

CORPORATE SOCIAL RESPONSIBILITY

AN ENGINE FOR INCLUSIVE GROWTH



**THE INSTITUTE OF
Company Secretaries of India**

IN PURSUIT OF PROFESSIONAL EXCELLENCE
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Preface

'Doing good is not a private act between a bountiful giver and a grateful receiver, it is a prudent social act.' – *Benjamin Franklin*

We live a dynamic life in a world that is growing more and more complex. Global scale environmental, social, cultural and economic issues have now become part of our every day life. Boosting profits is no longer the sole business performance indicator for the corporates and they have to play the role of responsible corporate citizens as they owe a duty towards the society, where they operate and draw resources from it and as such they are part of society. Corporate Social Responsibility [CSR] is underpinned by public policy and therefore, it has undeniable links with law. CSR is not something new to India and the concept of trusteeship advocated by Mahatma Gandhi, the Father of the Nation was embraced by many companies, in various forms over the years.

The government perceives CSR as the business contribution to the nation's sustainable development goals. Essentially, it is about how business takes into account the economic, social and environmental impact of the way in which it operates. Perception of the government about CSR gained shape and form in the Companies Act, 2013, which mandates Companies to undertake Corporate Social Responsibility, as one of the Board Agenda.

This handbook, 'Corporate Social Responsibility - An Engine for Inclusive Growth' highlights the historical background of the emergence of the concept, an analysis of the prescription for CSR under the Companies Act, 2013, a global perspective on the concept of CSR and frequently asked questions.

My sincere thanks to Mr. Lalit Kumar, Partner, J. Sagar Associates, for his valuable inputs in reviewing the book. I commend the dedicated efforts put in by team- ICSI led by CS Alka Kapoor, Joint Secretary and comprising of CS Banu Dandona, Deputy Director and CS Disha Kant, Assistant Education Officer in the Directorate of Professional Development –II under the overall guidance of CS Sutanu Sinha, Chief Executive & Officiating Secretary, ICSI and the guidance and leadership of Mr. Sanjay Grover, Central Council Member and Chairman, Corporate Laws and Governance Committee.

I am confident that this publication will be of immense practical value to company directors, corporate governance professionals and practitioners.

I welcome your suggestions for further value additions to this publication.

CS R. Sridharan

President

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CORPORATE SOCIAL RESPONSIBILITY

INTRODUCTION

No success in material terms is worthwhile unless it serves the needs or interests of the country and its people". JRD TATA

Economic growth is possible only through consumption of inputs available in the environment and society. The harnessing of natural resources has a direct impact on the economy, the environment and society at large. Corporate Social Responsibility (CSR) is a concept whereby organizations serve the interests of society by taking responsibility for the impact of their activities on customers, employees, shareholders, communities and the environment in all aspects of their operations. Corporate social responsibility is not about just giving randomly but about bringing benefits to all the stakeholders, including customers, employees and community at large.

Corporate Social Responsibility is the way companies manage their businesses to produce an overall positive impact on society through economic, environmental and social actions. Corporate social responsibility (CSR), also called corporate conscience, corporate citizenship, social performance, or sustainable responsible business/businesses. Business depends for its survival on long term prosperity of the society.

CSR has been defined by different people giving it a varied dimension. According to Michel Hopkins "Corporate Social Responsibility is concerned with treating the stakeholders of a company or institution ethically or in a responsible manner. 'Ethically or in a responsible manner' refers to treating key stakeholders in a manner deemed acceptable according to international norms."

European Union has defined CSR thus "A concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis." According to Business for Social Responsibility (BSR) "Corporate social responsibility is operating a business in a manner which meets or excels the ethical, legal, commercial and public expectations that a society has from the business."

The Corporate Social Responsibility and Corporate Governance are inextricable in today's going perception of the society. The Corporate

Governance and business ethics make the concept of Corporate Social Responsibility inevitable. As Winston Churchill once said "With great power comes great responsibility", social responsibility cannot be avoided.

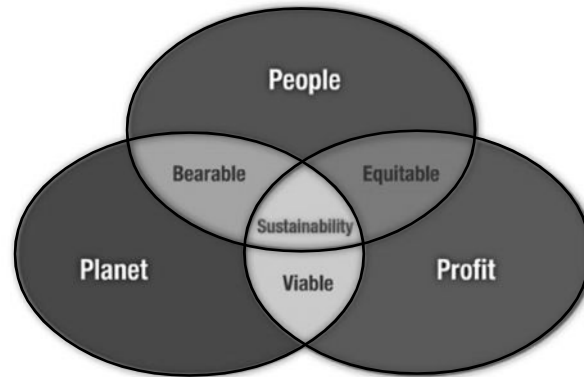
Corporate Social Responsibility is an important business strategy because, to some extent a consumer wants to buy products from companies he trusts, a supplier wants to form business partnership with companies he can rely on, an employee want to work for a company he respects, other concerns want to establish business contacts with companies seeking feasible solutions and innovations in areas of common concern.

Corporate social responsibility is basically a new business strategy to reduce investment risks and maximise profits by taking all the key stakeholders into confidence. The proponents of this perspective often include corporate social responsibility in their advertising and social marketing initiatives. It is a tool to increase the reputation of the company in the eyes of society.

It is certainly a business approach that creates a long term consumer and employee value by not only creating a 'green strategy' on natural environment but also considering every dimension of how a business operates in social, cultural and environment. The company should meet the needs of its all stakeholders (consumer, employees, shareholder, clients and other related persons) without sacrificing the ability to meet the needs of the future stakeholders.

Triple Bottom Line

Corporate Social Responsibility (CSR) is the responsibility of an organization for the impacts of its decisions and activities on society, the environment and its own prosperity, known as the "triple bottom line" (TBL) of people, planet, and profit. The three together are often referred to as 'the three pillars' of the business entity. In 1997 Briton John Elkington introduced the term (TBL) which is based on the premise that business entities have more to do than make just profits for the owners of the capital. Here People (human capital) refers to the Society where the business conducts its operations, Planet (natural capital) refers to the sustainable environment practices and Profit is shared by all concerned.



Significance of Corporate Social Responsibility to sustainability of business:

The CSR is important to the corporate to sustain in the environment and thus has the following significance:

- (i) Reduction in operative cost: corporate social responsibility helps companies in reduction in operating cost, this may include recycling, water conservation, energy efficiency etc..
- (ii) Increased Sales and Customer Loyalty: The customers also recognize those companies which are socially responsible. This results in increased sales and content customers.
- (iii) Higher productivity and Quality: Company as an essential of its triple bottom line, focuses on improving the working conditions of it employees, people in its supply/distribution chain, which helps in increased productivity with better quality
- (iv) Access to Capital: The companies with strong CSR have increased access to capital that might not otherwise have been available. Even the lending institutions are cautious and are considering this as an important parameter of granting loans.
- (v) Boost in Brand Image and Reputation: CSR is an essential brand building tool used by companies to enhance its reputation amongst the stakeholders.

The fact has been established by a number of studies/surveys that have been conducted in this direction. To mention a few as for instance,

1. An 11-year study of corporations by Harvard University which emphasized stakeholder management, found that socially responsible and sustainable corporations had sales

growth 4 times and employment growth 8 times that of "Shareholder first" companies. (*KPMG, The Business Case for Sustainability 2001*)

2. A Report by investment bank Goldman Sachs found that the companies that are considered leaders in environmental, social and governance (ESG) policies also lead the pack in stock performance – by an average of 25%. (*Goldman Sachs, 2007*)
3. Over a 5-year period Dow Jones Groups Sustainability Index (DJGSI) performed an average of 36.1% better than did the traditional Dow Jones Group Index (*World Economic Forum, 2005*). The DJSI 2008 Report, affirmed a "*positive strategically significant correlation between corporate sustainability and financial performance*", citing that a number of its indexes have outperformed their comparative benchmarks in relation to total returns since the launch of the respective indices. The Report found that sustainability strategies had significant impact on the cost of external financing, return on invested capital, sales growth, and the fade-rate of a firm's competitive advantage. (*Reported in BITC: The Value of Corporate Governance, October 2008*)
4. A study conducted by Innovest Strategic Value Advisors March 2008 revealed that their Global 100 (which represents 100 leaders from the MSCI World Index that demonstrate exceptional capacity to address their sector-specific environmental, social and governance risks and opportunities) outperformed the MSCI World Index by 7.2% (annualized). It also outperformed the Dow Jones Industrial Average by 7.5% and the Dow Jones Global Titans by 8.8%. (*Corporate Knights Vol. 72, p. 9*)

HISTORICAL BACKGROUND OF CSR

The concept of CSR is not new in India. The concept can be traced back to times immemorial, our *Vedassay* - man can live individually but can survive only collectively. Hence the challenge is to form a progressive community by balancing the interests of individuals and that of the society. To meet this, we need to develop a value system where people accept modest sacrifices for the common good. A value system is the protocol for behaviour that enhances the trust, confidence and commitment of members of the community. It goes beyond the domain of legality. It includes putting the community interests ahead of our own. Thus our collective survival and progress is predicated on sound values. Philosophers like Kautilya emphasized on ethical practices and principles while conducting business. In that period, Kings had an obligation towards society and merchants displayed their own business responsibility by building places of worship, education and various forms to charity for the needy. Although the core function of business was to create wealth for society and was based on an economic structure, the business community with their rulers believed in the philosophy of "*Sarva loka hitam*" which means "the well-being of all stakeholders". Indian Scriptures have at several places mentioned the importance of sharing one's earning with the deprived sections of society. There are different ways through which a firm can exert positive social change in society and collaborate with partners who have the explicit power to trigger such change.

