the company?

**View:** Section 135(9) of the Act uses the words “amount to be spent by a Company”, which contemplates about CSR obligation under section 135(5) of the Act. Hence, in this case, the exemption from constituting the CSR committee as provided under section 135(9) of the Act will not be available to the company.

**7. 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 and comply with the provisions contained in section 135(2) to 135 (6) of the Act till such time it meets the criteria specified in section 135(1) of the Act.”*

While section 135(1) of the Act provides for constitution of CSR committee, rule 3(2) of CSR Rules speaks about the time frame after which the CSR Committee and CSR spending can be discontinued.

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.

**8. Issue:** What should be the quorum for meeting of CSR Committee?

**View:** 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.”*

Hence, if quorum for meeting of CSR committee is not specified by the Board, presence of all the members is required to form the quorum.

**9. 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.

**10. Issue:** Under section 135(9) of the Act, the CSR obligation of Rs. 50 lakh is to be checked for the previous year or for the current financial year?

**View:** From the language of section 135(9) of the Act, CSR obligation for the previous year is not relevant. Depending on the liability of company for a particular financial year, whether CSR Committee requirement is applicable for that particular financial year or not needs to be determined.

**11. Issue:** If CSR obligation since financial year 2014-15 has never exceeded Rs. 50 lakh, only then can the exemption under section 135(9) of the Act be availed or if earlier it exceeded Rs. 50 lakh but in the current year, it is less than Rs. 50 lakh, this exemption can still be availed?

**View:** If company has already constituted CSR Committee and if the CSR obligation for current financial year is less than Rs. 50 lakh, the CSR Committee can be dissolved and the role of CSR Committee can be discharged by the Board of Directors itself, irrespective of whether the CSR obligation in any of the previous financial year(s) was Rs. 50 lakh or more. However, in the subsequent financial year, if the CSR obligation of such company exceeds Rs. 50 lakh, such company will again need to reconstitute the CSR Committee.

#### 4.4.2 Functions of CSR Committee

The CSR Committee shall undertake the following functions:

- (a) formulate and recommend to the Board, a CSR Policy on the basis of the approach and direction given by the Board, which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII to the Act and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of

the annual action plan; [section 135(3)(a) of the Act read with rule 2(f) of CSR Rules]

- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a) by way of formulating and recommending to the Board, an annual action plan in pursuance of CSR Policy of the company including the following:
- (i) the list of CSR projects or programs that are approved to be undertaken in areas or subjects specified in Schedule VII to the Act;
  - (ii) the manner of execution of such projects or programs as specified in rule 4(1) of CSR Rules;
  - (iii) the modalities of utilisation of funds and implementation schedules for the projects or programs;
  - (iv) monitoring and reporting mechanism for the projects or programs; and
  - (v) details of need and impact assessment, if any, for the projects undertaken by the company;

and recommend changes, if any, needed in the action plan with reasonable justification to that effect. [section 135(3)(b) of the Act read with rule 5(2) of CSR Rules]

- (c) monitor the CSR Policy of the company from time to time. [section 135(3)(c) of the Act]

#### **4.5 Board's Responsibilities towards CSR**

The Board of Directors shall:

- (a) after taking into account the recommendations made by the CSR Committee, approve the approach and directions for CSR and the CSR Policy for the company and disclose contents of such policy in its report.

Disclose the composition of the CSR Committee, CSR Policy and projects approved by the Board on the website of the company, if any, for public access; [section 135(4)(a) of the Act read with rule 9 of CSR Rules]

- (b) approve the annual action plan recommended by the CSR Committee and amendment thereto during the financial year, if any, recommended



by the CSR Committee based on reasonable justification to that effect; [rule 5(2) of CSR Rules]

- (c) ensure that the activities as are included in CSR Policy of the company are undertaken by the company; [section 135(4)(b) of the Act]
- (d) approve a project as on-going multi-year project and extend the duration for spending beyond one year based on reasonable justification [rule 2(i) of CSR Rules]
- (e) monitor the implementation of on-going projects with reference to the approved timelines and year-wise allocation and make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Such modification may including extension of duration of on-going projects which might initially not be approved as multi-year projects, beyond the year in which CSR spending was proposed based on reasonable justification; [rule 4(6) and rule 2(i) of CSR Rules]

- (f) ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years.

Where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policy. The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities [section 135(5) of the Act]

It is clear that CSR obligation under section 135(5) of the Act needs to be complied with by companies which have not completed 3 years from the date of incorporation.

- (g) satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and to seek certification to this effect from the Chief Financial Officer or the person responsible for financial management. [rule 4(5) of CSR Rules]
- (h) ensure that the administrative overheads do not exceed 5% of total CSR expenditure of the company for the financial year; [rule 7(1) of CSR Rules]

- (i) in case the company is unable to spend the earmarked amount for CSR activities during a particular financial year, specify reasons for non-spending in its report under section 134 of the Act and transfer the unspent amount in following manner:-
- In case of on-going projects, to transfer such unspent amount, within a period of 30 days from the end of financial year, to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the unspent CSR account; [section 135(5) & (6) of the Act and rule 10 of CSR Rules]

**Illustration**

ABC Private Ltd. did not spend as per the provisions of section 135(5) of the Act on the CSR activities by 31<sup>st</sup> March, 2021 pursuant to the ongoing project undertaken in pursuance of its CSR Policy. In this case ABC Private Ltd. should:

- Open a bank account with any scheduled bank under the name, "Unspent Corporate Social Responsibility Account for financial year 2020-21";
- Transfer the unspent amount within thirty days i.e. by 30<sup>th</sup> April, 2021 to such account and
- Spend such amount, in pursuance of its obligations towards the CSR Policy, latest by 31<sup>st</sup> March, 2024.

**Illustration**

In the above example, if ABC Private Ltd. fails to spend the amount as was transferred to the special bank account opened for this purpose by end of 31<sup>st</sup> March, 2024, then the company needs to transfer such unspent amount to a fund specified in Schedule VII to the Act within 30 days i.e. latest by 30<sup>th</sup> April, 2024.

- In case there is no on-going project, it has to transfer such unspent amount, within 6 months of the expiry of the financial year, to any of the funds mentioned in Schedule VII to the Act. [section 135(5) of the Act read with rule 10 of CSR Rules]

**Illustration:**

The net profit, calculated as per section 198 of the Act read with rule 2(h) of CSR Rules, of ABC Private Ltd. for the financial year 2019-20 is more than Rs. 5 crore and it fails to spend requisite CSR amount by 31<sup>st</sup> March, 2021 as mandated under section 135(5) of the Act. In this case, ABC Private Ltd. needs to do the following:

1. Specify the reasons for not spending the amount in the Board's Report; and
2. Transfer the unspent amount to a fund specified in Schedule VII to the Act, unless such amount relates to any ongoing project referred to in section 135(6) of the Act, by the end of 30<sup>th</sup> September, 2021.

- (j) In case there is excess amount spent towards CSR beyond the statutory obligation specified in section 135(5) of the Act during any financial year, to approve the set-off of such excess amount spent, during one or more of the three succeeding financial years.

However such excess amount should not be a surplus arising out of the CSR activities; [third proviso to section 135(5) of the Act read with rule 7(3) of CSR Rules]

- (k) To ensure that any surplus arising out of the CSR activities is ploughed back into the same project or transferred to the unspent CSR Account and spent in pursuance of CSR Policy and annual action plan of company or transfer such surplus amount to a fund specified in Schedule VII to the Act, within a period of 6 months of the expiry of the financial year [rule 7(3) of CSR Rules]
- (l) if any capital asset is created or acquired as a part of CSR, to ensure that it is 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 provided by the Ministry of Corporate Affairs (MCA); or beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or a public authority.

In case of capital assets created or acquired before the commencement of the Companies (CSR Policy) Amendment Rules, 2021, i.e., before 22<sup>nd</sup> January 2021, to ensure that this requirement is complied within 180

days from 22<sup>nd</sup> January 2021, or further extend the same for additional 90 days based on reasonable justification [rule 7(4) of CSR Rules].

After 22<sup>nd</sup> January 2021, all capital assets created or acquired as a part of CSR shall be held only in the name of entities as stated above and not in the name of the company.

- (m) ensure that impact assessment is undertaken, wherever applicable, through an independent agency and to review the impact assessment reports placed before the Board and to annex the same to the annual report on CSR. [rule 8(3) of CSR Rules]

It would be good practice to identify the need for the project before approving its implementation. The identification of the need for the project will ensure that it acts as a basic parameter while carrying out impact assessment.

A comparison of the responsibilities of the CSR Committee and the Board of Directors is given at **Annexure-IV**.

## **4.6 CSR Policy and Annual Action Plan**

### **4.6.1 CSR Policy**

“CSR Policy” is defined in rule 2(f) of CSR Rules as under:

“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.

The approach and direction for CSR is to be recommended by the CSR Committee to the Board, and based on the same, the approach and direction is finalised by the Board of Directors. The CSR Policy is to be prepared and recommended by the CSR Committee to the Board for its approval as per section 135(3)(a) of the Act read with rule 2(f) of the CSR Rules. This process may happen simultaneously also depending upon the convenience of the Board.

As per section 135(3)(a) of the Act, the CSR Policy shall indicate the activities to be undertaken by the company in areas or subjects, specified in Schedule VII to the Act. The definition of ‘CSR Policy’ has been amended vide Companies (CSR Policy) Amendment Rules, 2021 notified on 22<sup>nd</sup> January 2021. Hence, in respect of the companies to whom CSR provisions were applicable prior to this date, it is recommended that the CSR Policy be amended in line with the revised provisions

to include, inter-alia, the guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

The guiding principles to be included in the CSR Policy as contemplated in the CSR Rules appear to be macro level indicators as to the areas in which CSR projects are proposed to be undertaken, which can be articulated in the annual action plan for each financial year.

For example:

- Guiding principles for selection of CSR projects can be what parameters are to be evaluated while selecting a project, namely what should be the thrust area, local area, other areas where there exists a need for CSR project, projects of national importance, areas which deplete natural resources, etc. and what proportion of CSR spending is to be apportioned for these purposes so that there is an adequate positive impact arising out of the activities undertaken by the company.
- Guiding principles for implementation of CSR projects can be whether they will be undertaken directly or through any Implementing Agency, minimum benchmarks of various criteria while selecting an Implementing Agency such as no conflict of interest, no political background, satisfactory due diligence, track record indicators etc.
- Guiding principles for monitoring of CSR projects can be at what frequency spending shall be monitored, whether site visits would be needed, who shall visit, what evidences should be collected as to the progress of the project, etc.
- Guiding principles for formulation of annual action plan can be whether long term projects or short-term projects are to be selected, requirement of environmental clearance, compliance of local laws, evaluation while choosing a project, at what frequency impact assessment should be done, etc.

Prior to the amendment in CSR Rules, the CSR Policy of the company was defined to include a list of CSR projects or programs which a company plans to undertake areas or subjects specified in Schedule VII to the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and monitoring process of such projects or programs. After amendment to CSR Rules, these aspects are expected to be covered within the framework of annual action plan of the company, which is explained in paragraph 4.6.2 below.

It is recommended that CSR Policy should be drawn up to the extent it is relevant

in the context of company and should be compatible with the legal requirements. CSR Policy should be approved by the Board of Directors and reviewed and updated, as and when required. It is recommended that a company should:

- i) Outline a CSR Policy to reflect the vision, mission and goals on a broader level
- ii) CSR Policy should articulate broadly target group (marginalized group)/ geography (local/ wider area) / sectors (health/education/ environment)

A model CSR Policy is placed at **Annexure-V**.

**12. Issue:** Can a company spend in projects or programmes relating to activities mentioned in Schedule VII to the Act, but not specifically covered in CSR Policy?

**View:** As provided in section 135(5) of the Act, the Board shall ensure that the company spends at least 2% of the average net profits in pursuance of its CSR Policy. If a company wishes to spend CSR funds on activities mentioned in Schedule VII to the Act, but not specifically covered in CSR Policy, it may do so by suitably amending its CSR Policy with the approval of the Board to include such activities.

**13. Issue:** Is it mandatory to amend the CSR Policy after the amendments notified in CSR Rules on 22<sup>nd</sup> 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.

**14. Issue:** Is it mandatory to amend CSR Policy before 31<sup>st</sup> March 2021?

**View:** It is not mandatory to amend the CSR Policy by 31<sup>st</sup> March 2021, and the same may be amended before adopting annual action plan for the next financial year by the Board.

#### 4.6.2 Annual Action Plan

As per rule 5(2) of the CSR Rules, 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:-

- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII to the Act;
- (b) the manner of execution of such projects or programmes as specified in rule 4(1) of CSR Rules;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company.

All CSR projects or activities are required to be approved in annual action plan. If company proposes to undertake any project / activity which is not approved in annual action plan, it requires approval of CSR Committee and the Board with proper justification.

The annual action plan shall change for each financial year as it is a manifestation of the guiding principles mentioned in CSR Policy, as may be relevant for each financial year. It is recommended that the annual action plan should clearly outline the mechanisms and modalities for actual implementation of CSR projects and programs with a view to ensure measurable and sustainable outcomes primarily focusing on projects/ activities which are beneficiary oriented and contribute to sustainable development. It is also recommended that the annual action plan should also speak about the expectations to be achieved during the next financial year.

For example:

- List of CSR programmes, or at least broad criteria about what constitute a CSR project, which will meet the thrust areas and make positive impact.
- Manner of execution of project can be as to how much amount to be spent on a particular project in the current year, how much amount to be spent in the next financial year, which Implementing Agencies to hire etc.

- Modalities of utilisation of funds can be at what stage funds shall be disbursed, example- funds shall be disbursed after completion of work, etc.
- Monitoring & reporting mechanism can be selection of any third party for verification of work done, deciding frequency and parameters of verification, etc.
- Fixation of who shall do the impact assessment, which projects, timelines, etc.

#### **4.7 CSR Activities/ Projects / Programs**

CSR activities have been covered in the definition of 'CSR' prescribed under rule 2(d) of CSR Rules.

##### **4.7.1 What is covered and what is not covered in CSR**

All activities listed under Schedule VII to the Act shall be eligible as CSR Activities. (Refer Annexure-III)

As per the definition of CSR, the below mentioned activities shall not be considered as CSR activities:-

- (i) activities undertaken in pursuance of normal course of business of the company:

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
  - (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
- (ii) 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;
  - (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 clause (k) of section 2 of the Code on Wages, 2019 ;
- (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
- (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India.

#### 4.7.2 Normal course of business

In common parlance '**normal course of business**' refers to things which are routine in nature for business like sale, purchase etc. It refers to the usual course and routine of business activities. In the context of CSR, any activity which is part of core business of the company would not constitute CSR.

When CSR Rules were initially notified in the year 2014, the non-permissibility of activities which are in normal course of business of a company, as a part of its CSR, was highlighted in various provisions mentioned below:-

- i. The erstwhile rule 2(e) of CSR Rules which defined "CSR Policy" mentioned that "CSR Policy relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;

In this definition, vide an amendment dated 24<sup>th</sup> August 2020, a proviso was added which provided a carve-out for companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business. This proviso permitted such companies to undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 and to claim it as their CSR expenditure for these relevant financial years, subject to the conditions that:

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act.
  - (b) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report.
- ii. The erstwhile rule 4(1) of CSR Rules which prescribed that "the CSR activities shall be undertaken by the company, as per its stated CSR

Policy, as projects or programs or activities (either new or ongoing), *excluding activities undertaken in pursuance of its normal course of business*. The words “excluding activities undertaken in pursuance of its normal course of business” were deleted pursuant to the above mentioned amendment in the CSR Rules dated 24<sup>th</sup> August 2020.

- iii. The erstwhile rule 6(1) of CSR Rules provided that the CSR Policy shall include-
  - (a) a list of CSR projects or programs which a company plans to undertake in areas or subjects specified in of the Schedule VII to the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
  - (b) monitoring process of such projects or programs

The erstwhile rule 6(1) of CSR Rules had a proviso that the *CSR activities shall not include the activities undertaken in pursuance of normal course of business of a company*. This proviso was also deleted pursuant to the above-mentioned amendment in the CSR Rules dated 24<sup>th</sup> August 2020.

Hence, it can be seen that the non-permissibility of activities which are in the normal course of business of a company, as a part of its CSR, was initially mentioned at three places in CSR Rules. Pursuant to the amendments dated 24<sup>th</sup> August 2020, a carve-out in this regard for certain companies, was inserted in the definition of “CSR Policy”. Simultaneously, the reference to non-permissibility of activities which are in normal course of business of a company as CSR given in rule 4(1) of CSR Rules and proviso to rule 6(1) of CSR Rules were deleted. However, this reference remained in rule 2(e) of CSR Rules, i.e., the definition of “CSR Policy”. This shows that activities which are in normal course of business of a company were never contemplated to be considered as part of CSR.

After the amendments in CSR Rules dated 22<sup>nd</sup> January 2021, this reference has been removed from the definition of “CSR Policy” and has been inserted in the definition of “CSR” itself as prescribed under rule 2(d) of CSR Rules as under:-

**“Corporate Social Responsibility (CSR)”** means the activities undertaken by a company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in CSR Rules, but shall not include the “activities undertaken in pursuance of normal course of business of the company;”

After the amendment in CSR Rules dated 22<sup>nd</sup> January 2021, the above mentioned

carve out for companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business to undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 and claim it as CSR expenditure for these financial years subject to conditions as mentioned above, is mentioned as a proviso to rule 2(d)(i), i.e., it has also been shifted from the definition of "CSR Policy" and included in the definition of "CSR". The above is a transitory provision with a limited shelf life up to financial year 2022-23.

**15. Issue:** Whether distribution of free samples to customers can be considered a CSR activity?

**View:** This activity will fall under 'normal course of business' and hence may not be considered as CSR activity.

**16. Issue:** If in a CSR project, the logo of the company is affixed (eg: if a drinking water facility is made available at any place and company's logo is affixed on that place), whether it shall amount to 'activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services'?

**View:** If the CSR project is for any purpose other than normal course of business of the company and the company's logo is used, it would not tantamount to 'activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services' and hence it shall form part of the company's CSR activities.

**17. Issue:** Whether all companies are eligible to carry out activities which are in normal course of business as CSR activities?

**View:** No, only those companies which are engaged in research and development activity pertaining to development of new vaccine, drugs and medical devices related to COVID-19, can avail of this exemption subject to the condition that

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

For all other companies, activities which are in their normal course of business shall continue to be excluded from the ambit of CSR activities.

**18. Issue:** If a company eligible to claim exemption on CSR activities which are undertaken in normal course of business, has already spent some amount during the financial year 2020-21, but before the effective date of amendment in CSR Rules dated 24th August 2020, can such expenditure be considered towards CSR for the financial year 2020-21?

**View:** The exemption provided under proviso to rule 2(d) of CSR Rules is available for 3 financial years i.e. 2020-21, 2021-22 and 2022-23. Hence, even if the expenditure is incurred on such activities prior to the date of notification of amendment but during the financial year 2020-21, it shall be eligible to be counted towards CSR expenditure for the financial year 2020-21.

#### 4.7.3 Beneficiaries being Employees

The erstwhile rule 4(5) of CSR Rules stated that *“the CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR activities in accordance with section 135 of the Act”*.

In the draft CSR Rules issued for public comments, a provision was proposed to be inserted to the effect that *“activities significantly benefitting the employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 and their families. Provided that in case of any activity having less than 25% employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.”*

However, in the amendment made to CSR Rules vide notification dated 22<sup>nd</sup> January 2021, the proposed proviso relating to 25% beneficiaries being employees has not been incorporated, and the word ‘only’ appearing in erstwhile Rules has also been deleted.

