

# Ushering a new CSR regime -

## Latest changes in CSR

21st May, 2021

Jatin Jalundhwala,  
Company Secretary & Joint President (Legal)  
Adani Enterprises Limited

# CORPORATE SOCIAL RESPONSIBILITY

## Legal Framework of CSR under Companies Act, 2013 (CA2013)

India is the **first country to make CSR mandatory**

Section 135 of CA 2013 provides guidance to Companies, if CSR is applicable to it, then it has :

1. To form CSR committee
2. To have CSR Policy
3. To spend on CSR activities
4. To Report spending

Before 22 Jan 2021, the provision was **COMPLY or EXPLAIN**, now after 22 Jan 2021 Non Compliance is penalized .

# Amendments in CSR Provisions

**01**

**The Companies  
(Amendment) Act, 2019**

**The Companies  
(Amendment) Act, 2020**

**02**

**The Companies (CSR  
Policy) Amendment  
Rules, 2021**

## Definition of CSR

**Corporate Social Responsibility (CSR):** means the activities undertaken by a company in pursuance of **section 135** and rules made thereunder, but shall not include the following, namely:-

- ✘ Activities undertaken in pursuance of normal course of business of the company:
  - However, any company engaged in R&D activity of new vaccine, drugs and medical devices in their normal course of business may undertake R&D activity of new vaccine, drugs and medical devices related to COVID-19 for FYs 2020-21, 2021-22, 2022-23 subject to the conditions that-
    - a) such R&D activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
    - b) details of such activity shall be disclosed separately in the Annual Report on CSR included in the Board's Report.

## Definition of CSR.. Exclusions...

- ✗ **Any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;**
- ✗ Contribution of any amount directly or indirectly to any political party u/s 182;
- ✗ **Activities benefitting employees of the company as defined in section 2(k) of the Code on Wages, 2019;**
- ✗ **Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;**
- ✗ Activities carried out for fulfilment of any other statutory obligations under any law in force in India.

## CSR will be applicable if in Immediately Preceding FY the Company has

**Net Worth** of  
Rs. 500 Crore  
or more

OR

**Turnover** of  
Rs. 1000  
crore or  
more

OR

**Net Profit**  
of Rs. 5  
crore or  
more

OR

## Role of CSR Committee

### CSR Committee

- To **formulate & recommend** to the Board CSR Policy of the Company, which shall include Activities to be undertake by the Company ;
- To **recommend the amount** of CSR activities
- To **monitor CSR Policy**



## CSR Committee: Optional



- ✘ Constitution of CSR Committee is now **optional**, if the CSR obligation does not exceed **Rs. 50 lakhs**.
- ✘ In such case, the functions of CSR Committee shall be discharged by the Board of Directors.

## Functions of CSR Committee: Annual Action Plan

In addition to the functions specified in **Section 135**, now, the CSR Committee shall formulate and recommend to the Board, an **annual action plan** in pursuance of its CSR policy, which shall include the following, namely:



- ✍ **List of approved CSR projects and programmes;**
- ✍ **Manner of execution** of such projects or programmes;
- ✍ **Modalities of utilisation of funds and implementation schedules;**
- ✍ **Monitoring and reporting mechanism;**
- ✍ **Details of need and impact assessment**, if any, for the projects undertaken by the company.