Vedas suggest that peace, order, security and justice were regarded as the fundamental aims of the state. Welfare of the public was clearly regarded as the chief aim of the state. Literature on politics describes the promotion of *dharma* (*moral law*), *karma* (*pleasure*) and *artha* (*wealth*).

The concept of corporate social responsibility generally, agreed by the historians, emerged in the 1930s to 1940s and became formalized in 1953 with the publication of book named 'Social Responsibilities of the Businessman' by Howard Bowen. However, the term CSR became only popular in the 1990s. According to the World Business Council for Sustainable Development, 1999 "Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to the economic development while improving the quality of life of the workforce and their families as well as of the local community and the society at large."

DEVELOPMENTS ON CORPORATE SOCIAL RESPONSIBILITY IN INDIA

- The UN Conference on Human Environment and Development held at Stockholm and 'Stockholm Declaration on the Human Environment' 1972 was the first major UN Conference on the environment. It is widely recognized as the beginning of modern political and public awareness of global environmental problems. It brought Countries together in proclaiming that the preservation of the environment is essential to the continued enjoyment of life itself. The Declaration contains 26 principles concerning the environment and development; an Action Plan with 109 recommendations, and a Resolution.
- 42nd amendment to the Constitution of India incorporated Article 48-A and Article 51-A in the Constitution. According to Article 48-A (Directive Principles of State) the states are under the 'active obligation' to make all endeavour to protect and improve the environment. It provides that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country". On the other hand according to Article 51-A(g) (Fundamental Duties of citizen of India) it is the duty of every citizen of India to protect and improve the environment.
- After the 1972 proclamation there were several legislations introduced for protection of environment and planet which includes Water (Prevention and Control of Pollution) Act, 1974 ; Air (Prevention and Control of Pollution) Act, 1981; Environment Protection Act, 1986; The Public Liability Insurance Act, 1991; The National Green Tribunal Act, 2010, etc.
- The term "Sustainable Development" became prominent after the Rio Earth Summit in 1992 which prioritised global environmental discussions and improved upon the initial framework introduced at the United Nations Conference on the Human Environment, Stockholm in 1972. Sustainable development in this Summit was defined as "*Development which meets the needs of current generations without compromising the ability of future generations to meet their own needs*".

Government's Initiatives to Promote CSR

The government has taken various initiatives for the development of the society at large. Developing a society is a collective mechanism, it

requires efforts of the government, corporate, individual. In order to promote the concept of CSR, the government encourages the corporate to contribute towards the the society needs, welfare, education, research and development. ***"To enrich quality of life in the society we operate in we need to give back to the society manifolds than what we get from it"- JRD TATA.***

Until the enactment of the Companies Act, 2013, Corporate Social Responsibility was not a legally mandated. The environmental and labour laws prescribed the basic responsibilities that a corporate owes towards its employees and the environment.

Keeping in mind the need for development, the Ministry of Corporate Affairs, Govt. of India had notified the Corporate Social Responsibility Voluntary Guidelines 2009 on 21st November 2009 to be followed by the corporate. The corporate were required therein to formulate a CSR Policy according to Voluntary Guidelines 2009 as an integral part of the overall business policy in order to provide a road map for the CSR initiatives and efforts and guide to its strategic planning. Accordingly, the CSR Policy was expected to cover the following four core elements:

- 1. Care for all stakeholder:** It is responsibility of the corporate to take care the interest of all stakeholders including Customers, shareholders, creditors, supplier, employees, project affecting persons and of course the society where it operates.
- 2. Ethical Functioning:** Ethics are the values, behavior, nature, conduct of the person or persons in any organization or society. The best Ethical practices are also awarded. They should not engage in any abusive, unfair, anti-competitive or corrupt language.
- 3. Respect for Worker's Right and Welfare:** The companies should provide the workplace environment that is safe, hygienic and humane to work. They should be taken care of the heath issues arising out of the work of the organization. It should conduct the training and development program within the organization for the people of the organization.
- 4. Respect for Environment:** The companies are required to utilize the Planet i.e., Natural Capital in a well manner so that it cannot be wasted, excess utilized which is also required for the other states or countries and also requires to be preserve for the future generation.

The Government plays a very proactive role to ensure that CSR is

promoted. Even companies that practice CSR aggressively, such as the Tata, Johnson & Johnson, Unilever, Infosys, Mattel Toys, etc., need the necessary support from the government which has the responsibility to create the necessary safe environment for business investment, provide basic infrastructure, reasonable regulatory, processes and public policies because every country has its unique culture, history and political institutions, different standard of living, different policies of the countries. Therefore the role of the government needs to be understood as a collaborative process that seeks a balance between authority and responsibility.

Keeping in view the reviews of the Corporate Social Responsibility Voluntary Guidelines 2009 from the stakeholders, the Guidelines Drafting Committee (GDC) was constituted by the Indian Institute of Corporate Affairs. The GDC formulated the guidelines titled "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business" that mainstreamed the subject of business responsibilities. These Guidelines were released by MCA on July 8, 2011. These guidelines articulated nine Broad Principles which include the business responsibilities of a corporate with regard to : ethics, transparency and accountability; product/service lifecycle; employee well-being; upholding the interests of all stakeholder, especially those who are disadvantaged, vulnerable and marginalized; human rights; environment; influencing public and regulatory policy; inclusive growth & equitable development; customers. These were required to be adopted by the companies for the better business practices.



The principles and the core elements of each of the principles as recommended by the National Voluntary Guidelines are summarized below:

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability. The principle recognizes that ethical conduct in all functions and processes is the cornerstone of responsible business.

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout the business lives. The principle recognizes that all stages of the product life cycle, right from design to final disposal of the goods and services after use, have an impact on society and the environment.

Principle 3: Businesses should promote the well being of all employees. The principle go through to the all policies and practices relating to the dignity and well being of employees engaged within a business or in its value chain.

Principle 4: Businesses should respect the interests of, and responsible towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized. The principle recognizes that businesses have a responsibility to think and act beyond the interests of its shareholders to including employees, suppliers, project affecting people and others who have an interest on the operations of the business.

Principle 5: Businesses should respect and promote human rights. The principle takes into account the "Corporate Responsibility to Respect Human Rights", as referred in the United Nations "Protect, Respect, Remedy" Framework.

Principle 6: Business should respect, protect, and make efforts to restore the environment. The principle is to enlighten the environmental responsibility to the corporate which is a prerequisite for sustainable economic growth and for the well being of society.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner. The principle recognizes that businesses operate within the specified legislative and policy frameworks prescribed by the Government, which guide their growth and also provide for certain desirable restrictions and boundaries.

Principle 8: Businesses should support inclusive growth and equitable 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, especially to that of the disadvantaged, vulnerable and marginalized sections of society.

Principle 9: Businesses should engage with and provide value to their customers and 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 customers in a manner that creates value for both.

In line with the above guidelines the Securities and Exchange Board of India considering the largest interest of the public, disclosures by the listed companies, and from the perspective of Environment, Social and Governance(ESG), decided to mandate inclusion of '**Business Responsibility Report**' as part of the Annual report of the listed entities. SEBI amended the Listing Agreement vide circular number CIR/CFD/DIL/8/2012 dated on August 13, 2012 by inserting a clause 55. The provisions of the circular were made applicable with effect from financial year ending on or after December 31, 2012.

The clause 55 of the Listing Agreement states that *"Listed entities shall submit, as part of their Annual Reports, Business Responsibility Reports, describing the initiatives taken by them from an environmental, social and governance perspective, in the format suggested by the board" (attached as Annexure 3)*

The Business Responsibility Report is required to be submitted by the top 100 listed entities based on market capitalisation at BSE and NSE as on March 31, 2012. Besides this, other listed entities may voluntarily disclose BR Reports as part of their Annual Reports.