Post amendment, the definition of CSR shall not include the following: *“(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019”*

The term “Employee” as per section 2(k) of Code of Wages Act, 2019 is defined as under:

*“employee” means, any person (other than an apprentice engaged under the Apprentices Act, 1961), employed on wages by an establishment to do any skilled, semi-skilled or unskilled, manual, operational, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied, and also includes a person declared to be an employee by the appropriate Government, but does not include any member of the Armed Forces of the Union.*

It must be noted that the term “contract labour” is also defined as under in Code of Wages Act, 2019:

*“contract labour” means a worker who shall be deemed to be employed in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer and includes inter-State migrant worker but does not include a worker (other than part-time employee) who*

- (i) is regularly employed by the contractor for any activity of his establishment and his employment is governed by mutually accepted standards of the conditions of employment (including engagement on permanent basis), and
- (ii) gets periodical increment in the pay, social security coverage and other welfare benefits in accordance with the law for the time being in force in such employment”

The term “worker” is also defined in Code of Wages Act, 2019 as under:

*“worker means any person (except an apprentice as defined under clause (aa) of section 2 of the Apprentices Act, 1961) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and includes.....”*

Hence, even if some of the beneficiaries of any CSR projects happen to be employees (which may include even contract labour in case they fall within the ambit of the definition of “employee” for that relevant industry), to that extent, the amount spent should not be considered as CSR expenditure.

However, if the purpose of the project is for the benefit of the society at large and in case some of the employees are also beneficiaries of such programme then:

- If the benefit received by each beneficiary is specifically identifiable, to that extent the amount spent for employees should not be considered as CSR, i.e., the CSR amount would have to be calculated proportionately, and entire project should not be disregarded as being non-CSR. [example: distribution of Covid vaccines, etc.]
- However, if the benefit received by each beneficiary is not specifically identifiable, the project may be considered completely as being for CSR. [example: distribution of food, awareness campaigns, etc.]

Expenditure on activities which are predominantly for the benefit of persons associated with the business carried on by the company should not be treated as CSR.

**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.

**20. Issue:** Whether activities which are not designed for benefit of employees solely, but are for the benefit of other beneficiaries, but incidentally some employees do get benefitted out of those activities, would this be considered as 'activities benefitting employees' and be disallowed as CSR expenditure?

**View:** As mentioned in paragraph 4.7.3 above, the erstwhile rule 4(5) stated that 'activities that benefit only the employees of the company and their families shall not be considered as CSR'. In the draft CSR Rules released for public comments, it was mentioned that 25% beneficiaries of CSR projects could be employees and their families. However in the amendment made to CSR Rules vide notification dated 22<sup>nd</sup> January 2021, the provision relating to 25% beneficiaries being employees has not been covered, and the word 'only' appearing in erstwhile rule has also been deleted. If we apply the mischief rule of judicial interpretation, deletion of the word 'only' means that any activities benefitting employees will not be considered as CSR.

Since the minimum percentage of beneficiaries being employees is also not provided in the revised rules, it can be ascertained that if the intention of the project is not for employee welfare but for the benefit of the society at large and incidentally if in the process some of the employees are beneficiaries, to the extent the beneficiaries are employees, the amount spent should not be considered as CSR. Hence, in such cases, CSR spends would have to be calculated proportionately, and entire project need not be disregarded as non CSR expenditure.

**21. Issue:** If a company wants to do any activity for apprentices, can it be considered as CSR?

**View:** Any stipend or other monetary benefits to apprentices would be considered as a normal course of business or to meet statutory obligations

of the company. However, if any other activity is done for the benefit of apprentices which is not in the normal course of business and which is not a one-off event, it may be considered as CSR, as apprentices are excluded from the definition of 'employee' as per Code of Wages, 2019.

**22. 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 may not be covered under CSR.

**23. Issue:** If a company bears the expense of Covid-19 vaccine for contract labour, whether it will qualify as CSR?

**View:** As per FAQs on CSR released by MCA dated 10<sup>th</sup> April 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 provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

However, as per the definition of 'contract labour' given in Code of Wages, 2019, contract labour is deemed to be employed with the company and hence on case to case basis, they may be considered as employees of the company.

As per the amended definition of 'CSR', activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 shall not be considered as CSR. Hence, this activity would not now be considered as CSR in case of such industries where contract labour might be covered under the definition of "employees" under the Code of Wages, 2019.

#### 4.7.4 Covid-19 related Queries on CSR

MCA has vide its General Circular No. 10/2020 dated 23<sup>rd</sup> March 2020 clarified that spending of CSR funds for COVID-19 is an eligible CSR activity. MCA had also said that funds may be spent on various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII to the Act relating to promotion of health care including preventive health care and sanitation, and disaster management.

In furtherance to the circular dated 23<sup>rd</sup> March 2020, MCA had issued another General Circular No. 01/2021 dated 13<sup>th</sup> January 2021 wherein it is clarified that spending of CSR funds for carrying out awareness campaigns / programmes or public outreach campaigns on COVID-19 vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII to the Act relating to preventive health care and sanitisation, promoting education and disaster management respectively.

#### **COVID-19 related Frequently Asked Questions (FAQs) on CSR issued by MCA**

*The questions and answers given below are extracts from MCA Circular No. 15 /2020 dated 10<sup>th</sup> April, 2020*

**Query:** Whether contribution made to 'Chief Minister's Relief Funds' or 'State Relief Fund for COVID-19' shall qualify as CSR expenditure?

**Reply:** 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19' is not included in Schedule VII to the Act and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.

**Query:** Whether contribution made to State Disaster Management Authority shall qualify as CSR expenditure?

**Reply:** Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23<sup>rd</sup> March, 2020.

**Query:** Whether spending of CSR funds for COVID-19 related activities shall qualify as CSR expenditure?

**Reply:** MCA vide general circular No. 10/2020 dated 23<sup>rd</sup> March, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII to the Act relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII to the Act are broad based and may be interpreted liberally for this purpose.



**Query:** Whether payment of salary/wages to employees and workers, including contract labour, during the lockdown period can be adjusted against the CSR expenditure of the companies?

**Reply:** Payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) shall not qualify as admissible CSR expenditure.

**Query:** Whether payment of wages made to casual /daily wage workers during the lockdown period can be adjusted against the CSR expenditure of the companies?

**Reply:** Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Act. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.

**Query:** Whether payment of ex-gratia to temporary /casual /daily wage workers shall qualify as CSR expenditure?

**Reply:** 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 provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

**The above view should be read with the changed definition of employee in CSR Rules.**

**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.

#### 4.7.5 Issues and Views on CSR Activities in general

**24. Issue:** Can a company choose to spend CSR fund on activities not enlisted under Schedule VII to the Act?

**View:** Schedule VII to the Act is only a broad based indicative list of activities.

CSR activities which are in substance in relation to the subjects specified in Schedule VII to the Act can be undertaken. The MCA has indicated in its circular No.1/2016 dated 12<sup>th</sup> January 2016 that areas identified in Schedule VII to the Act should be construed liberally and they are intended to cover a wide range of activities.

**25. 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. If required an undertaking to this effect may be insisted upon from the Implementing Agency.

**26. Issue:** Can creating provisions in the books of accounts for CSR expenditure tantamount to meeting CSR obligations?

**View:** The Board of every company referred to in section 135(1) of the Act shall ensure that the company spends, in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years.

Hence, the company should spend the amount to meet CSR obligations as mere creation of provisions in the books of account will not qualify as CSR expenditure although companies are statutorily obliged to maintain books of Account on accrual basis.

**27. Issue:** Whether expenditure by companies on activities covered under Schedule VII to the Act, but for the fulfilment of requirement of any other law will count as CSR Expenditure?

**View:** Activities carried out for fulfilment of any other statutory obligations under any law in force in India would not count as CSR expenditure.

**28. Issue:** Can a deduction be availed while computing income from business or profession in respect of CSR expenditure?

**View:** Explanation 2 to section 37(1) of the Income Tax Act, 1961, which was inserted by Finance (No.2) Act 2014 (applicable from assessment year 2015-16), provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of business or profession and shall not be allowed as deduction under section 37(1) of the Income Tax Act, 1961.

**29. Issue:** Whether contribution made to funds specified under Schedule VII to the Act and covered by section 80G of the Income Tax Act, 1961 can be considered for allowing a deduction under the said section of the Income Tax Act, 1961?

**View:** The Ministry of Corporate Affairs has issued FAQ through general circular dated 12th January 2016 (FAQ No. 6), wherein, it has been clarified as under:

“No specific tax exemptions have been extended to CSR expenditure per se. The Finance Act, 2014 also clarifies that expenditure on CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister’s Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII to the Act, already enjoy exemptions under different sections of the Income Tax Act, 1961”

It has thus been clarified by MCA that a deduction under different sections of the Income Tax Act, 1961 in respect of those funds specified in Schedule VII to the Act would be allowable subject to the conditions specified in those section of the Income Tax Act, 1961. This view is also supported by decisions of Delhi and Bangalore ITAT in the following cases:

1. Escorts Skill Developments vs. CIT (2019 (178 ITD32) (Delhi)
2. Goldman Sachs Services P. Ltd. vs. JCIT (TPA No. 2355/Bangalore/2019) (117 Taxman.com 535)

#### 4.7.6 CSR Implementation

(1) As per rule 4(1) of CSR Rules, the Board shall ensure that the CSR activities are undertaken by the company itself or through-

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

These entities are generally referred to as 'Implementing Agencies', though this term has not been used in the CSR Rules. The CSR activities can be carried out by the company either directly or through any of these Implementing Agencies or through a combination of both methods.

(2) As per rule 4(2) of CSR Rules, every entity, covered under rule 4(1), which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from 1<sup>st</sup> April 2021. However, it shall not affect the CSR projects or programmes approved prior to 1<sup>st</sup> April 2021.

This means that from the date of commencement of the amended rule 4(2) of CSR Rules, i.e., from 22<sup>nd</sup> January 2021 till 31<sup>st</sup> March 2021, CSR projects or programmes can be carried out through Implementing Agencies which have not registered themselves with the MCA as the requirement to file e-form CSR-1 is applicable from 1<sup>st</sup> April, 2021 onwards. Hence, this is the only sub-rule under the amendment in CSR Rules dated 22<sup>nd</sup> January 2021, which is effective from 1<sup>st</sup> April 2021, and all other provisions have become effective from 22<sup>nd</sup> January 2021 itself.

Rule 4(2) of CSR Rules further provides that Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. After submission of Form CSR-1 on the MCA portal, a unique CSR registration number will be generated by the system automatically.

On perusal of Form CSR-1 provided in CSR Rules it can be ascertained that

this form can be filed only by such section 8 companies / registered public trusts / registered societies which have already registered under section 12A and section 80G of the Income Tax Act, 1961, unless they are established by the Central Government or State Government or were established under an Act of Parliament or a State legislature. This means that the registration under section 12A and section 80G of the Income Tax Act, 1961 shall be conditions precedent which shall be followed by the allotment of the CSR registration number by MCA.

**30. 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.

**31. Issue:** Whether registered private trusts will be permitted to do CSR activity?

**View:** No, post the amendment in CSR Rules dated 22<sup>nd</sup> January 2021, only registered public trusts will be permitted to do CSR activity, unless they are established under an Act of Parliament or State Legislature.

Hence effective 1<sup>st</sup> April, 2021 registered private trusts will not permitted to take up CSR activities.

**32. Issue:** Can any entity other than a section 8 company / registered public trust / registered society be permitted to do CSR activity?

**View:** Only if such entity (which is not a section 8 company / registered public trust / registered society) is established under an Act of Parliament or State Legislature, it can be allowed to do CSR activity.

**33. Issue:** If section 8 company/ registered public trust / registered society has track record of 3 years but has got section 12A and / or section 80G registration recently, whether it will be permitted to do CSR activity?

**View:** Yes, in such case the entity will be permitted to do CSR activity after obtaining CSR registration number from MCA.

**34. Issue:** If a new project is approved by the Board during the months of February 2021 or March 2021, is it mandatory that such project be taken up through section 8 company / registered public trust / registered society having registration under section 80G and 12A of Income Tax Act, 1961?

**View:** The requirement to have registration under section 80G and section 12A of the Income Tax Act, 1961 is stated in rule 4(1) of CSR Rules, whereas the requirement to seek registration with MCA is mentioned in rule 4(2) of CSR Rules. The proviso to rule 4(2) of CSR Rules states that the provisions of this sub-rule shall not affect the CSR projects or programs approved prior to the 1<sup>st</sup> April, 2021. Hence, the exemption during the transition period is only with regard to the registration with MCA, which is mentioned in rule 4(2) of CSR Rules, whereas the requirement to obtain registration under section 80G and section 12A of the Income Tax Act, 1961 became mandatorily applicable as soon as the amendment became effective, i.e., from 22<sup>nd</sup> January 2021.

Hence, if the project is approved post the date of aforesaid amendment, the section 8 company/ registered public trust / registered society must have registration under section 80G and section 12A of the Income Tax Act, 1961.

**35. Issue:** If on-going projects are already being carried out through a particular section 8 company, will it become ineligible to receive CSR funds if it has not received section 12A or 80G registration under Income Tax Act, 1961 or sought CSR registration number with MCA?

**View:** If the Board had already approved an on-going project and the company has engaged an Implementing Agency for such project, it may be permitted to continue with the activity through that entity only, even before it obtains section 80G and 12A registration of the Income Tax Act till the entire budgeted amount is spent on that project as per the approval of Board already given.

Section 6(b) of the General Clauses Act, 1897 says where any Central Act repeals any enactment, unless a different intention appears, the repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. However it is advisable to obtain section 80G and 12A registrations expeditiously.

**36. Issue:** Whether any entity established under an Act of Parliament or State Legislature / established by Central Government / State Government should also seek registration under section 12 A and section 80G of the Income Tax Act and also CSR registration number from MCA?

**View:** Rule 4(1) of CSR Rules provides various categories of entities through whom company can undertake its CSR activities. One such category is "a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government", and another such category is "any entity established under an Act of Parliament or a State legislature".

In both these categories, rule 4(1) of CSR Rules does not mention the requirement of registration under section 12A and section 80G of Income Tax Act. Hence, a view can be taken that for these two categories of entities, section 12A and section 80G registration is not a pre-requisite for undertaking CSR activities on behalf of companies. However, rule 4(2) of CSR Rules says "every entity, covered under sub-rule (1), which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1...." Hence, even for such entities, obtaining CSR registration number from MCA is mandatory. Form CSR-1 also reflects this intent.

**37. Issue:** Whether it is mandatory for all section 8 companies / registered public trusts / registered societies to file Form CSR-1 before 31<sup>st</sup> March 2021?

**View:** Every entity, covered under rule 4(1) of CSR Rules, which intends to undertake any CSR activity, shall register itself with the MCA by filing the form CSR-1 electronically from 1<sup>st</sup> April 2021 onwards. It is not expressly mentioned that these entities need to file Form CSR-1 and register with MCA before 31<sup>st</sup> March 2021. Hence, a view may be taken that the registration is a pre-condition before receiving funds for undertaking CSR activities on behalf of companies on or after 1<sup>st</sup> April 2021. Hence, it can be said that even though this form is not mandatorily to be filed before 31<sup>st</sup> March 2021 but from 1<sup>st</sup> April 2021 onwards, these entities must seek CSR registration number from MCA before receipt of CSR funds from any company.

**38. Issue:** Can a section 8 company / registered public trust / registered society, which has applied for but has not yet received section 12A & 80G registration, file form CSR-1?

**View:** The requirement of filing form CSR-1 comes from rule 4(2) of CSR Rules, which says "every entity, covered under rule 4(1)...". This implies that

for filing Form CSR-1, it is a pre-requisite that the entity should be registered under section 12A and 80G of the Income Tax Act, 1961, unless it is a section 8 company or a registered trust or a registered society, established by the Central Government or State Government, or any entity established under an Act of Parliament or a State legislature.

Further, the format of Form CSR-1 also reinforces the above assertion that only such section 8 companies / registered public trusts / registered societies are permitted to file Form CSR-1 which have already obtained registration under section 12A and section 80G of the Income Tax Act.

**39. Issue:** What is the responsibility of the company when it disburses funds to Implementing Agencies for undertaking activities in pursuance of CSR activities?

**View:** In view of the responsibility casted on the company to monitor the implementation of the CSR projects, activities and timelines, the company should, before disbursing funds to the Implementing Agencies, ensure that it gets complete details of the schedule of the implementation and timelines of utilisation of funds.

After disbursement of funds to Implementing Agencies, the company should also ensure that the activities undertaken by the Implementing Agencies are in line with the CSR Policy of the company.

(3) As per rule 4(3) of CSR Rules, a company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR Policy as well as for capacity building of their own personnel for CSR.

'International organisations' have been defined under rule 2(g) of the CSR Rules, as "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply.

As per the draft CSR Rules issued for eliciting public comments, there was a proviso which stated that a company may also engage an international organization for implementation of a CSR projects subject to prior approval of the central government. However, this proviso has not been included in the amended CSR Rules. This means that companies can engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes and also for capacity building of their own personnel, but they cannot be engaged in the implementation of CSR projects.



**40. Issue:** Can CSR spending be done through international organisations like World Bank etc., if spending is going to happen in India?

**View:** No, international organisations are permitted to be engaged only for designing, monitoring and evaluation of the CSR projects or programmes as per the CSR Policy of the company and for capacity building of company's own personnel for CSR, but the word 'implementation' is not used here. Hence, an international organisation cannot be an Implementing Agency for CSR projects.

**41. Issue:** Can CSR spending be given to international sports organisations for training of sports persons outside India?

**View:** No, international organisations cannot act as Implementation Agencies. In such cases, company will have to spend directly for the above purposes and not through these organisations.

(4) As per rule 4(4) of CSR Rules, a company may also collaborate with other companies for undertaking CSR projects or programs or activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with CSR Rules.

#### **4.7.7 Identifying appropriate Implementing Agency**

Identifying an appropriate Implementing Agency for undertaking CSR activities is an important task as the proper utilization of funds allocated depends on how capable the Implementing Agency is.

While finalizing the Implementing Agency, the following points should be kept in mind:

- The Implementing Agency should have well established track record of 3 years or more;
- The Implementing Agency should not have any association with any political party – directly or indirectly. Otherwise the whole purpose may deviate;
- The Implementing Agency should not have any conflict of interest with the employees of the company. There should be no direct or indirect benefit to any of the employees of the company or their family members;
- The HLC 2018 recommendation for due diligence is being complied with by the Implementing Agency;

- The Implementing Agency should have registration under section 12A and section 80G of the Income Tax Act and from 1<sup>st</sup> April, 2021 onwards such agency should also be registered with the MCA for undertaking CSR activities.
- The antecedents of the Implementing Agency, its past reputation, the reputation of persons associated with the same should also be subjected to scrutiny before selection.
- Any other requirement as may be prescribed by Government / Regulatory Authorities is being followed by the Implementing Agency.

## **4.8 CSR Spending**

### **4.8.1 Minimum 2% spending requirement**

As per section 135(5) of the Act, it is the responsibility of the Board to 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, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its CSR Policy. This spending is to be made on activities permissible as per definition of CSR which are included in Schedule VII to the Act and which form part of CSR Policy of the company as well as the annual action plan adopted by the company for the respective financial year.

As per explanation to section 135(5) of the Act, for the purpose of this section, "net profit" shall be calculated in accordance with the provisions of section 198 of the Act after making the adjustments referred to in rule 2(h) of CSR Rules.

It may be noted that while calculating average net profits of three immediately preceding financial years, the figures of profits as well as losses of such previous years should be considered.