## Change in CSR Regime

Unspent CSR Expenditure

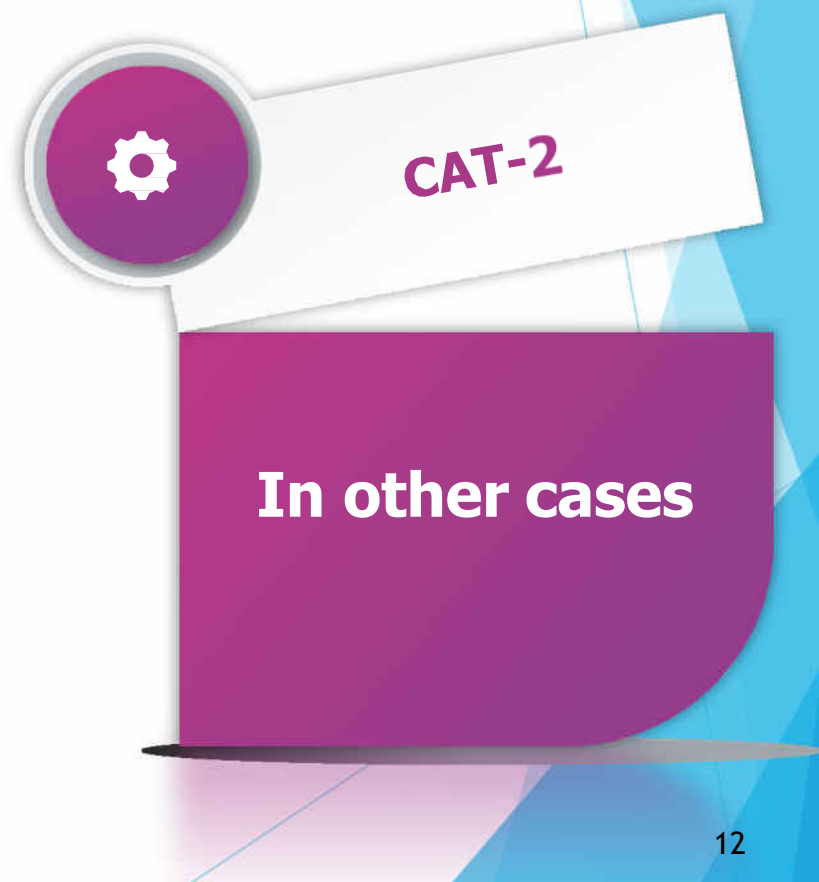
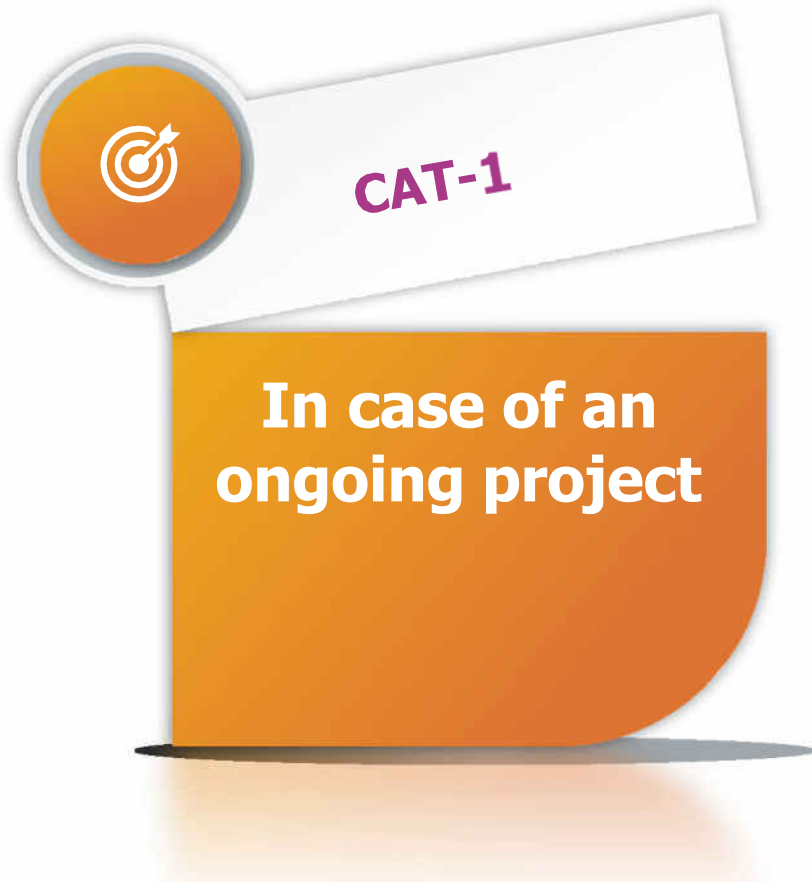