Guidelines on CSR for Central Public Sector Enterprises

The Department of Public Enterprises had issued Guidelines on Corporate Social Responsibility (CSR) for CPSEs in April, 2010 which have been issued formally to the Ministries/Departments for compliance in the Central Public Sector Enterprises (CPSEs) under their administrative control. According to the Guidelines, the financial component/budgetary spend on CSR and Sustainability is based on the profitability of the company which shall be determined by the Profit After Tax (PAT) of the company in the previous year.

These Guidelines encouraged CPSE's to shoulder responsibility for restoring/compensating economical, social and ecological damage. Recently, DPE overhauled the concept of CSR for CPSE's by issuing the Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises. Under the revised guidelines, CPSEs are expected to formulate their policies with a balanced emphasis on all aspects of CSR and Sustainability.

CORPORATE SOCIAL RESPONSIBILITY AND COMPANIES ACT, 2013

Companies Act, 2013 [“Act”] is a legislation which officially embarked on one of the world’s largest experiments of introducing the concept of CSR as a mandatory provision. With the introduction of new Act, there is a statutory obligation for the corporates to take initiatives towards Social, Environmental and Economic Responsibilities. The initiatives taken have to be reported to the company and other stakeholders appropriately.

Section 135 of the Act and the Companies (Corporate Social Responsibility Policy) Rules, 2014 [“CSR Rules”] framed thereunder govern CSR in India. The detailed provisions are explained below:

Definition of CSR

The Act does not define the term CSR. As per rule 2(c) of the CSR Rules “Corporate Social Responsibility means and includes but is not limited to:

- (i) projects or programs relating to activities specified in Schedule VII of the Act; or
- (ii) projects or programs relating to activities undertaken by the board of directors of a company (Board) 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 cover the subjects enumerated in Schedule VII of the Act.”

APPLICABILITY

Section 135 of the Act provides for the applicability of the CSR provisions on corporates. Sub-section (1) of section lays down that every company having

- net worth of Rs. 500 Crore or more; or
- turnover of Rs. 1000 Crore or more; or
- net profit of Rs. 5 Crore

during any financial year shall be required to constitute a CSR Committee of the Board consisting of three (3) or more directors, out of which at least one(1) director shall be an independent director.

Rule 3 of the CSR Rules specify that every company which ceases to be a company covered under section 135 as per the limits specified

thereunder for three consecutive financial years shall not be required to constitute a CSR Committee and comply with the provision of section 135, till such time that it meets the criteria specified. *Ministry of Corporate Affairs (MCA) vide Circular No. 21/2014 dated 18.06.2014, has clarified that the term 'any financial year' referred to in section 135 means any of the three preceding financial years.*

Effectively, section 135 and Schedule VII have come into effect from April 01, 2014, accordingly, every company which meets the criteria specified under sub-section (1) of section 135, in any of the three preceding financial years (i.e. 2011-12, 2012-13, 2013-14) is required to comply with the same from April 01, 2014 onwards. The section is applicable to both public and private companies as long as they fulfill the criteria.

Applicability to holding and subsidiary companies

Rule 3(1) provides that CSR is applicable to (a) every company including its holding or subsidiary; and in case where the company fulfills the criteria specified in sub-section (1) of section 135 of the Act. The net worth, turnover or net profit of a foreign company will be prepared in accordance with the requirements under the Act.

Applicability to Foreign Company

A foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and the rules.

The net worth, turnover or net profit of a foreign company under the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act. In simple terms the net worth, turnover or net profit of a foreign company under the section shall be computed in accordance with its Indian business operations.

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

As per section 135, every company which fulfills the criteria under sub-section (1) of the section 135 as mentioned above is required to constitute a Committee of the Board of directors, the CSR Committee, consisting of atleast three directors out of which one shall be an independent director. Certain companies have been exempted from the requirement of appointing an independent director, an CSR Committee they are:

- a private company or unlisted public company covered under sub-section (1) of the section 135 of the Act, which is not required to appoint independent director under sub-section (4) of the section 149 of the Act; and
- where a private company has only two (2) directors on its Board, it shall constitute a CSR Committee with those two (2) directors.

A foreign company covered under these rules shall constitute a CSR Committee with at least two (2) persons of which one (1) shall be as specified under clause (d) of sub-section(1) of section 380 of the Act and another person shall be nominated by the foreign company.

A person as specified under section 380(1)(d) means a person resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company.

The functions of CSR Committee :

- To formulate and recommend to the Board, a CSR Policy which would indicate the activities to be undertaken as specified in Schedule VII of the Act.
- To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy.
- To Institute a transparent monitor mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
- To monitor the CSR policy of the company time to time.
- To institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company [As per rule 5(2)].

As mentioned above, rule 3(2) provides that in case a company ceases to be covered under section 135(1) for three consecutive financial years, it shall not be required to constitute a CSR Committee and comply with provisions thereof.

CORPORATE SOCIAL RESPONSIBILITY POLICY

According to sub-section (4) of section 135 the Board of every company which falls under the criteria of sub-section (1) shall after taking into consideration the recommendations of the CSR Committee approve the CSR Policy of the company and disclose its contents in its report

and also place it on the website of the company. The Rules further elaborated that the CSR Policy shall include a list of CSR projects or programs which a company plans to undertake specifying the modalities for execution of such projects or programs and implementation schedules for the same. The CSR Policy must also contain the monitoring process of such projects or programs.

As per clause (e) of the rule 2, 'CSR Policy relates to the activities to be undertaken by the company as specified under Schedule VII (*annexed herewith as Annexure 1*) of the Act and expenditure thereon excluding the activities undertaken in pursuance of normal course of business of a company.

The MCA clarification *vide* Circular 21/2014 specifies that the entries in the Schedule VII must be **Interpreted Liberally** so as to capture the essence of the subjects enumerated in the said Schedule. The clarification gives an illustrative list of the wide range of activities which may be covered under the activities mentioned under Schedule VII of the Act. The list is provided for reference at **Annexure 2**.

The Board should therefore, ensure that the activities included in the CSR Policy are those related to the activities mentioned in Schedule VII of the Act. Further, it must ensure that the activities specified in the CSR Policy are carried out by the company.

CSR Policy shall specify the surplus arising out of the CSR projects or programs or activities and shall not form part of the business profit of a company.

CSR EXPENDITURE

According to sub-section (5) of the section 135 of the Act the Board of a company which fulfills the criteria mentioned under sub section (1) of the section 135 shall ensure that the company spends in every financial year at least two percent (2%) of the average net profits made during three immediately preceding financial years of the company in pursuance of the CSR Policy formulated by its CSR Committee.

'Average net profit' is to be calculated as per the provisions of section 198 of the Act.

As per clause (f) to rule 2 "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, 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 Act.

This rule 2 further elaborates that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with Companies Act, 1956 shall not be required to be re-calculated as per Companies Act, 2013.

In case of a foreign company covered under the provisions, net profit means the net profit of such company as per the profit and loss account prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 read with section 198 of the Act.

It has been further clarified that the expenditure incurred by foreign holding company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.

Rule 7 provides that CSR Expenditure shall include all expenditures incurred in connection with the projects or programs or activities undertaken as part of the CSR Policy approved by the Board, including capital contribution to such projects or programs but shall not include any expenditure on any item not in conformity or in connection with any activity which fall within the preview of Schedule VII of the Act.

Expenses incurred by companies in pursuance of the requirement of any Act/Statute or regulations (such as labour laws, land acquisition laws, etc.) would not count as CSR expenditure under the Act. However, expenditure on administrative overheads in building CSR capacities can be factored into CSR cost where the expenditure does not exceed 5% of total CSR expenditure of company in one financial year.

CSR ACTIVITIES

CSR Activities are the activities which are to be undertaken by the company as stated in CSR Policy as programs or projects or activities. As per rule 4, the Board may undertake its CSR activities as approved by the CSR committee through a registered trust or a registered society or a company established under section 8 of the Act by the company, either singly or along with its holding or subsidiary or associate company, or along with any other company or holding or subsidiary or associate company of such other company, or otherwise.

If such trust, society or company is not established by the company, either singly or alongwith its holding or, subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, such trust/society/company must have an established track record of three (3) years in undertaking similar programs or projects. For the purpose of undertaking these projects or programs by such entities the Board shall also specify, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

It is specified that '*Registered Trust*' shall include trusts registered under Income Tax Act 1961, for states where the registration of a Trust is not mandatory.

A company may also collaborate with other companies for undertaking CSR projects or program or activities in such a manner that the CSR committees of the respective companies are in a position to report separately on such projects or programs. This means that in case of a holding and subsidiary company, though they are required to constitute a CSR Committee independently if they fall under the criteria of section 135(1), they may collaborate for undertaking a CSR projects/ programs.