Issue with regard to the calculation of 'net profit' has been explained in detail in paragraph 4.3.2 which may please be referred to.

While making CSR spends, the company should give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

**42. Issue:** Is it mandatory to spend CSR funds on projects or activities within the local area where the company operates?

**View:** As per the MCA circular dated 28<sup>th</sup> 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.

#### **4.8.2 Applicability of CSR provisions to newly incorporated companies**

Section 135(1) of the Act specifies eligibility for undertaking CSR activities as net worth of Rs. 500 crore, or turnover of Rs. 1000 crore, or net profit of Rs. 5 crore for the preceding financial year. The criteria is mutually exclusive. While, section 135(5) of the Act enunciates that the quantum of CSR amount to be spent should be calculated as 2% of average net profit made during the immediately preceding three years, it also says that for the companies which have not completed the period of three financial years since incorporation, the quantum of CSR amount to be spent shall be 2% of the average net profits of the company made during such immediately preceding financial years.

From the above, it follows that the section 135(5) of the Act should henceforth be construed accordingly to mean that it is the responsibility of the Board to ensure that the companies falling under section 135(1) should spend their average net profit of immediately three preceding financial years on CSR activities, however if the company has not completed the period of three financial years since its incorporation, such number of financial year(s) which it has completed since its incorporation (being less than three years) should be taken into consideration.

In the case of a newly incorporated company which has not completed three financial years, the company will be obliged to make CSR spends if its net profit for the preceding financial year exceeds the threshold of Rs. 5 crore.

**Illustration:**

ABC Private Ltd. was incorporated on 1<sup>st</sup> April, 2016. During the financial year 2016-17 and 2017-18 it earned the net profit of Rs. 3 crore and Rs. 6 crore respectively (calculated as per section 198 of the Act read with rule 2(h) of CSR Rules). The provisions of section 135 to the Act were applicable to the company in the financial year 2018-19 as its net profit, during the immediately preceding financial year, i.e. 2017-18 exceeds the threshold limit of Rs. 5 crore.

In accordance with the section 135(5) of the Act, the company should ensure that during the financial year 2018-19, an amount equivalent to 2% of the average net profits of the financial year 2016-2017 and 2017-2018 is spent on CSR activities.

**4.8.3 On-going project**

On-going project is defined in rule 2(i) of CSR Rules as under:

“Ongoing Project” means a multi-year project undertaken by a company in fulfillment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the Board based on reasonable justification.”

If the Board has approved a project and subsequently Board realizes that the project and spending is going to extend to next financial year, the same project again is required to be approved by the Board as a multi-year/ on-going project with some reasonable justification.

As per rule 5(2) of CSR Rules, the CSR Committee shall formulate an annual action plan, under which it needs to include the modalities of utilisation of funds and implementation schedules for the projects or programs. Hence, in case of on-going projects, the timelines of CSR spending and any tentative carry forward of CSR spending in a particular financial year must also be incorporated in annual action plan and should be approved.

Further as per rule 4(6) of CSR Rules, in case of ongoing project, the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

### **What is the meaning of ‘commencement’**

As per Cambridge/Oxford Dictionary, the term “Commencement” is defined as “the beginning of something”. As per Merriam Webster’s Dictionary, “Commencement” is defined as “an act, instance or time of commencing”.

Black’s law Dictionary define the term “commence/commencement of building” as under:

COMMENCE: To perform the first act of.

COMMENCEMENT OF BUILDING or improvement, within the meaning of Lien Law, is the visible commencement of actual operations on the ground for the erection of the building, which everyone can readily recognize as commencement of a building, and which is work until building is completed.

As per Concise Law Dictionary, “to commence” means “to originate, to cause to begin; to take the first step; to do the first act in anything.” (Source: A. Ramanatha Aiyar at page 256.)”

Further there are some judgements under the Income Tax Act, which explain the term “Commencement of business” as “To commence any business does not mean merely the business for which the company was started but any transaction including sale, purchase etc.” (Kishan Garh Electric Supply Co. Ltd v State of Rajashtan (AIR 1960 Raj 49)) delivered in the context of section 149 of the Companies Act, 1956.

In the context of “commencement of business” it was held by the Income Tax Appellate Tribunal, Hyderabad Bench in case of *M/s. Surya Infra IT Parks Pvt Ltd v/s. Commissioner of Income Tax (ITA No. 863/Hyd/2014 dated 30<sup>th</sup> November 2015)* that there is a distinction between setting up of the business and commercialization of the operation, which generates actual revenue to the business. The concept of commencement will change according to the nature and facts of particular industry. It may vary depending upon the business model and business cycle of the industry.

In case of *CIT v/s Dhoomketu Builders and Developers (P) Ltd., ITA 528/2012 and 529/2012* delivered on 23<sup>rd</sup> April, 2013, the Hon’ble Delhi High Court had held on similar lines that in case of business of development of real estates, the participation in the tender represents one activity which would enable to acquire the land for development. The commencement of real estate business would normally start with the acquisition of land or immovable property.

Hence, whether the project has commenced or not needs to be carefully evaluated depending on a case to case basis.

**43. Issue:** Timeline for a multi-year project cannot exceed 3 years excluding the financial year in which it was commenced. So does it mean that the project can stretch to maximum total of 4 years?

**View:** A CSR project can be for more than 4 years also, but spending obligation in respect of the project for a particular year can be spread over only for 1+3 years.

**44. Issue:** If obligation of the company to spend on CSR under section 135(5) of the Act is Rs.1 crore for the year 2020-21, whether the company could be said to have discharged its obligations with respect to the following cases involving ongoing projects:-

Case A:

- Amount allocated for the project : Rs. 1 crore
- Amount spent in the current financial Year : Nil
- Amount transferred to Unspent CSR Account for the project as per section 135(6) : Rs. 1 crore

Case B:

- Amount allocated for the project : Rs. 1 crore
- Amount spent in the current financial year: Rs. 20 lakh
- Amount transferred to Unspent CSR Account for the project as per section 135(6) : 80 lakh

**View:** If Board has approved it as an on-going project based on reasonable justification and if the project has commenced during the financial year, it can be said that the company has discharged its CSR obligations.

#### 4.8.4 Unspent Amount

In any financial year, if a company is unable to spend the earmarked amount for CSR activities during that particular financial year itself, second proviso to section 135(5) of the Act prescribes that the reasons for non-spending of CSR amount needs to be mentioned in Board's Report prepared under section 134 of the Act.

With effect from 22<sup>nd</sup> January 2021, the amendments introduced by the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 have become effective, pursuant to which in case the company is unable to spend the earmarked amount for CSR activities during a particular financial

year, and if the Board has not approved any multi-year on-going project for CSR spending with reasonable justification as to why the CSR spending of that particular year needs to be carried forward beyond that financial year up to a maximum of next 3 financial years, such unspent CSR amount of that particular financial year needs to be transferred, within 6 months of the expiry of that financial year, to any of the funds mentioned in Schedule VII to the Act.

The HLC-2018 had recommended that a fund be specified by the Central Government where the unspent CSR amounts by companies be transferred, which may be used for innovative, high-impact projects related to activities listed in Schedule VII to the Act. Rule 10 of the CSR Rules prescribes that until a fund is specified in Schedule VII to the Act for the purposes of section 135(5) and (6) of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in Schedule VII to the Act.

**45. Issue:** Can a company use some currently unused existing bank A/c, which might have been lying idle with company, for making the transfer of unspent CSR amount?

**View:** No, section 135(6) of the Act says, "... special account **to be opened by the company** in that behalf for that financial year...". Hence, a new bank account titled as "Unspent CSR Account" should be opened for transferring the unspent CSR amount.

**46. 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 project

OR

(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 company

OR

- (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.

**47. Issue:** Can a company use previous year's bank account only for transferring subsequent year's unspent CSR amount, if the project is same?

**View:** No, section 135(6) of the Act says "...special account to be opened by the company in that behalf **for that financial year** ....". Hence, for every financial year, a new bank account needs to be opened by the company, unless the bank account used for parking unspent CSR amount of any of the previous years is fully spent now, and the nomenclature of that bank account is changed for using for the relevant financial year.

The purpose of prescribing separate bank account for each financial year is to ensure transparency and to facilitate monitoring of carried forward spending on CSR.

**48. 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.

**49. Issue:** If unspent CSR amount, which is not earmarked for any on-going project, is to be transferred to any fund mentioned in Schedule VII to the Act, whether such transfer must be done prior to disclosure of reasons for not-spending in Board's Report?

**View:** Statutorily, a timeline of 6 months is provided for transfer of unspent amount, not earmarked for any on-going project, to any fund mentioned in Schedule VII to the Act. However, as per rule 8 of CSR Rules, the Board's Report prepared under section 134 of the Act shall include an annual report



on CSR containing particulars specified in Annexure I or II, as may be applicable, of the CSR Rules. As per the format of this disclosure, the details of transfer of unspent CSR amount to fund mentioned in Schedule VII to the Act should be disclosed. Hence, it is open for the company either to first transfer the unspent amount to a fund mentioned in Schedule VII to the Act and disclose the details of such transfer along with reason for non-spending in the Board's Report or the company may disclose the reason of non-spending in Board's Report and provide an undertaking to the effect that it shall transfer the same to any fund mentioned in Schedule VII to the Act within the statutory timeline provided. If the company chooses the second option, it is recommended to disclose the details of such transfer to any fund mentioned in Schedule VII to the Act, in the Board's Report of the next financial year, so as to complete the disclosures for members of the company. This will also ensure that there has been complete transparency in reporting the matter to the members.

**50. 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 31<sup>st</sup> March 2020, 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 31<sup>st</sup> March, 2021, should be transferred to a separate bank account or fund specified in Schedule VII to the Act, as the case may be.

**51. 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 30<sup>th</sup> 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.

**52. Issue:** Which are the funds specified in Schedule VII to the Act where the unspent amount needs to be transferred?

**View:** Following four funds are specified in Schedule VII to the Act:-

- i. Prime Minister's National Relief Fund
- ii. PM CARES Fund

- iii. Clean Ganga Fund setup by Central Government for rejuvenation of river Ganga
- iv. Swachh Bharat Kosh set up by Central Government for promotion of sanitation

#### 4.8.5 Excess Spending

With effect from 22<sup>nd</sup> January 2021, a new proviso has been inserted in section 135(5) of the Act which says that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount spent against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

Rule 7(3) of CSR Rules prescribes that the set-off can be claimed up to immediately succeeding three financial years subject to the condition that –

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of rule 7(2) of CSR Rules.
- (ii) the Board of the company shall pass a resolution to that effect.

**53. Issue:** The provision relating to set off has been inserted w.e.f. 22<sup>nd</sup> 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?

**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<sup>1</sup>, 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.

#### 4.8.6 Surplus arising out of CSR projects

As per rule 7(2) of CSR Rules, any surplus arising out of the CSR activities shall not form part of the business profit of a company and:

- (1) It shall be ploughed back into the same project
- OR
- (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 company
- OR

1. Bhagat Ram Sharma vs Union of India 1988 (1) SCR 1034: AIR 1988 SC 740.

- (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.

Further as per rule 7(3)(i) of CSR Rules, such surplus amount ploughed back into the same project shall not be included in calculation of excess amount by the company, if any, for claiming set off in succeeding three financial years.

This means any surplus arising out of CSR activities must be utilized in the CSR project, but it shall not be considered as part of 2% CSR obligation of the company for the financial year in which it is spent, i.e., it must be over and above the obligation to spend 2% of profits of the company for the relevant financial year.

**Illustration:**

In case of an on-going project, the unspent CSR amount of Rs. 50 lakh for financial year 2020-21 is kept in a separate bank account for spending in subsequent three financial years. During financial year 2021-22, the company receives interest of Rs. 2 lakh on such earmarked amount kept in separate bank account, and it shall be the surplus arising out of CSR activities.

Interest received of Rs. 2 lakh shall not be considered as business profit of the company for financial year 2021-22, and

- (1) the interest received shall be ploughed back into the same project  
OR
- (2) the interest received shall be accumulated in that same bank account (where unspent funds earmarked for CSR are kept) and spent in the same on-going project  
OR
- (3) the interest received shall be transferred to a fund specified in Schedule VII to the Act.

Let us assume that the company spends the earmarked funds of Rs. 50 lakh pertaining to financial year 2020-21 during the financial year 2022-23 along with the interest received of Rs. 2 lakh. Suppose during the financial year 2022-23, the prescribed CSR spending of the company is Rs. 60 lakh. The interest received of Rs. 2 lakh (which is spent during financial year 2022-23) cannot be adjusted against the prescribed CSR spending of Rs. 60 lakh for that financial year, though company is under a statutory obligation to spend Rs. 2 lakh received as interest.

#### 4.8.7 Administrative Overheads

As per the erstwhile rule 4(6) of CSR Rules, companies could build CSR capacities of their own personnel as well as those of their Implementing Agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overheads, should not exceed 5% of total CSR expenditure of the company in one financial year.

Post amendment dated 22<sup>nd</sup> January 2021, this provision has been replaced with rule 7(1) of CSR Rules which says that the Board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

Pursuant to amendment in CSR Rules effective from 22<sup>nd</sup> January 2021, the term 'administrative overheads' had been defined in rule 2(b) of CSR Rules as under:

"Administrative overheads" means the expenses incurred by the company for 'general management and administration' of CSR functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme.

As the above definition is generic, there is bound to be discussion on the issue as to what kind of expenses come within the ambit of "administrative overheads".

As per MCA circular dated 18<sup>th</sup> June 2014, it had clarified that salaries paid by the companies 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. However, thereafter, the erstwhile rule 4(6) of CSR Rules, which provided that companies may spend on capacity building of their own and also Implementing Agencies' personnel up to 5% of total CSR expenditure of the company in one financial year, was amended on 12<sup>th</sup> September 2014, to the effect that the 5% limit shall also include expenditure on administrative overheads.

Pursuant to this amendment in the erstwhile rule 4(6) of CSR Rules, MCA had vide circular dated 17<sup>th</sup> September 2014 omitted the above mentioned point from MCA Circular dated 18<sup>th</sup> June 2014. In effect, salaries paid to CSR staff engaged in administrative activities cannot be factored into project cost, and it shall form part of administrative overheads. Salaries paid to CSR volunteers, who are not doing administrative activities but are involved in the actual implementation of CSR project, may be counted towards CSR Project cost.

Further MCA had issued Frequently Asked Questions (FAQs) vide its circular dated 12<sup>th</sup> January 2016, wherein MCA had clarified that monetization of 'pro bono' services of employees would not be counted towards CSR expenditure.

Designing, implementation, monitoring, and evaluation is part of CSR project cost and it would not be considered as Administrative cost / overheads.

Hence, 'general management and administration' costs related to the CSR function of the company is administrative cost, whereas cost spent on the implementation of a CSR project would form part of that particular CSR project.

**54. 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.

#### 4.8.8 Creation of Capital Assets

As per rule 7(4) of CSR Rules, CSR expenditure may be incurred by companies for creation or acquisition of a capital asset. However, such capital asset shall be held by-

- (a) a company established under section 8 of the Act, or a registered public trust or registered society, having charitable objects and CSR registration number under rule 4(2) of CSR Rules; or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority

The proviso to rule 7(4) of CSR Rules states that any capital asset created by a company prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2021, (i.e., prior to 22<sup>nd</sup> January 2021) shall, within a period of 180 days from such commencement (i.e. within 180 days from 22<sup>nd</sup> January 2021, i.e., by 21<sup>st</sup> July, 2021) comply with the requirement of this rule, which may be extended by a further period of not more than ninety days (i.e., up to 19<sup>th</sup> October 2021) with the approval of the Board based on reasonable justification.

In this particular proviso to rule 7(4) of the CSR Rules, it has been expressly mentioned that the requirement to comply with the newly inserted rule 7(4) shall apply even in respect of such capital assets which were created by companies as part of CSR projects, prior to the commencement of the rule 7(4), and a specific transitional timeline has also been provided.

While complying with rule 7(4) of CSR Rules, relevant provisions of Income Tax/ GST / Stamp Act/ Registration or other applicable laws should be complied with.

**55. Issue:** Can the capital asset created out of CSR spent be held by section 8 company / registered public trust / registered society which is in process of getting (but not yet received) section 12A and 80G registration under the Income Tax Act?

**View:** As per rule 7(4) of CSR Rules, the CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by a section 8 company or registered public trust or registered society, having charitable objects and CSR registration number issued by the MCA.

Accordingly, if the said capital asset is proposed to be held by any of these entities, it is mandatory that it must have CSR registration number issued by MCA.

As per format of "Form CSR-1" prescribed by the MCA, only such section 8 companies or registered public trusts or registered societies which have registration under section 12A and 80G of the Income Tax Act, 1961, are eligible to apply for CSR registration number from MCA.

Hence, capital assets created out of CSR spent cannot be held by any such entity of which registration is pending under section 12A and 80G of the Income Tax Act, 1961 and with the MCA.

**56. Issue:** Whether the Capital asset created / acquired post 22<sup>nd</sup> January 2021 be held by the company or entities referred to in rule 7(4) of CSR Rules?

**View:** Post 22<sup>nd</sup> January 2021, the capital asset created / acquired out of CSR spending is required to be held by the entities referred to in rule 7(4) of CSR Rules.

**57. Issue:** While undertaking CSR expenditure if an asset is being created, is it necessary for the company to route the funds through specified entities under rule 7(4) of CSR Rules or the company can spend it directly?

**View:** According to rule 7(4) of the CSR Rules, the CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by entities specified in said rule.

**58. Issue:** Whether capital asset will mean only immovable properties or will it include even movable properties also?

**View:** The term 'capital asset' has not been defined in CSR Rules or anywhere in the Act. However, the term 'capital asset' has been defined in section 2(14) of the Income Tax Act, 1961 as capital asset means:

- a) Any kind of property held by an assessee, whether or not connected with business or profession of the assessee.
- b) Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.

However, the term 'capital asset' shall exclude the following:

- a) Stock-in-trade, consumable stores, raw materials held for the purpose of business or profession;
- b) Movable property held for personal use of assessee or for any member of his family dependent upon him. However, jewellery, costly stones, and ornaments made of silver, gold, platinum or any other precious metal, archaeological collections, drawings, paintings, sculptures or any work of art shall be considered as capital asset even if used for personal purposes;
- c) Specified Gold Bonds and Special Bearer Bonds;
- d) Agricultural Land in India, not being a land situated:
  - a. Within jurisdiction of municipality, notified area committee, town area committee, cantonment board and which has a population not less than 10,000;
  - b. Within range of following distance measured aerially from the local limits of any municipality or cantonment board:
    - i. not being more than 2 KMs, if population of such area is more than 10,000 but not exceeding 1 lakh;
    - ii. not being more than 6 KMs , if population of such area is more than 1 lakh but not exceeding 10 lakh; or
    - iii. not being more than 8 KMs , if population of such area is more than 10 lakh.
- e) Deposit certificates issued under the Gold Monetisation Scheme, 2015

Hence, a view may be taken that the definition under the Income Tax Act may be applied for identifying which assets should be considered as 'capital assets' for the purpose of transferring to any prescribed entity as mentioned under rule 7(4) of CSR Rules.

#### **4.8.9 Corpus Funding**

As per the erstwhile rule 7 of CSR Rules, CSR expenditure would include all

expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of the CSR Committee. Further as per MCA Circular dated 18<sup>th</sup> June 2014, contribution to corpus of a trust / society / section 8 company, etc., will qualify as CSR expenditure as long as:

- (a) The trust / society / section 8 company, etc., is created exclusively for undertaking CSR activities or
- (b) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII to the Act.