Comply or  
Explain

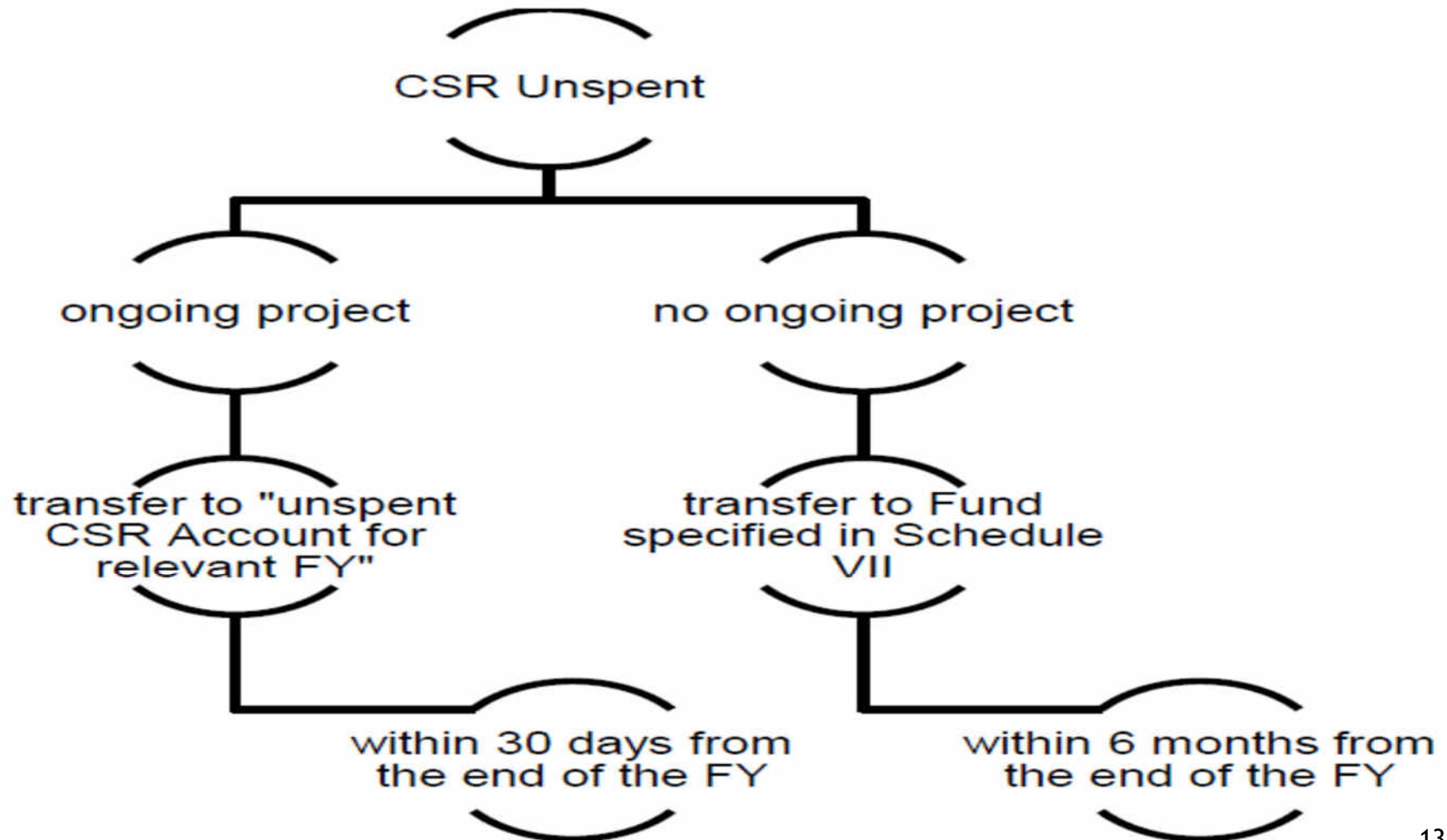


Comply or  
transfer

## Unspent CSR Expenditure



## Unspent CSR Expenditure



## CSR expenditure on Ongoing Projects- Key Issue



- ✍ **How compliance will be achieved in case of CSR amount transferred to any Trust, Section 8 Company?**



## Ongoing Projects

✂ **“Ongoing Projects”** means

- a multi-year project undertaken by a Company in fulfilment of its CSR obligation;
- project timelines shall not exceed 3 years excluding the financial year in which it was commenced; and
- projects that were initially not approved as a multi-year project but whose duration has been extended beyond one year by the Board based on reasonable justification.