As per rule 4, only expenses incurred on projects or programs or activities undertaken in India shall be considered as CSR activity. The basic structure of the provision is to ensure inclusive growth within the country. This rule restricts the corporate from undertaking CSR activities in a foreign land, which means an Indian MNC doing CSR in Africa shall not be counted for CSR under Indian laws.

Activities undertaken in normal course of business shall not be counted towards CSR. Those activities which are only for the benefits of the employees or their family shall also not be termed as the CSR activities.

The company should focus its CSR activities in and around local area and areas where it operates for conducting CSR activities for spending such amount.

Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies. Such training may be given through Institutions with established track record of at least three(3) financial years but such expenditure, including expenditure on administrative overheads shall not exceed **five per cent (5%)** of total CSR expenditure of the company in one(1) financial year.

An amount contributed directly or indirectly by any company to a political party under section 182 of the Act shall not be considered as CSR activity.

BOARD'S RESPONSIBILITY TOWARDS CSR

- To approve the CSR Policy after taking into account the recommendations made by CSR committee for the company.
- To ensure that the activities that are included in the CSR Policy are undertaken by the company and are in accordance with Schedule VII of the Act.
- To ensure that the company spends at least 2% of the average net profits in pursuance of its CSR Policy.
- To disclose the composition of CSR Committee in the Board's Report.
- To disclose the details of the CSR Policy developed and implemented by the company in CSR in Board's Report (clause (o) of the sub-section (1) of the section 134).
- The content of the policy and CSR activities are to be placed on the company's website (Rule 9).

COMPLY OR EXPLAIN

The section does not require earmarking certain percentage of amount as CSR rather it calls for spending on CSR. The proviso to sub-section (5) of the section 135 states that, where any company fails to spend such amount, it shall specify the reasons for not spending the amount in its Board's Report. The Act only provides for disclosure, there is no monetary penalty for non-compliance.

Few other clarifications

Following are some other clarifications given by the Ministry of Corporate Affairs on Corporate Social Responsibility vide Circular No. 21/2014 dated 18.06.2014 :

- One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.
- Contribution to corpus of a Trust/ Society/ Section 8 Company will qualify as CSR expenditure as long as
 - (a) the trust/society/section 8 company 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 of the Act.

In the Budget 2014-2015, the Finance Minister proposed the inclusion of slum development in the list of Corporate Social Responsibility (CSR) activities to encourage the private sector to contribute more towards this activity.

In accordance to this an amendment has been made to Schedule VII of the Act Vide MCA Notification No. G.S.R. 568(E) dated August 6, 2014, to include slum area development as a CSR activity. The term 'Slum area' herein shall mean any area declared as such by the Central Government or any other competent authority under any law for the time being in force.

Further according to Finance Act, 2014 any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purpose of the business or profession.

CSR REPORTING:

The Board's Report pertaining to a financial year commencing on or after April 1, 2014 of a company mandated to do CSR, shall include an in its annual report on CSR containing particular as specified under the Rules (*See Annexure 5*).

Further, where the company is a foreign company, the balance sheet filed under sub clause (b) of sub-section (1) of the section 381 of the Act shall contain an annexure containing the report on CSR.

GLOBAL PERSPECTIVE

The Corporate Social Responsibility is not only extended to India but it has a world wide accepted concept. There are other countries that also follow the concept of Corporate Social Responsibility in their country in their own way.

The international perspective to Corporate Social Responsibility to other countries like Singapore, Malaysia, South Africa and UK that practices CSR are discussed hereunder.

In the international level many countries come and meet for discussion on many other different matters. One of the matters is Social Responsibility for which conventions are held globally. The selected standards, codes and guidelines at the global level are as follows:

UNITED NATIONS GLOBAL COMPACT (UNGC)



United Nations Global Compact

“The Global Compact asks companies to embrace universal principles and to partner with the United Nations. It has grown to become a critical platform for the UN to engage effectively with enlightened global business.”
– UN Secretary-General Ban Ki-moon

The United Nations had initiated in 2000 a Global Compact to encourage the businesses to adopt sustainable and social responsibility policies and to report on their implementation. This is a framework based on the Principles in the areas of Human Rights, Labour, Environment and Anti Corruption. Under the Global Compact the companies are brought into through the cities program with UN Agencies. There are 193 United Nations Member States in the United Nations.

The UN Global Compact is the world’s largest corporate citizenship initiative with two objectives: “Mainstream the ten principles in business activities around the world” and “Catalyse actions in support of broader UN goals”. The UN Global Compact was announced by then UN Secretary-General Kofi Annan in an address to the World Economic

Forum on January 31, 1999, and was officially launched at UN Headquarters in New York on July 26, 2000.

The Following are the Ten Principles which are recommended by the United Nations Global Compact:

Human Rights:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

Labour

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

Principle 5: the effective abolition of child labour; and

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: undertake initiatives to promote greater environmental responsibility; and

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

INTERNATIONAL ORGANIZATION ON STANDARDIZATION

ISO (International Organization on Standardization) is a non governmental body made up with the members of the National Standard Bodies around the world.

International Standards give world-class specifications for products,

services and good practice, to ensure quality, safety and efficiency. And because they are developed through global consensus they help to break down barriers to international trade. Since 1947, ISO has published more than 19,500 International Standards to date covering almost every industry, from technology, to food safety, to agriculture and healthcare. ISO International Standards impact everyone, everywhere.

ISO 26000 provides guidance on how businesses and organizations can operate in a socially responsible way. This means acting in an ethical and transparent way that contributes to the health and welfare of society. International Organization on Standardization is the largest developer of Voluntary International standards. The ISO 9000 series is on quality management, ISO 14000 series is on environmental management, ISO 22000 series is on food safety management and many others.

In terms of ISO 26000, the following are the 7 core subjects that socially responsible organizations should address in their policies:

1. **Organizational governance** – Practicing Organization accountability and transparency at all levels; leadership promotes responsibility
2. **Human rights** – treating all individuals with respect; making special efforts to help members of vulnerable groups
3. **Labour practices** – providing just, safe and healthy conditions for workers; engaging in two-way discussions to address workers' concerns
4. **Environment** – identifying and improving environmental impacts of your operations, including resource use and waste disposal
5. **Fair operating practices** – respecting the law; practicing accountability and treating all partners fairly, including suppliers
6. **Consumer issues** – providing healthy and safe products, giving accurate information, and promoting sustainable consumption
7. Community involvement and development being involved as a good neighbour for the betterment of local community.

Global Reporting Initiative

The Global Reporting Initiative (GRI) is a large multi-stakeholder network of thousands of experts, in dozens of countries worldwide, who participate in GRI's working groups and governance bodies, use the

GRI Guidelines to report, access information in GRI-based reports, or contribute to develop the Reporting Framework in other ways – both formally and informally.

The Sustainability Reporting Guidelines developed by the Global Reporting Initiative (GRI), the Netherlands, is a significant system that integrates sustainability issues in to a frame of reporting.

The Global Reporting Initiative (GRI) aims to make reporting on economic, environmental and social performance as routine and comparable as financial reporting in all organizations. The idea for developing a framework for sustainability reporting was conceived in 1997, with the draft GRI Sustainability Reporting Guidelines released in 1999. Initially twenty organizations based their sustainability reports on the guidelines. In 2006, more than 850 organizations worldwide released sustainability reports based on the GRI Sustainability Reporting Framework and Guidelines.

The framework has been continually revised over the years, the Fourth generation of Sustainability Guidelines; the GRI G4 Sustainability Guidelines were released in May, 2013. The GRI Reporting Framework Principles are divided into two parts: Principles for defining report content and Principles for defining report quality.

Principles for defining report content: The Principles for Defining Report Content describe the process to be applied to identify what content the report should cover by considering the organization's activities, impacts, and the substantive expectations and interests of its stakeholders. These principles are used in connection to define the report content. The principles to define the report content are the following:

Stakeholder Inclusiveness: stakeholders are those persons who are directly and indirectly connected to the business of the organization and includes shareholders, employees, suppliers and other who has interest in the working of the business. It is the responsibility of the organization to identify, explain and respond to the expectations and interest of the stakeholders.

Sustainability Context: The principle is that the organization should represent the report in wider context of sustainability. The underlying question is that how an organization contributes, or aims to contribute in the future, to the improvement or deterioration of economic, environmental and social conditions, developments, and trends at the local, regional or global level. Reports should therefore seek to present performance in relation to broader concepts of sustainability. This involves discussing the performance of the organization in the context

of the limits and demands placed on environmental or social resources at the sector, local, regional, or global level.