This position was also re-iterated in the Frequently Asked Questions (FAQs) on CSR released by MCA vide circular dated 12<sup>th</sup> January 2016 in Question no. 10.

Interestingly, pursuant to the amendment in CSR Rules effective from 22<sup>nd</sup> January 2021, there is no rule corresponding to the erstwhile rule 7 of CSR Rules. Hence, the concept of contributions being made to 'corpus' has been deleted from the CSR Rules, and concept of 'on-going project' has been introduced, where company has a discretion of deciding whether to spend the amount in that particular year itself or carry it forward in its own books till next 3 years. Hence, from 22<sup>nd</sup> January, 2021 onwards, the contributions made to corpus of trusts / societies / section 8 companies, etc., may not qualify as CSR expenditure.

**59. Issue:** If any amount had been contributed by company towards corpus of any registered trust / registered society / section 8 company before 22<sup>nd</sup> January 2021, but the same was not spent by registered trust / registered society / section 8 company by 31<sup>st</sup> March 2021, what should be the treatment of such unspent funds?

**View:** From company's perspective, if the CSR contribution is made towards the corpus of section 8 company / trust / society, it was obviously not intended to be spent in the same year as such. Further contribution to corpus in the question is before 22<sup>nd</sup> January 2021 and hence it would be considered as CSR for financial year 2020-21, irrespective of whether amount contributed was actually spent or not if the conditions mentioned in MCA circular dated 18<sup>th</sup> June 2014 are fulfilled, i.e.,

- (a) The trust / society / section 8 company, etc., is created exclusively for undertaking CSR activities or
- (b) Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII to the Act.



## **4.9 CSR Monitoring**

Monitoring of CSR projects goes concurrently with implementation and it is an integral part of the CSR activity. Monitoring is essential to assess if the progress is on expected lines in terms of timelines, budgetary expenditure and achievement of milestones. In terms of rule 4(5) of CSR Rules, the Board of a company shall satisfy itself that the funds so disbursed by it for carrying out CSR implementation have been utilised for the purposes and in the manner as approved by it.

Also, in case of on-going projects, rule 4(6) of CSR Rules says that the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Hence, the CSR Committee and the Board should be apprised periodically of the progress of all CSR activities undertaken.

Periodic progress report on CSR activities of the company should be placed before the CSR committee and the Board. On the basis of such reports, the CSR committee and / or the Board may recommend appropriate actions for course corrections, if need be.

To ensure that the funds are utilized prudently for the intended purpose, the company should place appropriate checks on the utilization of funds. The funds should be released in a phased manner, upon full satisfaction of the utilization of funds previously given.

Other modalities of utilization of funds and implementation schedules for the projects or programmes and manner of execution of the same are expected to be prescribed in the annual action plan prepared under rule 5(2) of CSR Rules. The Board also needs to prescribe, in the CSR Policy, such parameters by way of guiding principles for selection, implementation and monitoring of activities as well as formulation of annual action plan.

### **4.9.1 CFO Certification**

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.

**60. Issue:** At what frequency should CFO certify to the Board about utilisation of CSR funds disbursed through Implementing Agencies?

**View:** 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.

**61. Issue:** Whether CFO should certify to the Board after disbursing the amount to Implementing Agencies also?

**View:** No, after disbursing amount to Implementing Agencies, he is not required to certify. In fact, only after monitoring the spending done by the Implementing Agency to the ultimate beneficiary, CFO needs to certify to the Board about its utilisation.

**62. Issue:** Can CFO engage third party professional to monitor the utilisation of funds and confirm utilisation to the Board?

**View:** CFO can take assistance for evaluating whether funds disbursed by the company have been utilised for the purpose and in the manner as approved by the Board, provided that the CFO is authorised to engage third party professional. However, the ultimate responsibility to furnish certificate to the Board under CSR Rules rests with the CFO only.

**63. Issue:** Whether CFO needs to certify to the Board even for spending done directly or only for spending done through Implementing Agencies?

**View:** The wordings of rule 4(5) of CSR Rules are that the Board shall satisfy itself that the funds disbursed have been utilized for the purposes and in the manner as approved by the Board. The reference about 'Implementing Agencies' is given only in rule 4(1) and 4(2) of CSR Rules.

Rule 4(3) of CSR Rules speaks about engaging international organizations for designing, monitoring and evaluation of the CSR projects or programmes and for capacity building of their own personnel for CSR, and rule 4(4) of CSR Rules speaks about collaborating with other companies for undertaking projects or programmes or CSR activities.

Hence, the context in which CFO certification is prescribed in rule 4(5) of CSR Rules is not only with regard to the spending done through 'Implementing Agencies', but it is in the context of overall CSR spending. Hence, CFO needs to certify to the Board even for spending done directly by the company as well as through Implementing Agencies.

**64. 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.

**65. Issue:** Whether CFO certification is needed for CSR spending done in financial year 2020-21 also?

**View:** CFO certification requirement comes from rule 4(5) of CSR Rules which has come into force on the date of publication of amendment to CSR Rules i.e. 22<sup>nd</sup> January, 2021. Hence, for CSR spending done in financial year 2020-21, the certificate from CFO should be submitted.

**66. Issue:** What should be the format of CFO Certificate?

**View:** There is no format prescribed for the same. However, the certificate should satisfy the Board that the money disbursed towards CSR activities / projects has been utilised for the purposes and in the manner as approved by it.

A specimen format of CFO Certificate is placed at **Annexure-VI**.

**67. Issue:** Whether CFO certificate needs to be attached to the annual report on CSR?

**View:** There is no requirement in the CSR Rules to attach CFO certificate to the annual report on CSR.

**68. Issue:** Whether CFO certificate needs to be placed at CSR Committee meeting or Board meeting?

**View:** Rule 4(5) of CSR Rules says 'the Board of a company shall satisfy itself that the funds 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.' Hence, in order to ensure that Board satisfies itself, the CFO certificate should be placed at the Board meeting. However, as per section 135(3)(b) of the Act, the amount of expenditure to be incurred on activities mentioned in CSR Policy would be recommended by the CSR Committee to the Board. Further as per rule 5(2)(d) of CSR Rules, it is also important to note that the role of the CSR Committee is to prescribe monitoring and reporting mechanism for the projects or programs in the annual action plan and in order to ensure compliance of its obligations, the CSR Committee may also consider the certificate from CFO prescribed under rule 4(5) of CSR Rules.

**69. Issue:** Whether reference about CFO certificate needs to be recorded in Board minutes?

**View:** It is not explicitly mentioned to make note of the fact that the CFO certificate has been given, however it is recommended to record the same in Board minutes.

**70. Issue:** If company does not have a designated CFO, who needs to certify?

**View:** If no person is designated as CFO, any person responsible for financial management needs to certify to the Board. Ultimately this certification is for the Board to get satisfied about the utilization of the funds in the manner approved by it. Hence, in such cases where there is no person designated as CFO or there is no particular person designated as head of finance department, it is up to the Board to specify in what manner it should get satisfied about utilization of funds.

It may be noted that the CSR responsibilities of the Board and CSR committee cannot be assigned to Trust / Trustees. Hence, even if the company has formed a Trust for undertaking CSR activities, the ultimate responsibility for such CSR activities would always be on the company. Hence, CFO certificate would also be needed in such cases.

#### 4.9.2 Impact Assessment

As per rule 8(3)(a) of CSR Rules, every company having average CSR obligation of Rs. 10 crore or more pursuant to section 135(5) of the Act, in the three immediately preceding financial years, shall undertake an impact assessment, through an independent agency, of their CSR projects having outlays of Rs. 1 crore or more, and which have been completed not less than one year before undertaking the impact study.

Further as per rule 8(3)(b) of CSR Rules, the impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

Also, as per rule 8(3)(c) of CSR Rules, a company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed 5% of the total CSR expenditure for that financial year or Rs. 50 lakh, whichever is less.

This is a new requirement inserted under the CSR Rules, based on the recommendation of the HLC-2018. It may be noted that the HLC-2018 had recommended for need and impact assessment for CSR projects. These two are different concepts, as 'need assessment' is an activity which is preparatory to starting any CSR project, whereas 'impact assessment' is an activity which can be done only post completion of CSR projects. However, rule 8(3) of CSR Rules speaks only about the need for an 'impact assessment', whereas rule 5(2) of

CSR Rules which requires a company to prepare an annual action plan says that one of the contents of annual action plan shall be '*details of need and impact assessment, if any, for the projects undertaken by the company*'. Hence, though impact assessment is mandatory in case of certain companies and for certain projects, it is recommended to carry out a need assessment also, although it is not mandatorily prescribed.

**71. Issue:** Whether impact assessment is mandatory for all projects to be undertaken from financial year 2021-22 onwards?

**View:** It is required to have impact assessment by the specified companies for the projects mentioned in rule 8(3)(a) of the CSR Rules which have completed on or after 22<sup>nd</sup> January, 2021.

**72. 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.

**73. Issue:** Can a company prescribes 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).

**74. Issue:** Whether impact assessment needs to be done every year?

**View:** Impact assessment is to be undertaken for a project which have spends beyond the threshold of Rs.1 crore. Hence it is to be done project wise and not financial year wise. The timeline of impact assessment may vary from project to project. For some projects, assessment after one year of completion may be sufficient and for some projects, the impact assessment may be appropriate after a period longer than one year. The only requirement is that the impact assessment report needs to be placed before the Board and shall be annexed to the annual report on CSR.

**75. Issue:** Can the first impact assessment of CSR projects having outlays of Rs. 1 crore or more, and which have completed not less than one year, be undertaken within 3 years from the date of project completion and thereafter at such intervals as prescribed in the CSR Policy of the company?

**View:** As per rule 8(3) of CSR Rules, if the average CSR obligation of company for immediately preceding three financial years as per section 135(5) of the Act is Rs. 10 crore or more and such company has CSR Projects having outlays of Rs. 1 crore or more, post one year after completion of said project, impact assessment needs to be done mandatorily. As mentioned above, the frequency as to when to conduct first impact assessment and thereafter at what frequency should impact assessment be conducted should be entirely at the discretion of the CSR Committee or as prescribed in the CSR Policy of the company.

**76. Issue:** Whether the impact assessment needs to be done for an ongoing project in respect of which an outlay of Rs. 1 crore or more has been made in the financial year but the project is not yet completed ?

**View:** Impact assessment is required to be done only after project is completed. If the project is on-going or not yet completed, even if the outlay has exceeded Rs. 1 crore, impact assessment is not mandatory.

**77. Issue:** Can impact assessment be carried out jointly by two or more companies, irrespective of which company has incurred expenditure for impact assessment?

**View:** As per the rule 4(4) of CSR Rules, a company may collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with CSR Rules. Hence, there may be a possibility that two or more companies could have undertaken a common project or program.

While doing impact assessment of such commonly undertaken project or program, there is no restriction in undertaking the impact assessment jointly by both or such higher number of companies who would have undertaken the project. So, all the companies involved in the project jointly may attach the common impact assessment report to their respective CSR Committee. Annexures to be attached to their respective Board's Reports relative to the outlay of each company in the common project/programme.

Further in such case of common impact assessment being undertaken, there is no bar in the CSR Rules to a single company bearing the entire cost of impact assessment. In such a scenario, it is up to the other companies to decide whether they will re-imburse a portion of the cost incurred to the company incurring the total cost. The companies may also decide between themselves as to who will claim the cost of common impact assessment as their CSR expenditure. However, it must be noted that the cost of impact assessment claimed as CSR expenditure cannot exceed the thresholds prescribed under rule 8(3)(c) of CSR Rules for each company.

If the companies undertaking common impact assessment are related parties, the provisions of section 188 and 177 of the Act and regulation 23 of Listing Regulations also need to be complied with.

**78. 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.

**79. Issue:** Whether cost of impact assessment can be claimed as CSR expenditure over and above the administrative overheads?

**View:** Yes, the admissibility of administrative overheads up to 5% as CSR costs is mentioned under rule 7(1) of CSR Rules, whereas the admissibility of impact assessment cost as CSR is referred to under rule 8(3)(c) of CSR Rules. Hence, these are separate items. Further, a definition has been given for 'administrative overheads' and the cost of impact assessment may not fall under the definition of 'administrative overheads'. Hence, cost of impact assessment can be claimed as CSR expenditure over and above the administrative overheads subject to the caps laid down.

**80. Issue:** Whether 'need assessment' of CSR projects is required to be done and whether cost incurred for the same be claimed as CSR expenditure?

**View:** The requirement of 'need assessment' was recommended by the HLC-2018, but it has not been made part of rule 8(3) of CSR Rules, though a reference to 'need assessment' is made in rule 5 of CSR Rules, i.e., annual action plan. Unlike impact assessment for which a separate allocation of expenditure is permitted that is not the case with need assessment.

**81. Issue:** If a company has obligation of spending Rs. 10 crore or more in three immediately preceding financial years, but company has spent partial amount only (whose average is less than Rs. 10 crore) or if company has not spent at all, whether impact assessment still needs to be done?

**View:** If the company has an obligation of spending as per rule 8(3) of CSR Rules, or if none of the projects where it has spent have outlays of Rs. 1 crore or more and have completed at least 1 year, impact assessment is not necessary. Further, if company has not spent at all, there is no question of impact assessment.

#### 4.10 CSR Reporting

The Board's Report of a company covered under CSR Rules shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the CSR Rules. The format as per Annexure I is applicable for the financial year commenced prior to 1<sup>st</sup> April 2020, and the format as per Annexure II is applicable for the financial year commencing on or after 1<sup>st</sup> April 2020. In case of a foreign company, the balance sheet filed under the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

The format of annual report on CSR as specified in CSR Rules is placed at **Annexure-VII.**

Rule 4(4) of CSR Rules says that a company may also collaborate with other companies for undertaking projects or programs or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programs in accordance with CSR Rules.

The reference made in rule 4(4) with regard to collaboration with other companies may apply for projects or programs or CSR activities done through Implementing Agencies as well as activities undertaken by them directly.

It may be noted that the MCA vide notification dated 24<sup>th</sup> March, 2021 amended Schedule III to the Companies Act, 2013 to enhance the disclosures required to be made by the company in its financial statements. The purpose of amendment to Schedule III to the Act was broadly to align the company's financial statements



in accordance with the auditor's reporting requirements i.e. the Companies (Auditors and Report Order) 2020.

Amended Schedule III to the Act applies to financial statements prepared for the financial year 2021-22 onwards and these requirements should be kept in mind while making disclosure on CSR in the financial statements.

### **Display of CSR Activities on Website**

As per rule 9 of CSR Rules, the Board of Directors of the company shall mandatorily disclose the composition of the CSR Committee, the CSR Policy and projects approved by the Board on website of the company, if any, for public access.

As per the erstwhile rule 9, only the contents of CSR Policy were to be displayed on the website of the company, as per the particulars specified in the Annexure to be attached to the Board's Report. However, post the amendment dated 22<sup>nd</sup> January 2021, the composition of the CSR Committee as well as the projects approved by the Board should also be disclosed on website of the company.

**82. 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.

**83. 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 22<sup>nd</sup> 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.

**84. 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.

#### **4.11 Specimen Board Resolutions for CSR**

Specimen of following Board Resolutions on CSR are placed at **Annexure-VIII**:

1. To approve filing of e-form CSR -1
2. To approve amendment to the existing CSR Policy
3. To approve and adopt a new policy
4. To identify Implementing Agency and approve allocation of CSR amount
5. To approve the annual action plan for the financial year\_\_\_\_\_
6. To approve dissolution of CSR Committee
7. To approve opening of a bank account for unspent CSR amount
8. To approve ongoing project and transfer to the 'Unspent CSR A/c'
9. To approve transfer of unspent CSR amount to specified fund under Schedule VII to the Act
10. To approve appointment of independent agency for undertaking impact assessment

#### **4.12 General or Special Directions**

The Companies (Amendment) Act, 2019 has inserted section 135 (8) of the Act which empowers the Central Government to give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of section 135 of the Act and such company or class of companies shall comply with such directions.

#### **4.13 Penal Provisions for not spending**

The Companies (Amendment) Act, 2020 has amended the penal provisions under section 135(7) of the Act effective from 22<sup>nd</sup> January 2021 as under:

“(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.”;

Hence, if the company fails to spend the prescribed amount of 2% of profits as per its CSR Policy or to transfer amount in any of the funds prescribed in Schedule VII to the Act, not only the company is liable for penal consequences but there shall be personal liability also on the officer in default.

Since the liability is in the form of 'penalty' it shall be open for adjudication under the in-house adjudication powers of the Registrar of Companies, without requiring to follow the process of prosecution.

### **Difference between fine and penalty**

Section 135(7) of the Act as introduced by the Companies (Amendment) Act, 2019 provided for the imposition of fine for non-compliance of section 135 of the Act. Apart from this, officers in default were also liable to fine together with imprisonment by way of punishment or for both. The Companies (Amendment) Act, 2020 substituted the above sub-section and provided for imposition of penalty instead of fine and also the punishment by way of imprisonment applicable on the officers in default was withdrawn. The quantum of penalty was also reduced considerably as against the quantum of fine. It is important in law to distinguish between fine and penalty.

A fine is a pecuniary punishment for an offence under the IPC (45 of 1860-section 40). Under the Mines Act it represents a monetary payment by a tenant to his landlord on a particular occasion. [section 2(1)(i) of the Mines Act, 1952]

Penalty is a liability composed as a punishment on the party committing the breach of contract. In criminal law it represents a punishment inflicted by a law for its violation.

Penalty and fine are not the same in law. A penalty is always recoverable in a civil action. A fine is never a penalty as it goes to the party suing, when recovered. A fine has been defined in law to be a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor.

The expression penalty refers to recovery of an amount as a penal measure even in civil proceedings. An exaction which is not compensatory in character is also a penalty. When penalty is imposed by an adjudicating authority, it is done so in adjudicatory proceedings and not by way of fine as a result of prosecution of an accused for commission of an offence in a criminal court. (Director of enforcement v MCTM Corpn.Pvt.ltd (AIR 1966 SC 1100,1104)

{Source- Reproduced selectively from P. Ramanatha Aiyar, Concise Law Dictionary Seventh Edition (from pages 584 and 1072).}

## 5. BUSINESS RESPONSIBILITY REPORTS BY LISTED COMPANIES

At a time and age when enterprises are increasingly seen as critical components of the social system, they are accountable not merely to their shareholders from a revenue and profitability perspective but also to the larger society which is also its stakeholder. Hence, adoption of responsible business practices in the interest of the social set-up and the environment is as vital as their financial and operational performance. This is all the more relevant for listed entities which, considering the fact that they have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis.

Ministry of Corporate Affairs, Government of India, in July 2011, came out with the 'National Voluntary Guidelines ("NVGs") on Social, Environmental and Economic Responsibilities of Business'. These guidelines contain comprehensive principles to be adopted by companies as part of their business practices and a structured business responsibility reporting format requiring certain specified disclosures, demonstrating the steps taken by companies to implement the said principles.

In line with the above NVGs and considering the larger interest of public disclosure regarding steps taken by listed entities from an Environmental, Social and Governance ("ESG") perspective, SEBI has mandated the requirement of Business Responsibility Report ("BRR") in the year 2012.

SEBI, in 2012, mandated the top 100 listed entities by market capitalisation to file BRR as per the disclosure requirement emanating from the NVGs. The requirement for filing BRRs was extended to the top 500 entities companies by market capitalisation from the financial year 2015-16. In December 2019, SEBI extended the BRR requirement to the top 1000 listed entities by market capitalisation, from the financial year 2019-20.