## What type of projects can be treated as Ongoing Projects

- ✘ Any CSR program carried on a project mode and duration of which exceeds one year may be considered as an Ongoing Project.
- ✘ In case of an Ongoing Project, the Board must approve
  - ✘ Timelines to complete,
  - ✘ Budget allocation during the entire tenure of the project,
  - ✘ Manner in which project will be implemented etc.
- ✘ While projects like construction of educational institutes, hospitals, vocational center, are likely to qualify as ongoing projects. Besides projects like educating 1000 girl child over a period of 2 years or organizing health camps across cities may also qualify as ongoing projects





What type of projects can be treated as Ongoing Projects

Company has a recognized trust established by promoters.

They are building a school. The work is not completed and majority funding is done by company.

Will it be covered as ongoing projects for company and will they get the benefit of unspent amount ? - Yes

## Unspent CSR Expenditure: In case of an ongoing project

Transfer the unspent CSR amount to a special account (Unspent CSR Account) within 30 days from the end of financial year

Amount in Unspent CSR amount shall be spent towards the CSR Policy within a period of three financial years from the date of such transfer

On failing, company shall transfer the amount to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of 3rd financial year.

## Unspent CSR Expenditure: In other case



## Unspent CSR Expenditure- Funds specified in Schedule VII

**PMNRF**  
PRIME MINISTER'S  
National Relief Fund



**PM CARES**  
Prime Minister's Citizen Assistance and Relief  
in Emergency Situations Fund

✍ Until a fund is specified in **Schedule VII**, the unspent CSR amount, if any, shall be transferred by the company to any fund included in **Schedule VII**.

✍ **Funds specified in Schedule VII:**

- Swachh Bharat Kosh;
- Clean Ganga Fund;
- PM National Relief Fund;
- PM CARES Fund;
- Other fund set up by the Central Government for socio-economic development

## Surplus from CSR Activities



- ✗ Any surplus arising out of the CSR activities shall not form part of the business profit of a company;
- ✗ Ploughed back into the same project or shall be transferred to the Unspent CSR Account;
- ✗ Spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.

## Carry forward and set off -excess CSR expenditure

- Now companies can **carry forward** the higher CSR spend beyond the minimum required amount, for set-off with CSR obligation up to immediate **succeeding three financial years**.

<b>CSR Obligations</b>	Rs 2 crores
<b>Amount Spent</b>	Rs 3 crores
<b>Excess spent can be adjusted up to immediate succeeding three financial years</b>	Rs 1 crore

- The following conditions should be fulfilled:
  - Excess amount available for set off shall not include the surplus arising out of the CSR activities, if any.
  - The Board shall pass a resolution to that effect.

## Implementation Agencies/ Entities

	Before 22 <sup>nd</sup> January, 2021	On or after 22 <sup>nd</sup> January, 2021
Trust	<p><b><u>Any Registered Trust</u></b> established by:</p> <ul style="list-style-type: none"> <li>the company either singly or along with any other company; or</li> <li>having an established track record of at least 3 years in undertaking similar activities.</li> </ul>	<p><b><u>Registered Public Trust registered under section 12A &amp; 80G of the Income Tax Act</u></b> established by:</p> <ul style="list-style-type: none"> <li>the company either singly or along with any other company; or</li> <li>having an established track record of at least 3 years in undertaking similar activities.</li> </ul>
Society	<p><b><u>Any Registered Society</u></b> established by:</p> <ul style="list-style-type: none"> <li>the company either singly or along with any other company; or</li> <li>having an established track record of at least 3 years in undertaking similar activities.</li> </ul>	<p><b><u>Registered Society registered under section 12A &amp; 80G of the Income Tax Act</u></b> established by:</p> <ul style="list-style-type: none"> <li>the company either singly or along with any other company; or</li> <li>having an established track record of at least 3 years in undertaking similar activities.</li> </ul>

## Implementation Agencies/ Entities



The company can undertake the CSR activities through the following entities:

- ✗ **Section 8 Company** established by the company, either singly or along with any other company; or
- ✗ **Section 8 Company** or **any registered trust** or **any registered society** established by the Central Government or State Government; or
- ✗ Any **entity** established under an Act of Parliament or a State legislature; or
- ✗ **Section 8 Company** having an established track record of at least 3 years in undertaking similar activities.