Materiality: Materiality means that the information in a report should cover topics and indicators that reflect the organization's significant economic, social and environmental impacts and that too substantially influence the assessments and decisions of stakeholders. There are wide range of topics that organization deals with and some relevant topics are those which reasonably consider for reflecting the organization's social, economic and environment impacts or influence the stakeholders decisions.

Completeness: The report should include coverage of material aspects and their boundaries, sufficient to reflect significant economic, environmental and social impacts, and to enable stakeholders to assess the organization's performance in the reporting period. Completeness primarily encompasses the dimensions of scope, boundary, and time. The concept of completeness may also be used to refer to practices in information collection and whether the presentation of information is reasonable and appropriate.

Principles for Defining Report Quality: The Principles for Defining Report Quality guide choices on ensuring the quality of information in the sustainability report, including its proper presentation. The quality of the information is important to enable stakeholders to make sound and reasonable assessments of performance, and take appropriate actions. These principles reflect the quality of information in the report. All these principles are fundamental to achieve the transparency. The quality of the information is important to enable stakeholders to make sound and reasonable assessments of performance, and take appropriate actions. The following are the principles:

Balance: The report should reflect positive and negative aspects of the organization's performance to enable a reasoned assessment of overall performance. The overall presentation of the report's content should provide an unbiased picture of the organization's performance. The report should avoid selections, omissions, or presentation formats that are reasonably likely to unduly or inappropriately influence a decision or judgment by the report reader.

Comparability: The organization should select, compile and report information consistently. The reported information should be presented in a manner that enables stakeholders to analyze changes in the organization's performance over time, and that could support analysis relative to other organizations. Comparability is necessary for evaluating

performance. Stakeholders using the report should be able to compare information reported on economic, environmental and social performance against the organizations past performance, its objectives, and, to the degree possible, against the performance of other organizations.

Accuracy: The reported information should be sufficiently accurate and detailed for stakeholders to assess the organization's performance. Responses to economic, environmental and social DMA and Indicators can be expressed in many different ways, ranging from qualitative responses to detailed quantitative measurements. The characteristics that determine accuracy vary according to the nature of the information and the user of the information.

Timeliness: The organization should report on a regular schedule so that information is available in time for stakeholders to make informed decisions. The usefulness of information is closely tied to whether the timing of its disclosure to stakeholders enables them to effectively integrate it into their decision-making. The timing of release refers both to the regularity of reporting as well as its proximity to the actual events described in the report.

Clarity: The organization should make information available in a manner that is understandable and accessible to stakeholders using the report. Information should be presented in a manner that is comprehensive to stakeholders who have a reasonable understanding of the organization and its activities.

Reliability: The organization should gather, record, compile, analyze and disclose information and processes used in the preparation of a report in a way that they can be subject to examination and that establishes the quality and materiality of the information. Stakeholders should have confidence that a report can be checked to establish the veracity of its contents and the extent to which it has appropriately applied Reporting Principles.

The GRI reporting Framework also defines the following standard Disclosures:

GENERAL STANDARD DISCLOSURES

- Strategy and Analysis
- Organizational Profile
- Identified Material Aspects and Boundaries

- Stakeholder Engagement
- Report Profile
- Governance
- Ethics and Integrity

SPECIFIC STANDARD DISCLOSURES

- Disclosures on Management Approach
- Indicators

CORPORATE SOCIAL RESPONSIBILITY IN SINGAPORE

“More cases studies illustrate that companies with corporate social responsibility in their DNA are more resilient and make better business model for success and long term sustainability.”

-President Singapore Compact, Mr. KwekLengjoo

“CSR is about how you make the money, not how you spend it,”

-Bhavana Murjani, a senior executive at Singapore Compact



As we are aware of the fact that consumers, investors, governments and even employees are now more sophisticated and aware than in past for the good corporate behavior or lack thereof. Therefore in this new business environment the goodwill and reputation of the company is the most valuable asset and the Corporate Social Responsibility is most powerful weapon in maximizing profitability in the long term along with reputation of the company. CSR helps in pursuing good business practices with product innovation, generating sales, building trust from shareholders and so on which can be more important to Small and Medium Sized Enterprises (SMEs).

“Singapore Compact for Corporate Social Responsibility” was set up in 2005 by the National Tripartite Initiative for CSR with the National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF) as founder members for promoting Sustainable Development for businesses and stakeholders. Singapore Compact is also the focal point and network body for the United Nations Global Compact (UNGC). The national society encourages CSR practices across the island. There are 420 businesses signed up as members out of 130,000 Singapore registered businesses.

The Singapore Compact has set up “Enabling CSR Journeys” a web page to know everything about CSR. The CSR Enabling Journeys helps companies to kick start their CSR programmes and Sustainability Reporting.

It provides a *Simple guide to get started*:

1. Understand what corporate responsibility is all about.
2. Get leadership commitment.
3. Develop an organizational sustainability vision.
4. Prioritize Focussing on the company’s strengths and areas of greatest relevance.

The webpage provide the all information one need to know, understand and helps to grow with corporate social responsibility.

Singapore Compact also launches Award Functions to give regards and praise to the companies who undertake CSR activities.

CORPORATE SOCIAL RESPONSIBILITY IN MALAYSIA

“Business is part of society, and how it reacts to expectations should not be as a response to an external force but as a response to forces which it is part and parcel of” *-Lord Holme (Bourne 1999)*

The Malaysian Government has taken following framework to monitor the Malaysian based Companies:

The framework for implementing CSR in Malaysia contains guidelines for Government Linked Companies (**GLCs**). The Khazanah Nasional Berhad, a management Authority for state investment has the responsibility to monitor that the GLCs implement CSR measures in accordance with the framework. The **Bursa Malaysia**, Malaysia Stock Exchange in September 2006 also launched framework on implementation and reporting guidelines for CSR activities undertaken by the listed companies. It aims to guide Public Listed Company’s (PLCs) in defining their CSR priorities, implementation and reporting. The framework is a set of guidelines for Malaysian PLCs to help them in the practice of CSR. It covers four focus areas – Environment, Workplace, Community and Marketplace, in no order of priority to highlight the various types of CSR issues and activities relevant to organizations. Bursa Malaysia recognizes ‘CSR to go beyond compliance of law’. The frameworks recommend the companies to consider all 4 dimensions of CSR while drafting their vision statement. There is a mandatory

requirement for all PLCs to state “A description of the corporate social responsibility activities or practices undertaken by the listed issuer and its subsidiaries or if there are none, a statement to that effect” in its Annual Report.

The CSR here refers to the activities which would facilitate education, skills to employees, communities, shareholders, safeguard the environment and other affected parties which has an influence on operation to the extent it lays down the foundation for long term and sustainable value creation.

The Bursa Malaysia has also launched its Business Sustainability Programme in November 2010, in order to have the Malaysian public-listed companies integrate sustainability into their business strategies. The program includes the publication of a sustainability guide for company directors and the introduction of a Sustainability Knowledge Portal on Bursa Malaysia’s website. Of others involved in the implementation of CSR in Malaysia, Caux Round Table Malaysia, CSR Asia, BCSR and EUMCCI are worth noting

The Other initiatives by the Authorities to promote CSR Activities:

- The government of Malaysia has introduced *Tax Incentives* to businesses that implement broad CSR programs. The tax incentives cover a variety of actions, such as the setting up, child-care facilities, contribution to the community and setting up library services, reduction in greenhouse gas emissions and investing in local communities. In addition the Government has set up fiscal incentives at national levels where funds have been specifically allocated for the benefit for children (incentives can be found in Income Tax Act 1967).

In addition, the government has established a fund of RM 100 Million to promote CSR activities. Moreover, the Malaysian government has announced that state-owned investment funds will include CSR as a criterion in connection with future investments. Also in 2010 the government launched a RM 1.5 billion fund to promote green technology development in Malaysia. Sustainable growth is also one of three goals highlighted in the Malaysian New economic Model (NEM), which aims to make Malaysia a high-income country by 2020.

- The Global Compact Network Malaysia (GCNM) is a network that works to promote the United Nations Global Compact (UNGC) *ten principles* a set of core values in the areas of human rights,

labour standards, the environment and anti-corruption among companies in Malaysia. By connecting to the network, businesses are given the opportunity to showcase their CSR activities internationally as well as an arena for interaction with organizations and other businesses. By August 2010, 62 companies and organizations had joined the GCNM, of which the majority of the companies were multinational companies. DiGi Communications, in which Telenor has a controlling stake, is one of the companies that are affiliated with the network. As emphasized by GCNM, DiGi is the only Malaysian company that has signed the "Caring for Climate" initiative.