In terms of Regulation 34(2)(f) of SEBI's Listing Regulations, the top 1000<sup>2</sup> listed entities based on market capitalization (calculated as on March 31 of every financial year) are required to include Business Responsibility Report, as part of their annual report, describing the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by the SEBI from time to time.

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2. Substituted for "five hundred" by the SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2019, w.e.f. 26.12.2019.

The listed entities other than top 1000 listed entities as stated above and listed entities which have listed their specified securities on SME Exchange, may include BRR in their annual report on a voluntary basis in the format as specified.

The key principles which are required to be reported by the entities pertain to areas such as environment, governance, stakeholder's relationships, etc. and are in alignment with the erstwhile NVGs Guidelines issued by the MCA.

It is pertinent to mention that the requirement of BRR was introduced in the year 2012 considering the principles enshrined in the NVGs issued by MCA, which were later revised in the year 2018. After, revision and updation, the new principles are called the National Guidelines on Responsible Business Conduct ("NGRBC").

In November 2018, the MCA constituted a Committee on Business Responsibility Reporting ('Committee on BRR') for finalising Business Responsibility Reporting formats for listed and unlisted companies, based on the framework of the NGRBC. SEBI was also part of this Committee and worked on the report. The report of the Committee was released on 11<sup>th</sup> August, 2020.

The Committee on BRR recommends that the Business Responsibility Report be called the Business Responsibility and Sustainability Report (BRSR).

Based on the report of the committee, SEBI issued a consultation paper on the format for BRSR on 18<sup>th</sup> August, 2020, wherein, it is proposed that the format for BRSR, as recommended by the Committee, shall be applicable to the top 1000 listed entities by market capitalization. It is also proposed that to begin with, the new format will be adopted by such listed entities on a voluntary basis for the financial year 2020 – 21 (for those who choose not to adopt the new format, the existing format will apply) and mandatorily from the financial year 2021-22.

SEBI in its Board meeting held on 25<sup>th</sup> March, 2021 has mentioned that the BRSR shall be applicable to the top 1,000 listed entities by market capitalization on a voluntary basis from financial year 2021-22 and mandatory from financial year 2022-23.

**85. Issue:** What is the impact of BRR reporting as far as CSR spends are concerned?

**View:** BRR expects the company to report impact assessment of CSR programs. Further it also requires the reporting on the steps taken by the company to ensure that the community development initiative is successfully adopted by the community.

## **6. GUIDELINES ON CSR AND SUSTAINABILITY FOR CENTRAL PUBLIC SECTOR ENTERPRISES (CPSEs)**

The first guidelines on CSR were issued by Department of Public Enterprises (DPE) in April 2010 to make it mandatory for public sector enterprises to set aside a fixed percentage of their profits for CSR activities. Subsequently, DPE explored a new dimension of CSR as a form of responsible business to be adopted voluntarily by the companies. After extensive consultations with all key stakeholders, DPE issued revised guidelines on CSR and Sustainability, effective from 1<sup>st</sup> April 2013, which incorporated the global best practices but retained focus on the domestic socio- economic requirements of our country.

The thrust of DPE guidelines on CSR and Sustainability has been on inclusive growth, development of backward regions, upliftment of the marginalized and under privileged and weaker sections of the society, empowerment of women, environment sustainability, promotion of green and energy efficiency technologies and sustainability development in all its diverse aspects.

The Act makes it mandatory for companies which fulfil the specified criteria to spend at least 2% of their average net profits of three preceding financial years on CSR activities. Considering the CSR provisions under the Act and rules made there under, the DPE has issued revised Guidelines on Corporate Social Responsibility and Sustainability for CPSEs w.e.f. 01.04.2014, which is reproduced below:

### **1.0. Background**

- 1.1. The Government of India enacted the Companies Act 2013 in August 2013. Section 135 of the Companies Act, 2013 (hereinafter referred to as 'the Act') deals with the subject of Corporate Social Responsibility (CSR). It lays down the qualifying criteria based on net worth, turnover, and net profit for companies which are required to undertake CSR activities and, *inter-alia*, specifies the broad modalities of selection, implementation and monitoring of the CSR activities by the Boards of Directors of companies. The activities which may be included by companies in their CSR policies are listed in Schedule VII of the Act. The provisions of section 135 of the Act and Schedule VII of the Act apply to all companies, including CPSEs.
- 1.2. The Ministry of Corporate Affairs has formulated CSR Rules under the provisions of the Act and issued the same on 27<sup>th</sup> February, 2014. The CSR Rules are applicable to all companies, including CPSEs w.e.f. 1<sup>st</sup> April, 2014.

- 1.3 All CPSEs shall have to comply with the provisions of the Act and the CSR Rules. Any amendment notified by the Ministry of Corporate Affairs in the CSR Rules, or in Schedule VII of the Act will also be binding on the CPSEs.
- 1.4 Prior to the notification of CSR Rules, DPE Guidelines on CSR and Sustainability issued in December 2012, were applicable to CPSEs w.e.f. 01.04.2013. In DPE guidelines, CSR and sustainable development were treated as complementary and, therefore, dealt with together. CSR was seen as an important constituent of the overarching framework of sustainability. The present guidelines of DPE are also intended to reinforce the complementarity of CSR and sustainability and to advise the CPSEs not to overlook the larger objective of sustainable development in the conduct of business and in pursuit of CSR agenda.

## **2.0. DPE Guidelines on CSR and Sustainability for CPSEs**

- 2.1. The CSR provisions of the Act, Schedule VII of the Act, and the CSR Rules are inviolable. However, in addition to the CSR provisions of the Act and the CSR Rules, the Department of Public Enterprises (DPE) has formulated Guidelines on CSR and Sustainability (hereinafter referred to as 'the Guidelines') which are applicable to CPSEs. It is clarified that the Guidelines do not supersede or override any provision of the Act, or Schedule VII of the Act, or the CSR Rules, but will only supplement them. The Guidelines are in the nature of initiatives or endeavour which the key stakeholders expect from CPSEs in the discharge of their Corporate Social Responsibility. Any possible situation in which there may be a conflict between the CSR Rules and the Guidelines, is not envisaged. However, it is clarified that in case of any perceived conflict between the CSR Rules and the Guidelines, the former shall prevail in all circumstances.
- 2.2 The term Sustainability has been used in conjunction with CSR in the title of DPE Guidelines because CSR activities which are envisaged in the Act and in the CSR Rules can be supplemented with sustainability initiatives as both aim at achieving sustainable development goals. In the Guidelines the need for taking sustainability initiatives is emphasised in addition to the requirement of mandatory compliance with the CSR Rules. The Guidelines are aimed at providing an overarching framework of Sustainability within which CSR is firmly embedded. Therefore, CPSEs are advised to read the CSR Rules together with the Guidelines to clearly understand what is expected of them by the stakeholders.

- 2.3 The Act enjoins all companies to have a CSR Policy, and the information which needs to be furnished in the CSR Policy is specified in the CSR Rules. There is to be no deviation from the mandatory provisions of the Act and the CSR Rules in this regard. However, the CSR Policy document of a CPSE should also include a vision and mission statement of how the CPSE proposes to comply with the Guidelines. The broad sustainability initiatives which a CPSE intends to undertake should also find mention therein. Since CSR and Sustainability issues are complementary in nature, and both are to be mentioned in the policy document, it is suggested that it may be referred to as 'CSR and Sustainability' policy. The change in nomenclature of the policy document and its information expanse would not in any way detract from the CPSE's commitment to CSR, or dilute its content. Rather, it would only indicate the willingness of the CPSE to voluntarily take a few extra steps to address social, economic and environmental concerns, which may be beyond the realm of CSR as envisaged in the Act and the CSR Rules, but are nevertheless worthy of attention for promotion of sustainable development in its diverse dimensions.
- 2.4 The following Guidelines applicable to all CPSEs are generally in the nature of guiding principles. The guidelines contain certain additional requirements as mentioned below:
- i) It is mandatory for all profit making CPSEs to undertake CSR activities as per the provisions of the Act and the CSR Rules. Even the CPSEs which are not covered under the eligibility criteria based on threshold limits of net-worth, turnover, or net profit as specified by section 135 (1) of the Act, but which made profit in the preceding year, would also be required to take up CSR activities as specified in the Act and the CSR Rules, and such CPSEs would be expected to spend at least 2% of the profit made in the preceding year on CSR activities.
  - ii) All CPSEs must adopt a CSR and Sustainability Policy specific to their company with the approval of the Board of Directors. The philosophy and spirit of CSR and Sustainability must be firmly ingrained in the policy and it must be consistent with the CSR provisions of the Act, Schedule VII of the Act, CSR Rules, the Guidelines, and the policy directions issued by the Government from time to time. The CSR and Sustainability policy of a CPSE should serve as the referral document for planning its CSR



activities in accordance with Schedule VII of the Act and give a road map for formulation of actionable plans.

- iii) If the CPSEs feel the necessity of taking up new CSR activities / projects during the course of a year, which are in addition to the CSR activities already incorporated in the CSR Policy of the company, the Board's approval of such additional CSR activities would be treated as amendment to the policy.

It would be mandatory for all CPSEs which meet the criteria as laid down in section 135(1) of the Act, to spend at least 2% of the average net profits of the three immediately preceding financial years in pursuance of their CSR activities as stipulated in the Act and the CSR Rules. This stipulated percentage of average net profits is to be spent every year in a manner specified in the Act and CSR Rules. In case a company fails to spend such amount, it shall have to specify the reasons for not spending it. However, in case of CPSEs mere reporting and explaining the reasons for not spending this amount in a particular year would not suffice and the unspent CSR amount in a particular year would not lapse. It would instead be carried forward to the next year for utilisation for the purpose for which it was allocated. While selecting CSR activities / projects from the activities listed in Schedule VII of the Act, CPSEs should give priority to the issues which are of foremost concern in the national development agenda, like safe drinking water for all, provision of toilets especially for girls, health and sanitation, education, etc. The main focus of CSR and Sustainability policy of CPSEs should be on sustainable development and inclusive growth, and to address the basic needs of the deprived, under privileged, neglected and weaker sections of the society which comprise of SC, ST, OBCs, minorities, BPL families, old and aged, women / girl child, physically challenged, etc.

- iv) For CPSEs to fully exploit their core competence and mobilize their resource capabilities in the implementation of CSR activities / projects, they are advised to align their CSR and Sustainability policy with their business policies and strategies to the extent possible, and select such CSR activities / projects which can be better monitored through in-house expertise.
- v) All CPSEs are expected to act in a socially, economically and

environmentally sustainable manner at all times. Even in their normal business activities, public sector companies should try to promote sustainable development through sustainability initiatives by conducting business in a manner that is beneficial to both, business and society. They are advised not to lose sight of their social and environmental responsibility and commitment to sustainable development even in activities undertaken in pursuance of their normal course of business. National and global sustainability standards which promote ethical practices, transparency and accountability in business may be referred to as guiding frameworks to plan, implement, monitor and report sustainability initiatives. But the amount spent on sustainability initiatives in the pursuit of sustainable development while conducting normal business activities would not constitute a part of the CSR spend from 2% of profits as stipulated in the Act and the CSR Rules.

- vi) As a part of their sustainability initiatives CPSEs are expected to give importance to environmental sustainability even in their normal mainstream activities by ensuring that their internal operations and processes promote renewable sources of energy, reduce / re-use / recycle waste material, replenish ground water supply, protect / conserve / restore the ecosystem, reduce carbon emissions and help in greening the supply chain. CPSEs are expected to behave in a responsible manner by producing goods and services which are safe and healthy for the consumers and the environment, resource efficient, consumer friendly, and environmentally sustainable throughout their life cycles i.e. from the stage of raw material extraction to production, use / consumption, and final disposal. However, such sustainability initiatives will not be considered as CSR activities as specified in the CSR Rules, and the expenditure incurred thereon would also not constitute a part of the CSR spend. Nevertheless, CPSEs are encouraged to take up such sustainability initiatives from their normal budgetary expenditure as it would demonstrate their commitment to sustainable development.
- vii) Sustainability initiatives would also include steps taken by CPSEs to promote welfare of employees, especially women, physically challenged, SC/ST/OBC categories, by addressing their concerns of safety, security, professional enrichment and

healthy working conditions beyond what is mandated by law. However, expenditure on such sustainability initiatives would not qualify as CSR spend.

- viii) The philosophy and spirit of CSR and Sustainability should be understood and imbibed by the employees at all levels and get embedded in the core values of the company.
- ix) CPSEs should extend their reach and oversight to the entire supply chain network to ensure that as far as possible suppliers, vendors, service providers, clients, and partners are also committed to the same principles and standards of corporate social responsibility and sustainability as the company itself. CPSEs are encouraged to initiate and implement measures aimed at 'greening' the supply chain.
- x) As mentioned in the Act, CPSEs should give preference to the 'local area' in selecting the location of their CSR activities. It is desirable that the Board of Directors of CPSEs define the scope of the 'local area' of their commercial units / plants / projects, keeping in view the nature of their commercial operations, the extent of the impact of their operations on society and environment, and the suggestions / demands of the key stakeholders, especially those who are directly impacted by the company's commercial operations / activities. The definition of 'local area' may form part of the CSR Policy of the CPSE.
- xi) After giving due preference to the local area, CPSEs may also undertake CSR activities anywhere in the country. The Board of Directors of each CPSE may also decide on an indicative ratio of CSR spend between the local area and outside it, and this may be mentioned in the CSR Policy of the CPSE. CPSEs, which by the very nature of their business have no specific geographical area of commercial operations, may take up CSR activities / projects at any location of their choice within the country.
- xii) As far as possible, CPSEs should take up the CSR activities in project, which entails planning the stages of execution in advance by fixing targets at different milestones, with pre-estimation of quantum of resources required within the allocated budget, and having a definite time span for achieving desired outcomes.
- xiii) CPSEs should devise a communication strategy for regular

dialogue and consultation with key stakeholders to ascertain their views and suggestions regarding the CSR activities and sustainability initiatives undertaken by the company. However, the ultimate decision in the selection and implementation of CSR activities would be that of the Board of the CPSE.

- xiv) As per the CSR Rules, all companies are required to include an annual report on CSR in their Board's Report. The template / format for reporting CSR activities as provided by CSR Rules should be strictly adhered to. However, CPSEs shall also have to include in the Board's Report a brief narrative on the action taken for the implementation of the Guidelines so that the stakeholders are informed of not only the CSR activities but also of the sustainability initiatives taken by the CPSEs. CPSEs are further advised to prepare an Annual Sustainability Report, which would go a long way in imparting greater transparency and accountability to the company's operations, apart from improving the brand image.
- xv) It is desirable that CPSEs get a baseline/ need assessment survey done prior to the selection of any CSR activity. It is also desirable that CPSEs should get an impact assessment study done by external agencies of the CSR activities /projects undertaken by them. Impact assessment is mandatory for mega projects, the threshold value of which can be determined by the Board of a CPSE and specified in its CSR and Sustainability policy. However, the expenditure incurred on baseline survey and impact assessment study should be within the overall limit of 5%of administrative overheads of CSR spend as provided for under the CSR Rules.
- xvi) Within the provisions of the Act, Schedule VII of the Act, and the CSR Rules, CPSEs are encouraged to take up CSR activities / projects in collaboration with other CPSEs for greater social, economic and environmental impact of their CSR activities / projects.
- xvii) CSR projects taken up by CPSEs in 2013-14 under DPE guidelines on CSR & Sustainability which were effective from 1<sup>st</sup> April 2013, may be continued till their completion. However, CPSEs to ensure that all new CSR activities / projects are in accordance with the CSR Rules.

- xviii) CPSEs which are statutory corporations should also comply with the provisions of the Act, CSR Rules and the Guidelines.
- xix) These guidelines will supersede the guidelines / circulars / instructions issued earlier by DPE on the subject of CSR and Sustainability.

### **Guidelines for CSR expenditure of CPSEs (dated 10<sup>th</sup>December, 2018)**

One of the recommendations which emerged from the CPSEs Conclave held in April 2018 was related to utilization of CSR funds in a focussed manner towards national priorities by adopting a theme based approach every year. Detailed deliberations on this recommendation were held subsequently by Department of Public Enterprises (DPE) with CPSEs, select Ministries/Departments, NITI Aayog and the Committee of Secretaries. Based on the deliberations, the Competent Authority has approved the following course of actions for undertaking CSR activities by Central Public Sector Enterprises (CPSEs):

- (i) A common theme may be identified for each year for undertaking CSR by CPSEs. For the year 2018-19, school education and health care may be taken up as the theme for focussed intervention. Annual theme for the future will be decided by the Competent Authority separately.
- (ii) CSR expenditure for thematic programme should be around 60% of annual CSR expenditure of CPSEs.
- (iii) Aspirational districts as identified by NITI Aayog may be given preference.
- (iv) The Competent Authority has further entrusted to NITI Aayog the responsibility to pilot the programme.
- (v) Accordingly, the CPSE undertaking CSR activity in aspirational districts would-
  - (i) designate a senior level functionary as nodal officer to liaise closely with the District Administration of concerned aspirational district;
  - (ii) furnish the details of nodal officer along with the name of selected aspirational district(s) to NITI Aayog, DPE and concerned administrative Ministry/Department of the CPSE;
  - (iii) furnish the details of projects funded by CPSE under CSR in an aspirational district to NITI Aayog, DPE and concerned administrative Ministry/Department of CPSE;

- (iv) Brief the concerned Central Prabhari Officer of aspirational district (Joint Secretary/Additional Secretary nominated by GOI for aspirational district), about the CSR project being funded by CPSE.

It will be the responsibility of the concerned CPSE to ensure that all the CSR activities being undertaken are in accordance with the relevant provisions of the Companies Act 2013, its Schedules and Rules issued under the said Act and there is no deviation from statutory provisions.

## **7. CSR in Insurance Companies**

India is at the forefront mandatory CSR prescription and has stipulated a 2% minimum spending on CSR activities by business above a certain threshold. This prescription made in the Companies Act 2013 is equally applicable to Insurance companies. Further, the Insurance Act, 1938 stipulates Rural and Social Sector Obligations to be fulfilled by the insurers in the form of sale of certain number of policies as well as certain amount of premium to some identified sections of the society.

### **Guidelines on Corporate Governance for insurance companies issued by the Insurance Regulatory and Development Authority of India (IRDAI)**

In view of the extensive changes to the governance of companies under the Companies Act, 2013, the IRDAI decided to review the various guidelines relating to the governance of insurance companies.

On 18<sup>th</sup> May, 2016 the IRDAI has issued revised Guidelines on Corporate Governance for insurance Companies which, *inter-alia*, provides following provisions in respect of CSR by insurance Companies:

### **Corporate Social Responsibility Committee ('CSR Committee') (mandatory)**

Section 135 of the Companies Act, 2013 requires constitution of a CSR Committee if certain conditions as mentioned in the said section are fulfilled. For Indian Insurance Companies, a CSR Committee is required to be set up if the insurance company earns a Net Profit of Rs. 5 crore or more during the preceding financial year. Further the 'Net Profit' for this purpose shall be as under:

*"Net profit" means the "profit/(loss) before tax" as per its financial statements prepared in accordance with the applicable provisions of the Insurance Act, 1938 and the Regulations framed thereunder, but shall not include the following, namely-*

- (i) Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
- (ii) Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Companies Act.

*Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Insurance Act, 1938, shall not be required to be re-calculated in accordance with the provisions of the Companies Act.*

In line with section 135(5) of Companies Act, 2013, the Board of Directors of the company shall ensure that the company spends not less than 2% of the three years' average Net Profits as defined above towards the CSR activities.

- (a) CSR will be based only on the average of the three years' profit as per the Statement of Profit and Loss Account as stated above.
- (b) The CSR Committee shall formulate a CSR Policy and get it approved by the Board.