## Implementation Agencies/ Entities



- ✎ Every implementation entity, which intends to undertake any CSR activity, shall register itself with the Central Government by filing the **Form CSR-1** with the Registrar, w.e.f. **01/04/2021**.
- ✎ However, this amendment shall not affect the CSR projects or programmes approved prior to **01/04/2021**.

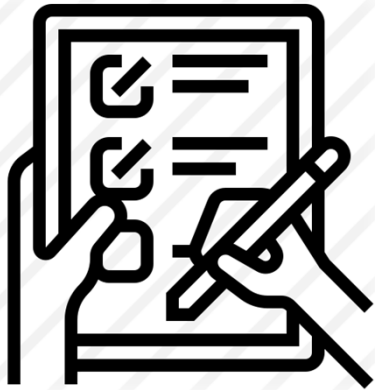
## Administrative Overheads: Defined



✎ **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.**

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

## Impact Assessment



- ✗ **Requirement:** Every company having average CSR obligation of **Rs. 10 crore or more**, in 3 immediately preceding financial years.
- ✗ **Impact Assessment of:**
  - CSR projects having outlays of **Rs. one crore or more**; and
  - Which have completed at least **one year**.
- ✗ **Impact Assessment by:** an independent agency.
- ✗ The impact assessment reports shall be placed before the Board and shall be annexed to the Annual Report on CSR.

## Impact Assessment




- ✎ 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.



***Expenditure on impact assessment will form part of CSR expenditure during the FY , in which assessment is carried and cost is incurred***



## Capital Asset

- 
- ✂ Now, Companies may spent the CSR amount for creation or acquisition of a capital asset, which shall be held by -
    - a Section 8 Company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number **(after filing Form CSR-1)**; or
    - beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
    - a public authority.

## Capital Asset



- ✘ However, any capital asset created by a company prior to **22/01/2021**, shall within a period of **180 days** from **22/01/2021** comply with the aforementioned requirement, which may be extended by a further period of not more than **90 days** with the approval of the Board based on reasonable justification.

## International organisations



- ✍ Now, 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 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.

## Annual Report on CSR Activities



A new detailed **Annual Report on CSR Activities** to be included in the Board's Report for FY 2020-21 onwards has been prescribed in Annexure II under the CSR Policy Rules.



## Additional disclosures in 'Annual Report on CSR Activities'



- ✗ Details of Impact assessment of CSR projects;
- ✗ Details of the amount available for set off and amount required for set off for the financial year, if any;
- ✗ Details of CSR amount spent against **ongoing projects** and **other than ongoing projects** for the financial year.
- ✗ Details of CSR amount spent against **ongoing projects** during the last FY and FYs preceding the same.
- ✗ Details of Unspent CSR amount and amount transferred to unspent CSR account during preceding three years.

## Additional disclosures in 'Annual Report on CSR Activities'



- ✍ Amount transferred to any fund specified in Schedule VII
- ✍ Amount spent on Administrative Overheads and Impact Assessment, if applicable.
- ✍ Asset-wise details of capital asset so created or acquired through CSR spent in the financial year.
- ✍ State and district of CSR project

## Utilization Certificate



- ✎ **CFO** or the **person responsible for financial management** shall certify to the Board that the funds so disbursed have been utilized for the purposes approved by it.
- ✎ **Certificate is not required to be disclosed anywhere**

## Website disclosure

Apart from CSR Policy; now constitution of CSR Committee and CSR Projects to be displayed on website.

## Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 [CSR Amendment Rules, 2021] (January 22, 2021)

- **CSR Obligation calculation**

SN	Particulars	Amount
1.	Average net profit of the company as per section 135(5).	1000
2(a).	Two percent of average net profit of the company as per section 135(5).	20
2(b).	Surplus arising out of the CSR projects or programmes or activities of the previous financial years.	10
2(c).	Amount required to be set off for the financial year, if any.	(5)
2(d).	Total CSR obligation for the financial year (2a+2b-2c).	25