- The 100 most valuable companies listed on Bursa Malaysia are given scores for engagement in relation to different dimensions of CSR, as well as corporate governance and the respect of human rights. The scores are prepared in accordance with the CSR policy, how this is being implemented and what effect it has. The share prices of companies with comprehensive CSR activities are monitored and compared with other listed companies in order to create a picture of how CSR activities affect companies' market value. The index shows that from June 2006 to June 2009 companies with good CSR programs give 19.3% higher dividends than other companies. This shows that focusing on CSR is not necessarily an obstacle to companies' core business in Malaysia.

CORPORATE SOCIAL RESPONSIBILITY IN SOUTH AFRICA

"You can never have an impact on society if you have not the power to change yourself."
– Nelson Mandela

South Africa applies the King Report on Corporate Governance (South Africa 2009 - King III). This code promotes good social and environmental practices as part of good corporate governance, which is closely oriented to the standards of international corporate governance. King III applies to "all entities regardless of the manner and form of incorporation or establishment and whether in the public, private or non-profit sectors."

What is referred to as 'King III' really comprises the King Report on Governance for South Africa 2009 ("the Report"), the King Code of Governance Principles for South Africa 2009 ("the Code") and Practice Notes to King III issued by the Institute of Directors which provide guidance in regard to the implementation of the Code. The Code deals with a number of governance elements, each of which is broken down into different principles which must be applied. In applying these principles there are best practice recommendations in the Code, which

are amplified in the Report. The King III report describes Sustainability and Corporate Citizenship as follow:

Sustainability is the primary moral and economic imperative of the 21st century. It is one of the most important sources of both opportunities and risks for businesses. Nature, society, and business are interconnected in complex ways that should be understood by decision-makers. Most importantly, current incremental changes towards sustainability are not sufficient – we need a fundamental shift in the way companies and directors act and organize themselves.

The concept of corporate citizenship which flows from the fact that the company is a person and should operate in a sustainable manner. Sustainability considerations are rooted in the South African Constitution which is the basic social contract that South Africans have entered into. The Constitution imposes responsibilities upon individuals and juristic persons for the realization of the most fundamental rights.

Corporate responsibility is the responsibility of the company for the impacts of its decisions and activities on society and the environment, through transparent and ethical behavior that: contributes to sustainable development, including health and the welfare of society; takes into account the legitimate interests and expectations of stakeholders; is in compliance with applicable law and consistent with international norms of behavior; and is integrated throughout the company and practiced in its relationships. The King reports constitute accepted guidance of best practices in corporate governance in South Africa, focusing on social, environmental and economic concerns. The King reports' clauses are not mandatory, but they take a "comply/apply or explain" approach that somewhat forces corporations to apply CSR programs or justify why they have not adopted them.

King III has 'apply or explain' approach to its principles and recommended practices. It is the legal duty of directors to act in the best interests of the company. The 'apply or explain' regime shows an appreciation for the fact that it is often not a case of whether to comply or not, but rather to consider how the principles and recommendations can be applied.

In contrast to the King I and II codes, King III applies to all entities regardless of the manner and form of incorporation or establishment and whether in the public, private sectors or non-profit sectors. We have drafted the principles so that every entity can apply them and, in doing so, achieve good governance. All entities should apply the principles in the Code and consider the best practice recommendations

in the Report. All entities should by way of explanation make a positive statement about how the principles have been applied or have not been applied.

Integration of social, environmental and economic issues

The proliferation of initiatives, tools and guidelines on sustainability is evidence of the growing awareness of sustainability issues. Because the company is so integral to society, it is considered as much a citizen of a country as is a natural person who has citizenship. It is expected that the company will be and will be seen to be a responsible citizen. This involves social, environmental and economic issues – the triple context in which companies in fact operate. Boards should no longer make decisions based only on the needs of the present because this may compromise the ability of future generations to meet their own needs.

A key challenge for leadership is to make sustainability issues mainstream. Strategy, risk, performance and sustainability have become inseparable; hence the phrase ‘integrated reporting’ which is used throughout this Report.

Sustainability is, however, about more than just reporting on sustainability. It is vital that companies focus on integrated performance. The board’s role is to set the tone at the top so that the company can achieve this integrated performance.

Inclusive stakeholder approach

This Report seeks to emphasise the inclusive approach of governance. It is recognised that in what is referred to as the ‘enlightened shareholder’ model as well as the ‘stakeholder inclusive’ model of corporate governance, the board of directors should also consider the legitimate interests and expectations of stakeholders other than shareholders. The way in which the legitimate interests and expectations of stakeholders are being treated in the two approaches is, however, very different.

In the ‘enlightened shareholder’ approach the legitimate interests and expectations of stakeholders only have an instrumental value. Stakeholders are only considered in as far as it would be in the interests of shareholders to do so.

In the case of the ‘stakeholder inclusive’ approach, the board of directors considers the legitimate interests and expectations of stakeholders on the basis that this is in the best interests of the company, and not merely as an instrument to serve the interests of the shareholder.

Summarised as below:

Inclusivity of stakeholders is essential to achieving sustainability and the legitimate interests and expectations of stakeholders must be taken into account in decision-making and strategy.

Innovation, fairness, and collaboration are key aspects of any transition to sustainability – innovation provides new ways of doing things, including profitable responses to sustainability; fairness is vital because social injustice is unsustainable; and collaboration is often a prerequisite for large scale change. Collaboration should not, however, amount to anti-competitiveness.

Social transformation and redress from apartheid are important and should be integrated within the broader transition to sustainability. Integrating sustainability and social transformation in a strategic and coherent manner will give rise to greater opportunities, efficiencies, and benefits, for both the company and society.

King II explicitly required companies to implement the practice of sustainability reporting as a core aspect of corporate governance. Since 2002, sustainability reporting has become a widely accepted practice and South Africa is an emerging market leader in the field (partially due to King II and the emergence of initiatives such as the Johannesburg Stock Exchange (JSE) Socially Responsible Investment (SRI) index which was the first of its kind in an emerging market).

King III supports the notion of sustainability reporting, but makes the case that whereas in the past it was done in addition to financial reporting it now should be integrated with financial reporting.

The company is integral to society, particularly as a creator of wealth and employment. In the world today, companies have the greatest pools of human and monetary capital. These are applied enterprisingly in the expectation of a return greater than a risk-free investment. Although the board is accountable to the company itself, the board should not ignore the legitimate interests and expectations of its stakeholders.

This Code of governance, which deals with the Principles, should be studied with the Report in which recommendations of the best practices for each principle are provided. Each principle is of equal importance and together forms a holistic approach to governance. Consequently, 'substantial' application of this Code and the Report does not achieve compliance.

The following are principles and recommended practices as given under

king III report for the companies and its board for good governance practice:

Governance Principle	Principle	Recommended Practices
Corporate Citizenship	The board should ensure that the company is and is seen to be a responsible corporate citizen	<p>The board should:</p> <ol style="list-style-type: none"> 1. Consider not only on financial performance but also the impact of the company's operations on society and the environment; 2. Protect, enhance and invest in the wellbeing of the economy, society and the environment; 3. Ensure that the company's performance and interaction with its stakeholders is guided by the Constitution and the Bill of Rights; 4. Ensure that collaborative efforts with stakeholders are embarked upon to promote ethical conduct and good corporate citizenship; 5. Ensure that measurable corporate citizenship programmes are implemented; and 6. Ensure that management develops corporate citizenship policies
Role and function of the Board	<p>The board should act as the focal point for and custodian of corporate governance</p> <p>The board should appreciate that strategy, risk, performance and sustainability are inseparable</p>	<p>The board should:</p> <ol style="list-style-type: none"> 1. Have a charter setting out its responsibilities 2. Meet at least four times per year; 3. Monitor the relationship between management and the stakeholders of the company; and 4. Ensure that the company survives and thrives <p>The board should:</p> <ol style="list-style-type: none"> 1. Inform and approve the strategy; 2. Ensure that the strategy is aligned with the purpose of the company, the value drivers of its business and the legitimate interests and expectations of its stakeholders; 3. Satisfy itself that the strategy and business plans are not encumbered by risks that have not been thoroughly examined by management; and