Constitution of CSR Committee will be as per Companies Act, 2013.

- (c) The expense incurred on CSR shall not be included for the purpose of calculation of ceilings on Expenses of Management under section 40B or section 40C, as the case may be.
- (d) The expenses incurred on CSR activities should not be charged to the Policyholders' Account."

## **8. CSR in Banking Companies**

The Companies Act, 2013 has introduced the concept of CSR by mandating companies to set aside 2% of their net profits and utilize the same for approved CSR Activities. The private sector banks incorporated as company under the Companies Act, 2013 are covered by the provisions of section 135 of the Act, and accordingly required to ensure the compliance of CSR provisions.

Since the Nationalized Banks are not incorporated as a company under the Companies Act, 2013, they are not covered under section 135 of the Act and accordingly, the requirement to spend 2% of net profits on CSR activities remains voluntary for such banks. However, they are required to spend 1% of net profits through donations as specified by the Reserve Bank of India (RBI).

In terms of RBI circular no.RBI.No./ 2005-06/ 237,DBOD.No.Dir.BC. 50/13.01.01/2005-06 dated 21<sup>st</sup> December, 2005,donations by Banks are capped at 1% of the published net profit. Donations are plain contribution as opposed to CSR which is a collaborative and monitored exercise. The said circular set the following guiding principles for donations by banks in India:

- (i) The profit making banks may make donations during a financial year aggregating upto 1% of the published profit of the banks for the previous year. In some cases, banks create funds for specific purposes to encourage research and development in fields related to banking. The Board of the banks may determine the amount of contribution to be made to such funds. The contribution made to such funds in a year will be reckoned for computation of the 1% ceiling.
- (ii) The donations out of the research and development funds should normally be made for setting up professional chairs, granting fellowships/ scholarships for studies and research at universities and approved institutions and for commissioning special projects for investigation, analysis and research for areas pertaining to banking, finance, statistics, management and economics, etc.
- (iii) The donations to Prime Minister's National Relief Fund and subscriptions / contributions to professional bodies / institutions related to banking industry like Indian Banks' Association, National Institute of Bank Management, Indian Institute of Banking and Finance, Institute of Banking Personnel Selection and Foreign Exchange Dealers' Association of India may be excluded from the limit indicated in para (i) above.
- (iv) Loss-making banks can make donations totaling Rs.5 lakh only in a financial year including donations to exempted entities / funds indicated in para (iii) above.
- (v) Unutilised portion of the limit of 1% should not be carried forward to the next year.
- (vi) The banks may continue to submit annual review of donations to their Boards of Directors.

## **9. CSR and Sustainable Development Goals**

Businesses cannot prosper in a world plagued with poverty, inequality, violence and environmental stress. Hence, for companies, doing well and doing good simultaneously is of paramount importance.



The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries - developed and developing - in a global partnership. They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests.

SDGs were adopted on 25<sup>th</sup> September, 2015 in Paris where 193 countries, including India, ratified and signed the convention to accomplish 17 SDGs. The SDGs have a much longer history of evolution but there is considerable evidence to support the claim that even globally, CSR co-evolved with the sustainable development movement.

### ***Mapping with SDGs***

In the Indian context, the CSR leadership can quite easily correlate the prescribed areas of CSR spending with the 17 SDGs. Each of the areas prescribed for CSR expenditure enlisted in Schedule VII of the Companies Act, 2013 are coherent with SDGs. For example, CSR on eradicating hunger, poverty, malnutrition and promoting healthcare and sanitation may be linked to SDG goals 1 (No Poverty), 2 (Zero Hunger), 3 (Good Health & Well Being) and 6 (Clean Water & Sanitation).

Also, CSR on promoting education including special education and employment enhancing vocation skills and livelihoods enhancement projects, could be correlated with SDGs 1 (No Poverty), 2 (Zero Hunger), 4 (Quality Education) and 8 (Decent Work and Economic Growth).

Similarly other aspects prescribed for CSR under the Act, may be appropriately linked to SDGs. In addition, the principles enshrined under the National Guidelines on Responsible Business Conduct (NGRBC)-2018, can also be mapped with SDGs as indicated below:

**SDGs mapped against NGRBC**

	P3, P4, P8		P2, P6, P7		P2, P6, P7, P8
	P2, P6, P7, P8, P9		P2, P3, P5, P8		P2, P6, P7, P8, P9
	P3, P6, P8		P3, P4, P8		P2, P6, P7, P8, P9
	P3, P8, P9		P2, P6, P7		P1, P3, P4, P5, P8
	P3, P4, P5, P8		P3, P4, P7, P8		P1, P7, P8
	P2, P6, P8		P2, P6, P9		★

The chart demonstrates the alignment between the SDGs and relevant Principles of the NGRBC. It may be noted that this is indicative.

**10. CSR AND CORPORATE GOVERNANCE**

The conceptualization of CSR was, initially, purely in terms of philanthropy or charity. However, a fundamental shift has been seen from this philanthropy to integrated approach towards CSR which is gradually getting infused into companies’ corporate governance practices.

Corporate Governance as a concept has CSR embedded in it, whereby companies not only consider their profitability and growth, but also the interests of society and the environment by taking responsibility for the impact of their activities on stake holders, environment, consumers, employees, communities, and all stake holders. Other members of the public sphere. The basic premise is that when the corporations get bigger in size, apart from the economic responsibility of earning profits, there are many other responsibilities attached to them which are more non-financial/social in nature.

Companies that practice good corporate governance are also those that are socially and environmentally responsible. That is to say, that unless there is good governance it is quite unlikely that there is a conscientious approach towards their social responsibility. Both Corporate Governance and CSR focus on the ethical practices in the business and the responsiveness of an organisation towards its stakeholders and the environment in which it operates.

### **11. CSR as Organizational Brand Building**

Businesses are aware of the importance of the public, especially their target audience, having a positive perception of them. Of course, their social responsibility, first and foremost, is to deliver value for money goods/services, followed by providing perfect after-sales support, customer service, involvement in civic causes, and generally performing acts that demonstrate that company cares about their customers, the environment, and the society as a whole. In general, companies with good social responsibility policies get more and better media coverage, which is one way to get the good publicity. Getting coverage in the media by doing good deeds and generating customer confidence is considered to be one of the best ways to create the brand image of the company.

A company demonstrates by being socially responsible, that it incorporates ethical practices in conducting itself, how it does the business. Customers are becoming more aware about the local, national and global issues, and there is no denying that their decisions are now being greatly influenced by these matters. Therefore, they tend to avail the goods & services from the companies that show their concern and their action over issues that also resonates greatly with the customers.

Businesses regard their name and their brand to be one of their most valuable assets and, by showing that they take their social responsibility seriously, they are also encouraging the public to take them seriously. Consumers are willing to spend more money on the products and services of a company that has proven itself to be socially responsible.

A company's workforce, for example, is inclined to feel more motivated to put in their best at work when they know they are contributing to a cause which helps the society as a whole the greater good. Social responsibility definitely helps in boosting the morale of employees, in turn, does wonders in increasing their productivity. It is a foregone conclusion that everyone – individuals and entities alike – have a responsibility to society. There is a moral obligation inherent in everyone, and companies are not exempt from doing their part. Potential investors also look into a company's social responsibility, using it as one of their

criteria in deciding whether to put money into the company or not. It is also instrumental in improving companies' stock prices, since it inspires confidence among associates and business partners.

## **12. Factors influencing CSR**

Many factors, including the following, have led to increasing attention being devoted to CSR:

- (i) Globalization coupled with focus on cross-border trade, multinational enterprises and global supply chains is increasingly raising CSR concerns related to human resource management practices, environmental protection, and health and safety, among other things.
- (ii) Governments and regulatory bodies, legal prescription, international organisation such as the United Nations, the Organisation for Economic Co-operation and Development and the International Labour Organization have developed declarations, guidelines, principles and other instruments that outline social norms for acceptable conduct.
- (iii) Advances in communications technology, such as the Internet, cellular phones and personal digital assistants, are making it easier to track corporate activities and disseminate information about them. Non-governmental organizations now regularly draw attention through their websites to business practices they view as problematic.
- (iv) Consumers and investors are showing increasing interest in supporting responsible business practices and are demanding more information on how companies are addressing risks and opportunities related to social and environmental issues.
- (v) Breaches of corporate ethics have contributed to elevated public mistrust of corporations and highlighted the need for improved corporate governance, transparency, accountability and ethical standards. There is increasing awareness of legal and regulatory initiatives to promote the CSR. Citizens in many countries demands that corporations should meet standards of social and environmental care, no matter where they operate.
- (vi) Businesses are recognizing that adopting an effective approach to CSR can reduce risk of business disruptions, open up new opportunities, and enhance brand and company reputation.

### 13. Social Stock Exchange

India is the only country in the world to have mandatory provisions of CSR for the corporates. The Hon'ble Finance Minister as part of the Budget Speech for financial year 2019-20 had announced as follows:

*"It is time to take our capital markets closer to the masses and meet various social welfare objectives related to inclusive growth and financial inclusion. I propose to initiate steps towards creating an electronic fund raising platform- a social stock exchange-under the regulatory ambit of Securities and Exchange Board of India for listing social enterprises and voluntary organizations working for the realization of a social welfare objective so that they can raise capital as equity, debt or as units like a mutual fund."*

Accordingly, SEBI constituted a working group on 'Social Stock Exchanges' (SSE) under the Chairmanship of Shri Ishaat Hussain on September 19, 2019. The broad terms of reference to the working group were to review and recommend:

- (i) Possible structures and mechanisms, within the securities market domain, to facilitate raising of funds by social enterprises and voluntary organizations
- (ii) Associated regulatory framework inter-alia covering the issues relating to eligibility norms for participation, disclosures, listing, trading, oversight etc.

The committee observed that the designing of Social Stock Exchange (SSE) also requires a recognition that for-profit social enterprises (FPEs) are different from non-profit social enterprises (NPOs) as they operate in different ways and have different financing needs. NPOs (which include section 8 companies, trusts and societies) and FPEs uses different kinds of capital. The working group has, therefore, suggested different approaches for each under the aegis of the SSE. The committee proposed unifying elements and common approaches for the two under the SSE umbrella. These constitute the common minimum reporting standard for all enterprises. The standard incorporates reporting of social impact, governance and financials. Over time, the minimum standard is envisioned to evolve and become more rigorous and more sophisticated. A pathway for that evolutionary process is laid out in the report.

In the report, the Working Group has laid out the modalities for creating a Social Stock Exchange that will serve as a platform for fundraising and also incorporate a set of procedures by which social impact will be measured and reported.

The SEBI has invited comments from public on the report of working group on

Social Stock Exchange. The recommendation of the working group, if accepted, will pave the way for financial stability and fund raising by NPOs and will have consequential effect on the implementation of CSR projects handled by such organisations.

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**Annexure-I****Summary of the recommendations made by the HLC-2018****1. Applicability of the CSR Provisions**

The scope of CSR applicability be extended to Limited Liability Partnerships (LLPs) which are within the purview of the MCA. The applicability of CSR may also be extended to Banks registered under the Banking Regulation Act, 1949. The applicability of CSR provisions may also be extended to similarly placed entities not covered under Companies Act through necessary amendments in Companies Act and, if necessary, in their respective statutes.

**2. Applicability of CSR Provisions to Newly Incorporated Companies**

A clarification may be issued that for newly incorporated companies the obligation under section 135 shall lie only after they have been in existence for three years.

**3. Constitution of CSR Committee**

Companies having prescribed CSR amount below Rs. 50 lakh be exempt from forming a separate CSR Committee. The Board itself would carry out the functions of the CSR Committee.

**4. Obligation to carry out CSR and Carrying Forward of unspent CSR amount**

The Committee is of the view that the unspent CSR amount for a particular year be transferred to a separate designated account created for the purpose. Such unspent amount, and the interest earned thereon, be spent within a period of three to five years, failing which the same be transferred to a fund to be specified by the Central Government which may be used for innovative, high-impact projects related to activities listed in Schedule VII. Adequate provisions be provided to ensure compliance. A penalty, 2-3 times the default amount, may be imposed subject to a maximum of Rs. 1 crore upon the default being made good, but there be no imprisonment.

**5. Creation of Capital Assets through CSR spending**

Regulatory oversight be exercised through enhanced and granular reporting wherever CSR funds are used for creation of capital assets. Companies be encouraged to forge partnerships when creating assets for public purpose. The

ownership shall rest with the public and the company may act as a custodian to operate it and make it self-sustaining.

## **6. Undertaking CSR Activities in Local Areas**

The emphasis on local area in the Act is only directory and not mandatory in nature. A clarification be issued advising companies to engage in CSR activities by balancing local area preference with national priorities.

## **7. Schedule VII of the Act**

Schedule VII be mapped and aligned largely with SDGs and some important items such as promoting sports, senior citizens' welfare, welfare of differently abled persons, disaster management, and heritage be additionally included to develop an SDG+ framework. The Central Government may, if required, identify a few areas from Schedule VII as priority areas and issue specific directions in this regard.

Contribution to Central Government funds as specified in Schedule VII be discontinued as CSR spend. However, a specific designated fund may be created for transfer of unspent CSR funds lying with the company beyond the proposed 3-5 year time limit.

## **8. Deepening CSR Impact**

The Committee recommended that a company having average prescribed CSR amount of Rs. 5 crore or more in the three immediately preceding financial years, undertake need and impact assessment studies for their CSR programmes/projects in that year and disclose the same in their Board's Report. Such studies be undertaken once in three years.

## **9. Issues related to Reporting for CSR**

The reporting for CSR needs to be strengthened, with enhanced disclosures for better information dissemination with respect to selection of projects, locations, Implementing Agencies to facilitate better monitoring.

## **10. CSR Audit**

The Committee is of the view that CSR may be brought within the purview of statutory financial audit, by making details of CSR spending as part of the financial statement of a company, and incorporated in Schedule III of the Act.

## **11. Issues pertaining to Implementing Agencies**

A clarification be issued that mere disbursal of funds to Implementing Agencies



is not construed as CSR spending. The Board of a company to ensure that CSR funds are duly spent on CSR activities as specified under Schedule VII and report on the modalities of utilization of funds.

## **12. Registration of Implementing Agencies**

The Board of a company to ascertain the credibility of an Implementing Agency (IA) and carry out necessary due diligence. IAs to be registered with MCA to carry out CSR activities.

## **13. Tax Benefits for CSR Activities**

All activities listed under Schedule VII to enjoy uniform tax benefit. CSR expenditure to be made deductible from the income earned for the purpose of taxation. The mode of implementation to be tax neutral. Implementing Agencies be treated as partners and not service providers/vendors for CSR activities, so as to address the variable incidence of indirect taxes on them.

## **14. CSR Exchange Portal**

A CSR Exchange Portal be developed for creating an interactive platform for all stakeholders, including contributors, beneficiaries, IAs, etc. by leveraging the benefits of technology to maximize the potential and outcomes of CSR.

## **15. Social Impact Companies**

'Social Impact Companies' be created as vehicles within the CSR framework, with the express object of pursuing social outcomes, while being permitted to achieve conditional profit which can be distributed. CSR contribution to social impact bonds raised by such Social Impact Companies or not-for-profit companies bringing upfront risk capital may be considered on a pilot basis.

## **16. Applicability of BRR to 1000 Companies**

The Committee is of the view that the ambit of reporting on BRR be expanded gradually and at this juncture, it be extended to top 1000 companies.

## **17. Advocacy of CSR and academic network for CSR**

NFCSR to be strengthened to function as the think-tank for CSR. The Government may consider contributing Rs. 10 crore as seed capital for strengthening NFCSR. It shall build a strong network among all stakeholders and build capacity for CSR. NFCSR may also undertake advocacy for Individual Social Responsibility.

### **18. Guidelines for PSUs for effective CSR implementation**

The Committee recommended that MCA shall partner with the DPE for comprehensive guidelines for Central Public Sector Undertakings (CPSUs).

### **19. Annual Report on CSR**

The Committee recommended that an Annual CSR Survey may be prepared by the Ministry.

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**Annexure-II****Extracts of Principles from National Guidelines on Responsible Business Conduct, 2018 (NGRBC)****Principle 1: Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent, and accountable.**

This Principle recognizes that ethical behaviour in all operations, functions and processes, is the cornerstone of businesses guiding their governance of economic, social and environmental responsibilities.

The Principle emphasizes that disclosures on business decisions and actions that impact stakeholders form the fundamental basis of operationalizing responsible business conduct and should be accessible to all relevant stakeholders.

It recognizes that businesses are an integral part of society and that they will hold themselves accountable for the effective adoption, implementation, and the making of disclosures on their performance with respect to the Core Elements of these Guidelines.

The Principle further emphasizes that the governance structure of the business should ensure this, in line with SDG 16.

**Core Elements**

1. The governance structure should develop and put in place structures, policies and procedures that promote this Principle, prevent its contravention and effect prompt and fair action against any transgressions.
2. The Governance Structure should ensure that the Principles of these Guidelines are understood, adopted and implemented throughout the operations of their business.
3. The Governance Structure should also promote the adoption of this Principle across the value chain of their business.
4. The Governance Structure should disclose and communicate transparently and enable access to information about the policies, procedures, performance (financial and non-financial), and decisions of their enterprise, that impact their stakeholders, especially those that are most at risk to business impacts and communities that are vulnerable and marginalized.

5. The Governance Structure should take responsibility for meeting all its statutory obligations in line with the spirit of the law, enabling fair competition and ensuring it treats all its stakeholders in an equitable manner.
6. The Governance Structure should ensure that the business avoids complicity with the actions of any third party that violates any of the Principles contained in these Guidelines.
7. The Governance Structure should put in place appropriate structures, policies and procedures to address conflicts of interest involving its members, employees and business partners.
8. The Governance Structure should put in place appropriate structures, codes, policies, and procedures to ensure that the business does not engage in illegal and abusive practices, bribery and corruption, and ensure timely and fair action in case such transgressions are detected.
9. The Governance Structure should ensure that the business contributes to public finances by timely and complete payment of all applicable taxes in the letter and spirit of the laws and regulations governing such payments.

**Principle 2: Businesses should provide goods and services in a manner that is sustainable and safe.**

This Principle recognizes the proposition of SDG 12, that sustainable production and consumption are interrelated, contribute to enhancing the quality of life and towards protecting and preserving earth's natural resources.

The Principle further emphasizes that businesses should focus on safety and resource-efficiency in the design and manufacture of their products, and use their products in a manner that creates value while minimizing and mitigating its adverse impacts on the environment and society through all stages of its life cycle, from design to final disposal. Over time, businesses should embrace the idea of circularity in all its operations.

In order to do so, the Principle encourages businesses to understand all material sustainability issues across their product life cycle and value chain.

**Core Elements**

1. Businesses should, in designing, producing and making available goods and services, endeavor to ensure that resource-efficient and low-carbon processes and technologies are deployed to minimize adverse environmental and social impacts.

2. Businesses should provide stakeholders across the value chain with adequate information about environmental and social issues and impacts across product life cycle from design to disposal. This may be done through appropriate and relevant tools such as certifications, labels, ratings and other communication and disclosure platforms including reports, websites, etc.
3. Businesses should increasingly take responsibility for the safe collection, reuse and recycling of their products at life so as to build a circular economy as a part of the notion of extended producer responsibility that is increasingly becoming a part of regulation in India and globally.

**Principle 3: Businesses should respect and promote the well-being of all employees, including those in their value chains.**

This Principle encompasses all policies and practices relating to the equity, dignity and well-being, and provision of decent work (as indicated in SDG 8), of all employees engaged within a business or in its value chain, without any discrimination and in a way that promotes diversity. The principle recognizes that the well-being of an employee also includes the wellbeing of her/his family.