## CSR Activities u/Schedule VII of CA 2013 to be read liberally

1. Eradicating Hunger & Poverty & Malnutrition ;

2. Promotion of Education;

3. Promotion of Gender Equality and Empowering Women;

4. Ensuring Environmental Sustainability;

5. Protection of National Heritage, Art and Culture

6. Measures for the benefit of Armed Forces Veterans, War Widows & their dependents;

## CSR Activities u/Schedule VII of CA 2013 to be read liberally

7. Training to promote Sports

8. Contribution to the Prime Minister's National Relief Fund and PM CARES Fund

9. Contribution to Incubators or Research and Development Projects

10. Rural Development Project .

11. Slum Area Development  
12. Disaster Management

## Penal Provisions

Old Penal Provision	New Penal Provision
<p><b>Company shall be punishable with:</b></p> <p><b>Fine:</b>  <i>Minimum-</i> Rs. 50 thousand;  <i>Maximum-</i> Rs. 25 lakh.</p> <p><b>Every officer of the company who is in default shall be punishable with:</b></p> <p><b>Imprisonment:</b>  <i>Maximum-</i> 3 years</p> <p style="text-align: center;"><b>OR</b></p> <p><b>Fine:</b>  <i>Minimum-</i> Rs. 50 thousand;  <i>Maximum-</i> Rs. 5 lakh.</p> <p style="text-align: center;"><b>OR</b></p> <p><b>Both</b></p>	<p><b>Company shall be liable to:</b>            Penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or Rs. 1 crore, whichever is less.</p> <p style="text-align: center;"><b>AND</b></p> <p><b>Every officer of the company who is in default shall be liable to:</b>            Penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent CSR Account, as the case may be, or Rs. 2 lakh, whichever is less.</p>



# Practical challenges





## Capital Assets



- ✗ The capital assets 'created or acquired' out of CSR funds cannot be held directly by the company. It can only be held by the entities prescribed under Rule 7(4)(a) to 7(4)(c), which includes a Section 8 company, registered public trust, a public authority, etc.
  - The transfer of capital assets such as land and buildings will have stamp duty implications, which casts an additional financial burden on the company.
  - This provision will affect those companies which do not undertake their CSR activities through implementing partners.
  - Applicability from retrospective effect is ultra virus the parent statute.



## Unspent CSR Expenditure

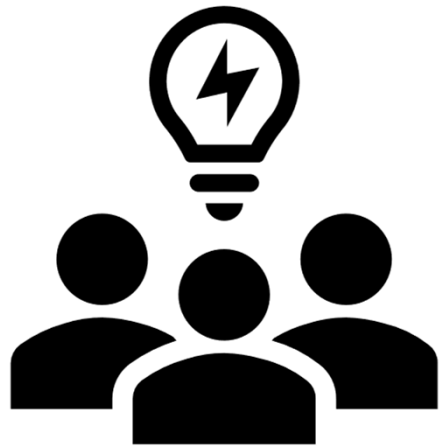


- ✍ Under Section 135(6), the unspent CSR amount (for a particular FY), pursuant to an “ongoing project”[5], shall be transferred to an “Unspent CSR Account”, which is to be opened by the company. This provision has affected companies which disburse their CSR funds to implementing partners.
  - As the “Unspent CSR Account” cannot be opened by implementing partners, the company may be forced to claw back the unspent CSR amount from the implementing partner.
  - Clawing back such funds becomes more difficult if the company has engaged multiple implementing partners or vendors.

## Utilization Certificate - CFO



- ✍ Under Rule 4(5) – “The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect”. This provision creates practical difficulties for companies that have engaged implementing partners, as the CFO has an obligation to ensure that the implementing partners have also utilised CSR funds in accordance with Board approvals.
- ✍ Certificate is not required to be disclosed anywhere.
  - In many situations, the implementing partners may engage multiple sub-partners and vendors for last-mile implementation of CSR activities. In such situations, the CFO will have an onerous responsibility of ensuring proper utilisation of funds at the last-mile.



## Concluding thoughts

- ▶ Apart from casting onerous legal obligations on the company, the new CSR regime provides for the imposition of stringent monetary penalties for non-compliance with the CSR mandate.
- ▶ Under Section 135(7), stringent penalties can be imposed on the company, and every officer in default. Although Section 135(7) has been ‘decriminalised’, it is among the few provisions of the Act where the quantum of ‘penalty’ has not been significantly reduced.
- ▶ Within a span of eight years, there has been a major departure from the original objective of CSR, which was envisaged to encourage corporate philanthropy

**THANK YOU**