		4. Ensure that the strategy will result in sustainable outcomes taking account of people, planet and profit.
Governing stakeholder relationships	<p>The board should appreciate that stakeholders' perceptions affect a company's reputation</p> <p>The board should delegate to management to proactively deal with stakeholder relationships</p>	<p>1. The gap between stakeholder perceptions and the performance of the company should be managed and measured to enhance or protect the company's reputation.</p> <p>2. The company's reputation and its linkage with stakeholder relationships should be a regular board agenda item.</p> <p>3. The board should identify important stakeholder groupings.</p> <p>1. Management should develop a strategy and formulate policies for the management of relationships with each stakeholder grouping.</p> <p>2. The board should consider whether it is appropriate to publish its stakeholder policies.</p> <p>3. The board should oversee the establishment of mechanisms and processes that support stakeholders in constructive engagement with the company.</p> <p>4. The board should encourage shareholders to attend AGM's.</p> <p>5. The board should consider not only formal, but also informal, processes for interaction with the company's stakeholders.</p> <p>6. The board should disclose in its integrated report the nature of the company's dealings with stakeholders and the outcomes of these dealings.</p>
Integrated reporting and disclosure	The board should ensure the integrity of the company's integrated report	<p>1. A company should have controls to enable it to verify and safeguard the integrity of its integrated report.</p> <p>2. The board should delegate to the audit committee to evaluate sustainability disclosures. The integrated report should:</p> <p>3. be prepared every year;</p>

	<p>Sustainability reporting and disclosure should be integrated with the company's financial reporting</p> <p><i>Sustainability reporting and disclosure should be independently assured</i></p>	<p>4. convey adequate information regarding the company's financial and sustainability performance; and</p> <p>5. focus on substance over form</p> <p>1. The board should include commentary on the company's financial results.</p> <p>2. The board must disclose if the company is a going concern.</p> <p>3. The integrated report should describe how the company has made its money.</p> <p>4. The board should ensure that the positive and negative impacts of the company's operations and plans to improve the positives and eradicate or ameliorate the negatives in the financial year ahead are conveyed in the integrated report.</p> <p><i>1. General oversight and reporting of sustainability should be delegated by the board to the audit committee.</i></p> <p><i>2. The audit committee should assist the board by reviewing the integrated report to ensure that the information contained in it is reliable and that it does not contradict the financial aspects of the report.</i></p> <p><i>3. The audit committee should oversee the provision of assurance over sustainability issues</i></p>
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CORPORATE SOCIAL RESPONSIBILITY IN UNITED KINGDOM

The United Kingdom had played a pioneering role in shaping internationally understanding on how to address issues associated with both the positive and negative impact of businesses on the society. The most of UK's largest companies follow a dual strategic leadership pattern. This implies that the role of the CEO and the chairman of the company board are separated. There is a control of Institutional Investors about 80 percent of the UK equity market. Earlier the companies were mostly skeptical or cynical about CSR, whereas there is a genuine consensus and effort today to consider CSR as a mainstream activity. There is a movement towards the developing company-specific CSR to emerge as a preferred company in the market through a deeper

comparative understanding of the investment goals and engagement practices. If the government of the United Kingdom is to play a stronger, more active role in promoting CSR, it needs to intervene in the marketplace for the benefit of the society. Progressive coalitions are already emerging on an issue specific basis- for example the Business Leaders Initiative on Climate Change and the Business Leaders Initiative on Human Rights.

CSR is a dynamic idea and would be under continuous flux. Therefore, constant updation of CSR initiatives has to happen from all the partners in group. These partners are from all the stakeholders of business and each of them needs to create their own credibility. There is a strong presence of CSR-training related to social and environmental issues in the management leadership in management of the firm.

The UK, Companies Act 2006 has incorporated some provisions relating to Corporate Social Responsibility. According to section 172 of the companies act 2006 of UK, (1) A director must act in a way to promote the success of the company for the benefit of the members as a whole and doing so having in regard to –

- (a) The likely consequences of any decision in the long term,
- (b) The interests of the company's employees,
- (c) The need to foster the company's business relationships with suppliers, customers and others,
- (d) The impact of the company's operations on the community and the environment,
- (e) The desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) The need to act fairly as between members of the company.

(2) Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes

(3) The duty imposed by this section has effect subject to any enactment or rule of law requiring directors, in certain circumstances, to consider or act in the interests of creditors of the company.

Section 417 of the Companies Act 2006 of UK requires the contents of the Director's Report, a business review to inform the members of the company and help them to assess how well the directors have performed

their duties in promotion of success of the company as under section 172 of the act. The following key points are required to be noted in fulfilling the section 417:

- I. The business review must contain a fair review and full description of the principle risks and uncertainties facing the company.
- II. The review required is a balanced and comprehensive analysis of development and performance of the company's business during financial year, and Position of the company's business at the end of financial year.
- III. The review must contain, for an understanding of the development, performance and position of the company's business, analysis using financial key indicators.
- IV. The review must, wherever necessary, include reference to, explanation of and amounts included in the company's annual report.
- V. Where the company is a quoted company (Listed company) the business review must include the following point:
 - (i) the main trends and factors likely to affect the future development, performance and position of the company's business; and
 - (i) information about –
 - (a) environmental matters (including the impact of the company's business on the environment),
 - (b) the company's employees, and
 - (c) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
 - (i) Subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

FREQUENTLY ASKED QUESTIONS ON CSR**1. What are the consequences for non-compliance of CSR provisions?**

Ans. The concept of CSR is based on the principle 'comply or explain'. Section 135 of the Act does not lay down any penal provisions in case a company fails to spend the desired amount. However, sub-section 8 of section 134 provides that in case the company fails to spend such amount, the Board shall in its report specify the reasons for not spending the amount.

In case the company does not disclose the reasons in the Board's report, the company shall be punishable with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000, or with both. (Section 134(8)).

2. Whether section 135 is required to be complied by the company as well as its holding or subsidiary company?

Ans. Rule 3(1) of Companies (CSR Policy) Rules, 2014, every company including its holding or subsidiary which fulfils the criteria specified in sub-section (1) of section 135 of the Act with regard to networth/ turnover or net profit shall comply with the provisions of section 135 of the Act and these rules.

The criterion needs to be fulfilled by individual company. Merely being a holding or subsidiary company of a company which fulfils the criteria under section 135(1) does not make the company liable to comply with section 135, unless the company itself fulfils the criteria. Therefore, if the holding company or the subsidiary company themselves fulfils the criteria specified in Section 135, all the provisions mentioned therein become applicable to such company.

3. From which Financial Year CSR expenditure & reporting begins?

Ans. Since section 135 relating to Corporate Social Responsibility and schedule VII have become effective from April 01, 2014, every company which meets the criteria specified under sub-section (1) of section 135 is required to comply the same from April 01, 2014. Companies have to spend the amount on CSR activities as required under section 135 during the F.Y. 2014-15 and Reporting of the same would be done in 2015 Board's Report.

Accordingly, amongst other things, the constitution of CSR Committee, preparation of CSR Policy, the spending of amount on CSR activities needs to be done during the financial year 2014-15.

4. Whether the provisions of CSR are applicable to section 8 companies?

Ans. Section 8 companies are supposed to apply their profits in promoting the objects such as commerce, art, science, sports, education or any such other object and it prohibits payment of any dividend to its members. There is no specific exemption given with regard to applicability of section 135 to section 8 companies.

5. In case of companies having multi-locational operations, which local area of operations should the company choose for spending the amount earmarked for CSR operations?

Ans. Proviso to Section 135(5) of the Companies Act 2013 provides that a company shall give preference to the local area and the areas around it where it operates for spending the amount earmarked for CSR activities. In case of multi-locational operations, the company could exercise discretion in choosing the area for which it wants to give preference.

6. In case the company has appointed personnel exclusively for implementing the CSR activities of the company, can the expenditure incurred towards such personnel in terms of staff cost etc. be included in the expenditure earmarked for CSR activities?

Ans. The Ministry of Corporate Affairs vide General Circular No. 21/2014 dated 18th June, 2014 has 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.

According to Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules 2014, Companies may 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 shall not exceed five percent of total CSR expenditure of the company in one financial year.

7. Are the provisions with regard to CSR applicable to foreign companies?

Ans. In terms of Rule 3(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2013, a foreign company having its office or project office in India which fulfils the criteria specified in Section 135(1) is required to comply with the provisions of Section 135 of the Act and the Rules thereunder.

The networth, turnover or net profit of a foreign company is to be computed in accordance with the balance sheet and profit and loss account of the foreign company prepared with respect to its Indian business operations in accordance with schedule III or as near thereto as may be possible for each financial year.

Therefore foreign company having its branch office or project office in India which fulfils the criteria specified under section 135(1) is required to constitute a CSR Committee and comply with the spending of 2% of average net profits as per financial statement of its Indian business operations in CSR activities in India.

8. Where CSR activities lead to profits, how should such profits be treated?

Ans. Rule 6(2) of the Companies (CSR Policy) Rules, 2014 provides that the CSR policy of the Company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company. This impliedly means that the surplus arising out of CSR projects or programs or activities of the company shall not form part of the business profit of a company.

Ideally, the surplus should be rolled over to CSR Corpus.

9. If a company having turnover of more than Rs. 1000 crores or more has incurred loss any of the preceding three financial years, then whether such company is required to comply with the provisions of the section 135 Companies Act, 2013?