**Core Elements**

1. The Governance Structure should ensure that the business complies with all regulatory requirements pertaining to its employees, and that there are systems and processes in place to enable this to be done by its value chain partners.
2. Businesses should ensure equal opportunities at the time of recruitment, during the course of employment, and at the time of separation without any discrimination.
3. Businesses should promote and respect the right to freedom of association, participation of workers, and collective bargaining of all employees including contract and casual labour, and provide access to appropriate grievance redressal mechanisms.
4. Businesses should not use child labour, coercive or forced labour, or any form of involuntary labour, paid or unpaid.
5. Businesses should put systems and processes in place to support the work-life balance of all its employees.
6. Businesses should ensure fair, timely and transparent payment of

statutory wages of all its employees, including contract and casual labour without discrimination.

7. Businesses should aspire to pay fair living wages to meet basic needs and economic security of all employees, including casual and contract labour.
8. Businesses should provide a workplace “environment that is safe, hygienic, accessible to the” - there is no space between the words differently abled and which upholds the dignity of the employees. Businesses should engage and consult with their employees on this provision.
9. Businesses should ensure continuous upgradation of skill and competence of all employees by providing access to necessary learning opportunities, on an equal and nondiscriminatory basis. They should promote career development through human resource interventions.
10. Businesses should create systems and practices to ensure a humane workplace free from, violence and harassment (including sexual harassment); a workplace where employees feel safe and secure, with adequate provisions for grievance redressal.

**Principle 4: Businesses should respect the interests of and be responsive to all its stakeholders.**

This Principle recognizes that businesses operate in an eco-system comprising a number of stakeholders, beyond shareholders and investors, and that their activities impact natural resources, habitats, communities and the environment. The Principle acknowledges that it is the responsibility of businesses to ensure that the interests of all stakeholders, especially those who may be vulnerable and marginalized, are protected.

The Principle further recognizes that businesses have a responsibility to maximize the positive impacts and minimize and mitigate the adverse impacts of its products, operations, and practices on all their stakeholders.

**Core Elements**

1. Governance Structures should ensure that the business acknowledges, assumes responsibility, and is transparent about the impact of their policies, decisions, products and associated operations on all stakeholders, and the natural environment.

2. Businesses should develop systems, processes and mechanisms to identify its stakeholders, understand their expectations and concerns, define the purpose and scope of the engagement, consult with them in developing policies and processes that impact them, and commit to resolving any differences and redressing grievances in a just, fair and constructive manner.
3. Businesses should enable all stakeholders to benefit fairly from the value generated by the businesses, and any conflicts or differences arising from the impact of business operations or the sharing of the value generated by the businesses should be resolved in a just, fair and equitable manner.

**Principle 5: Businesses should respect and promote human rights.**

This Principle recognizes that human rights are rights inherent to all human beings, and that everyone, individually or collectively, is entitled to these rights, without discrimination. It further recognizes that human rights are inherent, inalienable, interrelated, interdependent and indivisible.

The Principle is inspired, informed and guided by the Constitution of India and the International Bill of Rights and recognizes the primacy of the State's duty to protect and fulfil human rights.

The Principle is further informed and guided by the UN Guiding Principles on Business and Human Rights in its articulation of the responsibility of businesses to respect human rights. It affirms that the responsibility of businesses to respect human rights requires that it avoids causing or contributing to adverse human rights impacts, and that it addresses such impacts when they occur. The Principle urges businesses to be especially responsive to such persons, individually or collectively, who are most vulnerable to, or at risk of, such adverse human rights impacts.

**Core Elements**

1. The Governance Structure should ensure that the business undertakes to make its employees aware of the human rights content of the Constitution of India, relevant national laws and policies, and the International Bill of Human Rights and their application to businesses as outlined in the United Nations Guiding Principles for Business and Human Rights. It should further ensure that the responsibility for addressing such impacts is assigned to the appropriate level and function within the business.

2. The Governance Structure should ensure that the business has in place such policies, structures and procedures that demonstrate respect for the human rights of all stakeholders impacted by its business. This includes carrying out human rights due diligence to identify, prevent, mitigate and account for how they address adverse human rights impacts.
3. The Governance Structure should ensure that their business, where it is causing, contributing or otherwise linked to adverse human rights impacts, takes corrective actions to address such impacts.
4. Businesses should promote the awareness and realization of human rights across its value chain.
5. Businesses should ensure that all individuals and groups whose human rights are impacted by them have access to effective grievance redressal mechanisms.

**Principle 6: Businesses should respect and make efforts to protect and restore the environment.**

This Principle recognizes that environmental responsibility is a prerequisite for sustainable economic growth and for the well-being of society.

The Principle emphasizes that environmental issues are interconnected at the local, regional and global levels, which makes it imperative for businesses to address issues like pollution, biodiversity conservation, sustainable use of natural resources and climate change (mitigation, adaptation and resilience) in a just, comprehensive and systematic manner. These are aligned with SDGs 11, 13, 14 and 15.

The Principle encourages businesses to assess environment impacts of its products and operations and take steps to minimize and mitigate its adverse impacts where these cannot be avoided.

The Principle encourages businesses to adopt environmental practices and processes that minimize or eliminate the adverse impacts of its operations and across the value chain.

The Principle encourages businesses to follow the Precautionary Principle in all its actions.

**Core Elements**

1. The Governance Structure should ensure that the business formulates



appropriate policies, procedures and structures to assess, measure and address its adverse impacts on the environment at all its locations, at all stages of its life cycle from establishment to closure. Special care should be taken where these impacts occur in eco-sensitive areas.

2. Businesses should develop appropriate strategies for sustainable and efficient use of natural resources and manufactured materials, giving due consideration to expectations and concerns of all stakeholders.
3. Businesses should define measurable key performance indicators and targets to monitor their performance on environmental aspects such as water, air, land-use, forest, energy, materials, waste, biodiversity, built environment and so on.
4. Businesses should focus on addressing climate change through development of both mitigation and adaptation measures, and build climate resilience and in line with India's Nationally Determined Contributions to the Paris Climate Change Agreement and the National/ State Action Plans on Climate Change.
5. Businesses should learn from industry best practices for promoting reduction, reuse, recycling and recovery of material and resources, and encourage and motivate its stakeholders, particularly consumers and business partners, to do the same.
6. Businesses should seek to improve their environmental performance by adopting innovative, resource-efficient and low-carbon technologies and solutions resulting in lower resource footprint, lesser material consumption and more positive impact on environment, economy and society.

**Principle 7: Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.**

This Principle recognizes that businesses operate within specified national and international legislative and policy frameworks, which guide their growth and also provide for certain desirable restrictions and boundaries.

The Principle recognizes the legitimacy of businesses to engage with governments for redressal of a grievance or for influencing public policy.

The Principle emphasizes that public policy advocacy must expand public good.

**Core Elements**

1. The Governance Structure should ensure that its advocacy positions are consistent with the Principles contained in these Guidelines and publicly disclosed.
2. Businesses should, to the extent possible, undertake policy advocacy through trade and industry chambers and associations, and other similar collective platforms.
3. Businesses should ensure that its policy advocacy positions promote fair competition and respect for human rights.

**Principle 8: Businesses should promote inclusive growth and equitable development.**

This Principle recognizes the challenges of social and economic development faced by India, and builds upon the national and local development agenda as articulated in government policies and priorities. This is particularly significant in zones affected by social disharmony and low human development.

The Principle recognizes the value of the energy and enterprise of businesses and encourages them to innovate and contribute to the overall development of the country with a specific focus on disadvantaged, vulnerable and marginalized communities, as articulated in section 135 of the Companies Act, 2013.

The Principle also emphasizes the need for collaboration amongst businesses, government agencies and civil society in furthering this development agenda in line with SDG 17.

The Principle reiterates that business success, inclusive growth and equitable development are interdependent.

**Core Elements**

1. The Governance Structure shall ensure that the business takes appropriate actions to minimize any adverse impacts that it has on social, cultural and economic aspects of society including arising from land acquisition and use, construction of facilities and operations.
2. Businesses should assess, measure and understand their impact on social, and economic development, and respond through appropriate action to minimize and mitigate its negative impacts on society.
3. Businesses should innovate and invest in products, technologies and

processes that promote the well-being of all segments of society, including vulnerable and marginalized groups.

4. Businesses should respond to national and local development priorities and understand the needs and concerns of local communities, particularly vulnerable and marginalized groups and in regions that are underdeveloped, while designing and implementing their CSR programmes.
5. Businesses should make efforts to minimize the negative impacts of displacement of people and disruption of livelihoods through their business operations and where displacement is unavoidable, this process must be undertaken in a humane, participative, informed and transparent manner, where just and fair compensation is paid to those impacted.
6. Businesses should respect all forms of intellectual property and traditional knowledge and make efforts to ensure that benefits derived from their knowledge are shared equitably.

**Principle 9: Businesses should engage with and provide value to their consumers in a responsible manner.**

This Principle is based on the fact that the basic aim of a business entity is to provide goods and services to its consumers that are safe to use, and in a manner that creates value for both.

The Principle recognizes that consumers have the freedom of choice in the selection and usage of goods and services, and that the enterprises will strive to make available products that are safe, competitively priced, easy to use and safe to dispose of, for the benefit of their consumers.

The Principle also recognizes that businesses should play a key role, along with other relevant stakeholders, in mitigating the adverse impacts that excessive consumption of its products may have on the overall well-being of individuals, society and our planet, in line with SDG 12.

**Core Elements**

1. Governance Structures should ensure that the business minimizes and mitigates any adverse impact of its goods and services on consumers, the natural environment and society at large.
2. Businesses should ensure that they do not restrict the freedom of choice

and free competition in any manner while designing, promoting and selling their products.

3. Businesses should disclose all information accurately, through labelling and other means, including the risks to the individual, to society, and to the planet, from the use of the products, so that the consumers can exercise their freedom to consume in a responsible manner.
4. Businesses should manage consumer data in a way that does not infringe upon their right to privacy.
5. Businesses should make consumers aware of, and provide information and guidance to them on, safe and responsible usage and disposal of their products (including reuse and recycling), and to eliminate over-consumption.
6. Businesses should promote and advertise their products in ways that do not mislead or confuse the consumers or violate any of the Principles in these Guidelines.
7. Businesses should provide appropriate grievance redressal mechanisms that are transparent and accessible, to address consumer concerns and feedback.
8. Businesses that provide essential services, e.g. utilities, should enable universal access, including to those whose services have been discontinued for any reason, in a non-discriminatory and responsible manner.

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**Annexure-III****List of CSR Activities under Schedule VII to the Act**

Schedule VII to the Act specifies the activities which may be included by companies in their CSR policies. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII to the Act, are broad-based and are intended to cover a wide range of activities illustratively.

However, in determining CSR activities to be undertaken, preference should be given to local areas and the areas around where the company operates.

*SCHEDULE VII*

Following activities may be included by companies in their CSR Policies:

- (i) 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.
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, 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.
- (v) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) Measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central

Para Military Forces (CPMF) veterans, and their dependents including widows;

- (vii) Training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports;
- (viii) Contribution to the prime minister's national relief fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the Central Government for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (ix) (a) 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  
(b) 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 Defense 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).
- (x) Rural development projects;
- (xi) Slum area development.

*Explanation.-* For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.

- (xii) Disaster management, including relief, rehabilitation and reconstruction activities.

**Annexure-IV****Comparison of Role of CSR Committee and Board of Directors**

<b>Particulars</b>	<b>CSR Committee</b>	<b>Board of Directors</b>
<b>CSR Policy</b> (section 135(4) and rule 2(1)(f))	<ul style="list-style-type: none"> <li>• Recommend to the Board about approach and direction of CSR</li> <li>• Formulation and Recommendation to Board – draft CSR Policy on the basis of approach and direction given by the Board and including Guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;</li> </ul>	<p>Taking into account recommendations of CSR Committee,</p> <ul style="list-style-type: none"> <li>• to approve the approach and directions for CSR</li> <li>• Approve CSR Policy</li> </ul>
<b>Annual Action Plan</b> (Rule 5(2))	<p>Formulate and recommend to the Board, an annual action plan in pursuance to CSR Policy including following:</p> <p>(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII to the Act;</p> <p>(b) the manner of execution of such projects or programmes as specified in rule 4(1) of CSR Rules ;</p> <p>(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;</p> <p>(d) monitoring and reporting mechanism for the projects or programmes; and</p>	<p>Board may alter such plan based on reasonable justification as per recommendation of CSR committee</p>

Particulars	CSR Committee	Board of Directors
	<p>(e) details of need and impact assessment, if any, for the projects undertaken by the company.</p> <p>Recommend changes if any needed in the action plan</p>	
<p><b>Extension of duration of existing project and classify it as on-going project</b> (Rule 2(1)(ii))</p>	<p>Recommendation to the Board</p>	<p>Project that was initially not approved as a multi-year project – Board may extend its duration beyond one year based on reasonable justification;</p>
<p><b>Implementation</b> (Rule 4(1))</p>	<p>Recommendation to the Board</p>	<p>Board to ensure that CSR activities to be undertaken by company itself or through-</p> <p>(a) Section 8 company; or</p> <p>(b) Registered Public Trust; or</p> <p>(c) Registered Society</p> <p>Having prescribed registrations</p>



Particulars	CSR Committee	Board of Directors
<p><b>Spending or Transfer</b> (section 135(5) and (6))</p>	<p>Recommendation to the Board</p>	<p>Board to ensure that company spends in every financial year 2% of the average net profit made during preceding 3 financial years (if company exists &gt; 3 financial years) or during such immediately preceding financial years in pursuance of CSR Policy (if company exists &lt;3 years)</p> <p>In case of unspent amount related to on-going project – transfer such amount to separate bank account</p> <p>In case of unspent amount is related to other than on-going project – transfer such amount to funds prescribed in Schedule VII to the Act</p>
<p><b>Reporting</b> (Rule 4(4))</p>	<p>If companies collaborate among themselves, CSR Committee of respective company should be in a position to report separately on such projects or programmes</p>	<p>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 (Rule 4(5))</p>
<p><b>Monitoring for all projects – ongoing or otherwise</b> (Rule 4(5))</p> <p><b>Receiving CFO Certification</b> (Rule 4(5))</p>	<p>To review monitoring</p>	<p>Chief Financial Officer or the person responsible for financial management shall certify to the Board about utilization of funds disbursed for the purposes and manner approved by the Board.</p>

Particulars	CSR Committee	Board of Directors
<b>Monitoring for on-going projects</b> (Rule 4 (6))	To review monitoring	<b>In case of on-going project</b> - monitor the implementation of the project with reference to the approved timelines and year-wise allocation
<b>Administrative Over-heads</b> (Rule 7(1))	NA*	Ensure that Administrative Overheads shall not exceed 5% of total expenditure of company for the financial year.
<b>Set off excess amount</b> (Rule 7(3) (ii))	NA*	Where company spends an amount in excess of requirement and want to set off against the requirement – Board approval required by way of resolution at the time when – (a) company spent in excess (b) company want to set-off said excess amount
<b>Transfer of Capital Asset</b> (Proviso to Rule 7(4))	NA*	Requirement to transferring capital asset created prior to 22 <sup>nd</sup> January, 2021 to prescribed entities (section 8 company, regd. public trust, regd. society, beneficiary or public authority) within 180 days i.e. by 21 <sup>st</sup> July, 2021 –

Particulars	CSR Committee	Board of Directors
		it may be extended by 90 days – for which approval of board is required with reasonable justification
<b>CSR Reporting</b> (Sec. 135(5) and Rule 8)	NA*	Board's Report to include "annual report on CSR"  Specify the reason in case of company fails to spend amount
<b>Impact Assessment Report</b> (Rule 8(3) (b))	NA*	The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
<b>Disclosure on Website</b> (Rule 9)	NA*	Mandatory disclosure on website, if any:  (a) Composition of CSR Committee  (b) CSR Policy  (c) Projects approved by the Board

\* It is recommended to route these matters through CSR Committee

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**Annexure-V****Model Corporate Social Responsibility Policy****1. Purpose**

The Corporate Social Responsibility Policy ("CSR Policy") of \_\_\_\_\_ (name of the company) has been formulated by the CSR Committee and approved by the Board of Directors at its meeting held on \_\_\_\_\_.

This policy aims to contribute towards sustainable development of the society and environment to make planet a better place for future generations. The philosophy of CSR is imbibed in our business activities and social initiatives taken in the area of \_\_\_\_\_ (e.g. health, sanitation, drinking water and infrastructure etc.)

The activities enlisted in this CSR Policy are aligned with the group CSR Policy of \_\_\_\_\_ (name of the business group/parent/holding co., if any) and are carried out by the company either individually or in association with eligible Implementing Agencies registered with the Ministry of Corporate Affairs.

The CSR Policy is formulated in accordance with the provisions of section 135 of the Companies Act, 2013 and rules made thereunder and other applicable laws to the company.

**2. Effective Date**

This policy shall be effective from the beginning of financial year \_\_\_\_\_.

**3. Definitions**

- (i) "Act" means the Companies Act, 2013.
- (ii) "Board of Directors" or "Board" means the collective body of the directors of the company.
- (iii) "Company" means " \_\_\_\_\_ (name of the company)"
- (iv) "CSR Committee" means Corporate Social Responsibility Committee constituted by the Board of Directors of the company.
- (v) "CSR Policy" means CSR Policy of \_\_\_\_\_ (name of the company)
- (vi) "CSR Rules" means the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time.
- (vii) "Implementing Agency" means any entity registered with Ministry of

Corporate Affairs for undertaking CSR projects, which is engaged by the company to implement various projects in pursuance of CSR Policy.

Any term used in this policy but not defined herein shall have the same meaning assigned to them under the Act and CSR Rules as applicable to the company.

#### **4. Functions of CSR Committee**

CSR Committee was constituted by the Board of Directors on \_\_\_\_\_  
(date of constitution) with following functions assigned:

- a) To formulate and recommend a CSR Policy indicating the activities to be undertaken by the company in areas or subject specified in Schedule VII to the Act;
- b) To recommend the amount of expenditure to be incurred on the activities referred to in clause (a);
- c) To formulate and recommend an annual action plan in pursuance of CSR Policy covering the following aspects:
  - (i) the list of approved CSR projects or programs to be undertaken in areas or subjects specified in Schedule VII to the Act;
  - (ii) the manner of execution of such projects or programs as specified in rule 4(1) of CSR Rules;
  - (iii) the modalities of utilisation of funds and implementation schedules for the projects or programs;
  - (iv) monitoring and reporting mechanism for the projects or programs; and
  - (v) details of need and impact assessment, if any, for the projects undertaken by the company;
- d) Recommend changes to the Board, if any, needed in the annual action plan with reasonable justification to that effect.
- e) To monitor the CSR Policy as approved by the Board from time to time.

The CSR Committee should recommend the approach and direction of CSR activities to be undertaken by the company and also provide 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

## **5. CSR Activities**

Company shall undertake CSR activities for development of the society and the environment, particularly in the vicinity of the areas where the facilities of the company are located.

### **A. The company shall undertake such activities which are broadly related to any of the following:**

- (i) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation
- (ii) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects.
- (iii) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups.
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water.
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional art and handicrafts;
- (vi) measures for the benefit of armed forces veterans, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- (vii) training to promote rural sports, nationally recognised sports, paralympic sports and olympic sports

- (viii) Rural development projects
- (ix) Development of area declared as "slum area" by the Government or Competent Authority.
- (x) Disaster management, including relief, rehabilitation and reconstruction activities.

**B. The company may also contribute to the following funds as part of CSR activities:**

- (i) Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water.
- (ii) Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;
- (iii) Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other fund set up by the Central Government for socio economic development and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- (iv) 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;
- (v) 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 Defense 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).

The above areas as enshrined in Schedule VII to the Act and included in this policy aims to provide macro areas in which CSR projects should be undertaken by the company. The CSR Committee should consider details of CSR projects as elaborated in the annual action plan for each financial year.

Any CSR activity proposed to be undertaken as a CSR initiative, but not specifically covered in the aforesaid, may be undertaken only with the prior approval of the Board and CSR Committee.

## **6. Focus Areas**

While the company may undertake CSR activities in any areas listed above, the focus areas of CSR activities should be on the following aspects:

- (i) Health Camps
- (ii) Environment protection
- (iii) Rain Water Harvesting
- (iv) Rural Transformation
- (v) Safe Drinking Water
- (vi) Education to underprivileged

## **7. Annual Action Plan**

The CSR Committee shall formulate and recommend to the Board, an annual action plan which shall include the following:

- (a) the list of CSR projects or programmes that are approved and to be undertaken by the company
- (b) the manner of execution of such projects or programmes
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company.

The Board of Directors are empowered to alter the annual action plan during the financial year, if so recommended by the CSR Committee, based on the reasonable justification for such change.



## 8. CSR Spending

The company shall endeavor to achieve the objectives of CSR Policy and allocate every year:

- a. Minimum 2% of its average net profits made during the three immediately preceding financial years
- b. Any income or surplus arising out of the CSR activities, projects or programs shall not form part of the business profit of the company and the same shall be ploughed back for use in CSR activities

All the expenditure relating to CSR shall be pre-approved by the CSR Committee. The CFO shall monitor the utilization of funds for the purposes set forth and certify to this effect.

Unspent CSR amount, if any, shall be transferred to separate account in accordance with the applicable CSR Rules from time to time.

## 9. Mode of implementation

CSR programs, projects or activities of the company should be implemented through following methods:

- i. Directly by the company;
- ii. Implementing Agencies;
- iii. Any foundation or body incorporated by the company and eligible to undertake such CSR projects.
- iv. in collaboration with other organizations/group companies

While the company can engage suitable Implementing Agencies to undertake approved CSR projects. The company can also partner with local governance bodies, such as Gram Panchayats, Civic Bodies, Municipality to directly undertake approved CSR projects with the help and support of these bodies.

## 10. Need and Impact Assessment

CSR activities undertaken should be in the interest of the society and the local population where the company operates. Before undertaking any project or activities the company shall conduct need assessment for the project and its utility in the demography where project is proposed.

After one year of completion of CSR project, the company should consider to conduct an impact assessment of the project so completed and place a report for consideration of the Board.

A summary of impact assessment outcome shall be disclosed in the Board's Report.

### **11. Capital Assets**

Capital asset acquired or created by CSR projects should be held by the beneficiaries of the said CSR project or a trust or a public authority for the benefits of all. The company should take appropriate measure to ensure that such assets are utilized for the purpose it was meant for and should not be transferred or disposed off without prior permission of the company.

### **12. Information dissemination**

CSR Policy and activities undertaken shall be disseminated on website for public access and shall be published in the Annual Report of the company in the format prescribed under the Act and CSR Rules.

### **13. Review**

The CSR Committee shall be fully responsible for the monitoring and review of the implementation of this policy in accordance with applicable laws from time to time. The CSR Committee shall provide recommendations as and when it deems necessary to the Board so as to amend/ modify/ revise the CSR Policy.

**Note:** In addition, the CSR Policy of the company may give guidance on Voluntary CSR Initiatives, Voluntary CSR Audit, CSR Governance Principles and reporting about deviations, if any. Further, CSR Policy may also provide for guidance on disclosure of awards and recognitions received.

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**Annexure-VI****Specimen of CFO Certificate for utilisation of funds disbursed for CSR activities**

To

The Board of Directors

XYZ Ltd.

This is to certify that the following funds were disbursed and utilised for CSR projects, as approved by the Board of Directors and monitored by the CSR Committee, during the period\_\_\_\_\_:

Name of CSR Project	Implemented through	Amount Sanctioned	Amount Disbursed	Amount Utilised	Unspent Amount, if any

The books of account and other records of CSR projects, as available with the company/ Implementing Agency, gives reasonable assurance about the utilisation of the funds disbursed by the company to Implementing Agencies for undertaking approved CSR activities.

Utilization Report by Auditors of Implementing Agencies/third parties engaged by the company is annexed.

Chief Financial Officer / Person-in-Charge (Finance)

XYZ Ltd.

Date:

Place:

\*\*\*\*

**Annexure- VII**

**[Annexure-I of CSR Rules]**

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT FOR FINANCIAL YEAR COMMENCED PRIOR TO 1<sup>ST</sup> DAY OF APRIL 2020

1. A brief outline of the company's CSR Policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR Policy and projects or programs.
2. The composition of the CSR Committee.
3. Average net profit of the company for last three financial years
4. Prescribed CSR Expenditure (2% of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
  - (a) Total amount to be spent for the financial year;
  - (b) Amount unspent, if any;
  - (c) Manner in which the amount spent during the financial year is detailed below:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sl. No	CSR project or activity Identified	Sector in which the Project is covered	Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was undertaken	Amount outlay (budget) project or programs wise	Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs (2) Overheads	Cumulative expenditure upto the reporting period	Amount spent: Direct or through Implementing Agency *
1							
2							
	TOTAL						

\* Give details of Implementing Agency

6. In case the company has failed to spend the 2% of the average net profit of the last three financial years or any part thereof, the company shall provide reasons for not spending the amount in its Board's report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/-	Sd/-	Sd/-
(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee)	(Person specified under clause (d) of sub- section (l) of section 380 of the Act) (wherever applicable)

**[Annexure-II of CSR Rules]**

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT FOR FINANCIAL YEAR COMMENCING ON OR AFTER 1<sup>ST</sup> DAY OF APRIL, 2020

1. Brief outline on CSR Policy of the Company.
2. Composition of CSR Committee.

Sl. No.	Name of Director	Designation / Nature of Directorship	No. of meetings of CSR Committee held during the year	No. of meetings of CSR Committee attended during the year

3. Provide the web-link where Composition of CSR committee, CSR Policy and CSR projects approved by the Board are disclosed on the website of the company
4. Provide the details of impact assessment of CSR projects carried out in pursuance of sub-rule (3) of rule 8 of Companies (CSR Policy) Rules, 2014, if applicable (attach the report)
5. Details of the amount available for set off in pursuance of sub-rule (3) of rule 7 of the Companies (CSR Policy) Rules, 2014 and amount required for set off for the financial year, if any

Sl. No.	Financial Year	Amount available for set-off from preceding financial years (in Rs)	Amount required to be set-off for the financial year, if any (in Rs)
1			
2			
3			
	TOTAL		

6. Average net profit of the company as per section 135(5).
7. (a) 2% of average net profit of the company as per section 135(5)  
 (b) Surplus arising out of the CSR projects or programmes or activities of the previous financial years  
 (c) Amount required to be set off for the financial year, if any  
 (d) Total CSR obligation for the financial year (7a+7b-7c)
8. (a). CSR amount spent or unspent for the financial year:

Total Amount Spent for the Financial Year (In Rs.)	Amount Unspent (In Rs.)			
	Total Amount transferred to Unspent CSR Account as per section 135(6)	Amount transferred to any fund specified under Schedule VII as per second proviso to section 135(5)		
	Amount	Date of transfer	Name of the Fund	Amount





(c) Details of CSR amount spent against other than ongoing projects for the financial year:

(1) Sl. No.	(2) Name of the Project	(3) Item from the list of activities in Schedule VII to the Act	(4) Local Area (Yes/No)	(5) Location of the Project		(6) Amount Spent for the project (in Rs.)	(7) Mode of Implementation - Direct (Yes/No)	(8) Mode of Implementation - Through Implementing Agency	
				State	District			Name	CSR registration number
1									
2									
3									
	<b>TOTAL</b>								

(d). Amount spent in Administrative Overheads

(e). Amount spent on Impact Assessment, if applicable

(f). Total amount spent for the Financial Year (8b+8c+8d+8e)

(g). Excess amount for set off, if any

Sl. No.	Particulars	Amount (in Rs.)
(i)	2% of average net profit of the company as per section 135(5)	
(ii)	Total amount spent for the financial year	
(iii)	Excess amount spent for the financial year [(ii)-(i)]	
(iv)	Surplus arising out of the CSR projects or programmes or activities of the previous financial years, if any	
(v)	Amount available for set off in succeeding financial years[(iii)-(iv)]	

9. (a) Details of unspent CSR amount for the preceding three financial years:

Sl. No.	Preceding Financial Year	Amount transferred to Unspent CSR Account under section 135 (6) (in Rs.)	Amount Spent in the reporting Financial Year (in Rs)	Amount transferred to any fund specified under Schedule VII as per section 135(6) if any			Amount remaining to be spent in succeeding financial years (in Rs.)
				Name of the Fund	Amount (in Rs.)	Date of Transfer	
1							
2							
3							
	TOTAL						

(b) Details of CSR amount spent in the financial year for ongoing projects of the preceding financial year(s):

(1) Sl. No.	(2) Project ID	(3) Name of the project	(4) Financial Year in which the project was commenced	(5) Project duration	(6) Total amount allocated for the project (in Rs.)	(7) Amount spent on the project in the reporting financial year (in Rs.)	(8) Cumulative amount spent at the end of reporting financial year (in Rs.)	(9) Status of the project – Completed / On-going
1								
2								
3								
	TOTAL							

10. In case of creation or acquisition of capital asset, furnish the details relating to the asset so created or acquired through CSR spent in the financial year. (asset-wise details)

- (a) Date of creation or acquisition of the capital asset(s) .
- (b) Amount of CSR spent for creation or acquisition of capital asset.
- (c) Details of the entity or public authority or beneficiary under whose name such capital asset is registered, their address etc.

(d) Provide details of the capital asset(s), created or acquired (including complete address and location of the capital asset).

11. Specify the reason(s), if the company has failed to spend 2% of the average net profit as per section 135(5).

Sd-	Sd-	Sd-
(Chief Executive Officer or Managing Director or Director)	(Chairman CSR Committee).	[Person specified under clause (d) of sub- section (1) of section 380 of the Act]  (wherever applicable).

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**Annexure-VIII****Specimen of Board Resolutions to be passed with respect to CSR provisions****1. TO APPROVE FILING OF FORM CSR -1\*****1A. In cases where Implementing Agency is a corporate entity**

**“RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time, the approval of the Board of Directors of the [name of the section 8 company], be and is hereby accorded for filing e-form CSR-1 on behalf of the company on the portal of the Ministry of Corporate Affairs, Government of India.

**RESOLVED FURTHER THAT** Board of Directors of [name of the section 8 company], do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing of e-form CSR-1.

**RESOLVED FURTHER THAT** Board of Directors of the [name of the section 8 company], be and are hereby authorized severally to take necessary steps to give effect to the above resolution and do all such acts, deeds and things as may be required to ensure filing of e-form CSR-1.”

**1B. In cases where Implementing Agency is a Non-Corporate entity\***

**“RESOLVED THAT** in accordance with the requirements of the section 135 of the Companies Act, 2013 and the relevant rules thereunder as applicable to the Trust/Association, application be made in Form No.CSR-1 with the Ministry of Corporate Affairs, Government of India, for registration of the [name of the entity] and that any one of the Trustees be and are hereby authorized to finalise the application, file the same on MCA portal and to attend to all matters incidental thereto.

**RESOLVED FURTHER THAT** Board of Trustees/Governor of the {name of the entity} do hereby take on record the valid registration certificates granted under section 12A and section 80G of the Income Tax Act, 1961 for the purposes of receiving CSR funds and for filing e-form CSR-1.

**[\*Note:** A suitable preamble should be provided explaining in brief the background.]

## **2. TO APPROVE AMENDMENT TO THE EXISTING CSR POLICY**

**“RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable, the Board of Directors of the company do and hereby approve amendments to the existing CSR Policy as recommended by the CSR Committee of the Board.

**RESOLVED FURTHER THAT** the amended CSR Policy, be and is hereby approved, signed by Mr./Ms. [●], Director.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company.”

## **3. TO APPROVE AND ADOPT A NEW CSR POLICY**

**“RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve a new CSR Policy in suppression of the existing CSR Policy dated [●] in compliance with the requirements under Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

**RESOLVED FURTHER THAT** the new CSR Policy be and is hereby approved and signed by Mr./Ms. [●], Director.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of revised policy on the website of the company.”

## **4. TO IDENTIFY IMPLEMENTING AGENCIES AND TO APPROVE ALLOCATION OF CSR AMOUNT**

**“RESOLVED THAT** pursuant to section 135 and other applicable provisions, if any, of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR Committee, the Board of Directors do and hereby identify and approve following implementing agencies for the purpose of implementing the CSR projects of

the company as outlined below with allocation of amount of [Rs. \_\_\_\_ ] as CSR expenditure for the Financial Year [•].

Sl. No.	Implementing Agency	Purpose	Nature of Project (one time / multi-year)	CSR spend allocated (Rs.)
	Total			

**RESOLVED FURTHER THAT** Mr. / Ms. [•] (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to convey the approval to the identified implementing agencies and to take all necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be incidental to the above.”

#### **5. TO APPROVE THE ANNUAL ACTION PLAN FOR THE FINANCIAL YEAR [•]**

“**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with rule 5(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and based on the recommendations of the CSR Committee, the Board of Directors of the company do and hereby approve the annual action plan to be implemented by the company for the financial year [•]

**RESOLVED FURTHER THAT** the annual action plan be and is hereby signed by Mr./Ms. [•], Director.

**RESOLVED FURTHER THAT** the Board of Directors do and hereby take note of, inter- alia, the following specific matters included in the annual action plan in pursuance of CSR Policy of the company:

- (a) the list of approved CSR projects or programmes
- (b) the manner of execution of such projects or programmes
- (c) the modalities of utilisation of funds and implementation schedules
- (d) monitoring and reporting mechanism for the projects or programmes
- (e) details of need and impact assessment, if any, for the projects undertaken by the company

**RESOLVED FURTHER THAT** the said annual action plan shall stand valid until altered by the Board of Directors during the financial year [•] on such grounds as it may deem appropriate, subject to the recommendation of the CSR Committee.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and to do all such acts, deeds and things as may be required to ensure implementation of the annual action plan.”

#### **6. TO APPROVE DISSOLUTION OF CSR COMMITTEE**

“**RESOLVED THAT** in terms of section 135 (9) of the Companies Act, 2013 and any other provisions as may be applicable from time to time and in view of the fact that the requirement to make spends on account of CSR obligations for the Financial Year [•] is less than Rs. 50 lakh, approval of the Board of Directors be and is hereby accorded to dissolve the CSR committee with immediate effect/ with effect from [•]

**RESOLVED FURTHER THAT** the duties and the responsibilities of the CSR Committee in terms of the Companies Act, 2013, rules thereunder and CSR Policy, be and are hereby entrusted with the Board of Directors with effect from \_\_\_\_\_.”

**RESOLVED FURTHER THAT** that the Board of Directors do place on record its sincere appreciation for the services extended by the members of the CSR Committee during their tenure of association with the Committee”

#### **7. TO APPROVE OPENING OF A BANK A/C FOR UNSPENT CSR AMOUNT**

“**RESOLVED THAT** a bank account under the name and style of “Unspent CSR Account of M/s [•]” be opened with [•] Bank, [•] Branch and the below named signatories be and are hereby authorized to open and operate the said account:

##### **List of Authorized Signatories**

**RESOLVED FURTHER THAT** the \_\_\_\_\_ (name of the bank) be and is hereby authorized to accept, honour and pass all cheques, hundis, bills of exchange, promissory notes, indemnities, guarantees, agreement for letter of credit, trust receipt for monies, received and any other commercial documents whatsoever drawn, made, accepted endorsed by the aforementioned signatories and to act upon all such instructions given by them in the manner provided herein below including Internet Banking Facility:



Limit	Signatories

**RESOLVED FURTHER THAT** the abovementioned authorized signatories be and are hereby authorized to apply for and avail the Internet Banking facility offered by the bank, receive login and password and operate the account in the manner provided herein above.

**RESOLVED FURTHER THAT** this resolution shall remain in force until a superseding resolution is passed by the Board of Directors to this effect.

**RESOLVED FURTHER THAT** the Directors of company be and are hereby authorized severally to do all such acts, matters, deeds and things as may be necessary and incidental to give effect to this resolution including issuing extracts of the resolution passed to the Banker.”

#### **8. TO APPROVE ONGOING PROJECT AND TRANSFER TO THE ‘UNSPENT CSR A/C’**

“**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 read with rule 4(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and such other provisions as may be applicable and in terms of the approved annual action plan for the financial year [●], the Board of Directors do and hereby take on record and approve the following CSR projects (which were not approved originally as multi-year projects but whose duration is more than one year but less than three years) as ongoing projects on account of extension in their scope:

Sl No.	Name of Project	Implementing Agency	Duration (excluding FY in which it commenced)	Justification for classification	Amount allocated for the project
1					
2					

**RESOLVED FURTHER THAT** an amount of Rs. [●] remaining unspent for the Financial Year [●] in respect of the above ongoing projects be and is hereby transferred to the “Unspent CSR Account” of the company, maintained with [●] Bank and approval of the Board be and is hereby accorded to spend out of

the said Account over a period of 3 years from the end of the Financial Year to which it relates, such amounts as may be determined by the Board from time to time, as part of CSR obligations of the company.

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required.”

**9. TO APPROVE TRANSFER OF UNSPENT CSR AMOUNT TO SPECIFIED FUND UNDER SCHEDULE VII TO THE COMPANIES ACT, 2013**

“**RESOLVED THAT** pursuant to section 135 (5) of the Companies Act, 2013 read with rule 10 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 and such other provisions as may be applicable and in terms of the CSR Policy of the company and as recommended by the CSR Committee, the Board of Directors of the company do and hereby approve the transfer of Rs. [•] being the unspent CSR amount for the financial year [•], not being an amount relating to any ongoing project, to any of the funds specified in Schedule VII to the Companies Act, 2013 as listed below within a period of 6 months of expiry of Financial Year [•]

Description of the Fund specified in Schedule VII	Amount to be transferred (in INR)

**RESOLVED FURTHER THAT** the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required.”

**10. TO APPROVE APPOINTMENT OF INDEPENDENT AGENCY FOR UNDERTAKING IMPACT ASSESSMENT**

“**RESOLVED THAT** pursuant to section 135 of the Companies Act, 2013 and other applicable provisions read with rule 8(3) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as amended from time to time and based on the recommendation of the CSR Committee, the Board of Directors do and hereby approve appointment of M/s [•] as an Independent Agency to conduct impact assessment in respect of the following CSR projects undertaken by the company during the Financial Year [•] and which have an outlay of Rs. 1 crore or more and which have been completed not less than one year before undertaken the impact assessment.

Sl. No.	Implementing Agency	Purpose	Project Outlay (Rs.)	Date of Completion

**RESOLVED FURTHER THAT** Mr. / Ms. [•] (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to finalize the terms and conditions of the appointment including the remuneration and out of pocket expenses payable to the impact assessment agency, subject to the condition that the same shall not exceed 5% of the total CSR expenditure for that financial year or Rs. 50 lakhs, whichever is less.

**RESOLVED FURTHER THAT** Mr. / Ms. [•] (Director/KMP/CSR Head/ Officer) of the company be and is hereby authorized to do all such acts, deeds and things as may be required including signing and execution of documents in this regard and take all necessary steps to give effect to the above resolutions.”

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