Ans. As per the provisions of section 135 of the Act, one of the three criteria has to be satisfied to attract Section 135. Therefore, if a company satisfies the criterion of turnover, although it does not satisfy the criterion of net profit, is required to comply with the provisions of Section 135 and the Companies (CSR Policy) Rules, 2014. But, since there are no profits, the company

held not spend any amount but explain the reasons for not speeding the amount in its Boards Reports.

10. Can CSR be done in kind? i.e. If a company is in the business of publication of books for the purpose of CSR?

Ans. Perhaps yes, but the issue needs further clarification from MCA.

11. What is the applicability of Section 135 of the Companies Act, 2013?

Ans. Section 135 is applicable to:

Every company having

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more
- or a net profit of Rs. 5 crore or more

during any financial year.

12. Does 'any financial year' mentioned in section 135(1) mean at any time in the history of the company.

Ans. The Ministry of Corporate Affairs has vide General Circular No. 21/2014 dated June 18, 2014 clarified that 'any financial year' referred under sub-section (1) of section 135 of the Act read with Rule 3(2) of CSR Rules, 2014 implies 'any of the three preceding financial years'.

As per the clarification, in case, a company which meets the criteria in any of the preceding three financial years (i.e. 2011-12, 12-13, 13-14) but does not meet the criteria in financial year 2014-15 will need to constitute CSR Committee and comply with provision of 135 (2) to (5).

13. Is CSR mandatory for private companies also?

Ans. In terms section 135 every company which meets the criteria of networth, turnover or net profits mentioned therein is required to constitute a CSR Committee of the Board and also comply with the other requirements of section 135.

14. A private company is not required to appoint an independent director, whereas Section 135(1) states that the CSR Committee should have at least one independent director. Do private companies need to appoint an independent director to comply with this section?

Ans. In terms of rule 5 of the Companies (CSR Policy) rules, 2014, an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director shall have its CSR Committee without such director. Further in case a private companies has only 2 directors, its board shall constitute its CSR Committee with two such directors.

15. Whether an activity a company is required to do as per its statutory obligations under any law, would be termed as CSR activity?

Ans. No, the activity undertaken in pursuance of any law would not be considered as CSR activity.

In this regard, please refer to the Ministry of Corporate Affairs Circular No. 21/2014 dated June 18, 2014 where it is clarified that expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act, 2013.

16. There are certain corporate groups who run hospitals and educational institutions, will this be considered as CSR?

Ans. If the hospitals and educational institutions are part of the business activity of the company they would not be considered as CSR activity. However, if some charity is done by these hospitals or educational institutions, without any statutory obligation to do so, then it can be considered as CSR activity.

17. In case of companies having multi-locational operations, which local area of operations should the company choose for spending the amount earmarked for CSR operations?

Ans. Proviso to Section 135(5) of the Companies Act 2013 provides that a company shall give preference to the local area and the areas around it where it operates for spending the amount earmarked for CSR activities. In case of multi-locational operations, the company could exercise discretion in choosing the area for which it wants to give preference.

18. Is there any requirement of filing Annual Report on CSR activities with the Registrar of Companies?

Ans. The Annual Report on CSR activities forms part of the Board's Report. A copy of the Board's report is required to be filed with

the Registrar alongwith the Annual Report. There is no requirement of separately filing Annual Report on CSR activities.

19. What is the treatment of expenses incurred beyond that of mandated CSR spend

There are instances of CSR activities that are in the project mode which require fund beyond that of the mandated 2 %.

Will such expense, where incurred, be counted in subsequent Financial years as part of CSR expenditure?

Ans. In terms of section 135(5), the board of every company, to which section 135 is applicable, 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 preceding year. There is no provision of spreading over the expenditure incurred in a particular year over the next few years. The words used here is at least. Therefore any expenditure over 2% could be considered as voluntary higher spend. In case, a company does not want to spend the 2% in the subsequent year on account of it having spent a higher amount, the Board's report can state so.

20. Whether CSR expenditure of a company can be claimed as a business expenditure?

Ans. Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. Accordingly, the amount spent by a company towards CSR can not be claimed as business expenditure.

21. Whether the average net profit criteria in section 135(5) is Net profit before tax or Net profit after tax?

Ans. The explanation to section 135(5) states that "average net profit" shall be calculated in accordance with section 198 of the Companies Act, 2013. In terms of section 198(5)(a) in making computation of net profits, income-tax and super-tax payable by the company under the Income-tax Act, 1961 shall not be deducted. Therefore the net profit criteria in section 135(5) is net profit before tax.

22. Can donation of money to a trust by a company be treated as CSR expenditure of the company?

Ans. The Ministry of Corporate Affairs has vide General Circular No. 21/2014 dated June 18, 2014 has clarified that Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies 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 of the Act.

- 23. It has been indicated in the rules that all CSR activities should be in project/programme mode, will intermittent, one-off events such as marathons /awards/advertisements /sponsorships of TV programmes, etc. be part of CSR expenditure?**

Ans. It has been clarified through Circular no. 21/2014 dated June 18, 2014 that CSR activities should be undertaken by the companies in project/programme mode (as referred in Rule 4(1) of Companies CSR Rules, 2014). One off events such as marathons/ awards/advertisements /sponsorships of TV programmes, etc. would not be qualified as part of CSR expenditure.

CONCLUSION

A company's interactions and interdependencies with society are many and complex. Businesses have an impact on societies, and vice versa, so there is a need to recognize the mutual responsibilities that this entails. Within societies, public scrutiny of firms is constant, customer choice criteria include the reputations and values of suppliers, and the next generation of leaders will choose employers whose values match their own. The Friedman's formulation that "The business of business is business" has outlived its utility, and social responsibility and being a good corporate citizen are the buzzwords today. In the long run, those organizations or group of persons who do not exercise power in a way which society considers responsible, will tend to lose it.

*Annexure 1***SCHEDULE VII
(See Section 135)****ACTIVITIES WHICH MAY BE INCLUDED BY COMPANIES IN THEIR
CORPORATE SOCIAL RESPONSIBILITY POLICIES**

Activities relating to as per the Act enforced:-

- I. eradicating extreme hunger and poverty;
- II. promotion of education;
- III. promoting gender equality and empowering women;
- IV. reducing child mortality and improving maternal health;
- V. combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases;
- VI. ensuring environmental sustainability;
- VII. employment enhancing vocational skills;
- VIII. social business projects;
- IX. contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
- X. such other matters as may be prescribed.

The Ministry of Corporate Affairs vide Notification No. GSR 130(E) replaced items (i) to (x) of Schedule VII. The Notification stated as under:

(I) In Schedule VII, for items (i) to (x) and the entries relating thereto, the following items and entries shall be substituted, namely :-

- I. 'ID eradicating hunger, poverty and malnutrition, promoting preventive health care and 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, agro forestry, 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 arts and handicrafts;
- VI. measures for the benefit of armed forces veterans, war widows and their dependents;
- 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 any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- IX. contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government
- X. rural development projects."

Annexure 2

[To be published in the Gazette of India, Extraordinary, Part II,
Section 3, Sub-section (i)]

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
NOTIFICATION**

New Delhi, the 19th January, 2015

G.S.R.(E). – In exercise of the powers conferred under section 135 and sub-section (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014' namely :

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4 in sub-rule (2),-

(i) for the words "established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise", the words "established under section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise" shall be substituted;

(ii) in the proviso, in clause (i), for the words "not established by the company or its holding or subsidiary or associate company, it", the words "not established by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company" shall be substituted.

[F. No. 1/18/2013-CL V-Part]

AMARDEEP SINGH BHATIA

Joint Secretary to the Government of India

Note. - The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 129(E), dated the 27th February, 2014 and was subsequently amended by notification number G.S.R. 644(E), dated the 12th September, 2014.

Annexure 3

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 12th September, 2014

G.S.R. 644(E). – In exercise of the powers conferred under Section 135 and sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules to amend the Companies (Corporate Social Responsibility Policy) Rules, 2014, namely:–

1. (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 4, in sub-rule (6), after the words “but such expenditure” the words and comma “including expenditure on administrative overheads,” shall be inserted.

[F. No. 1/18/2013-CL-V-Part]

MANOJ KUMAR, Jt. Secy.

Note : The principal notification was published in the Gazette of India vide No. G.S.R. 129(E), dated 27.02.2014.

Annexure 4**General Circular No.36/2014**

**F.No.05/01/2014-CSR
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing, Shastri Bhawan,
Dr. R.P. Road, New Delhi-110001
Dated: 17.09.2014

To

All Regional Director,
All Registrar of Companies,
All Stakeholders

Subjecti : Clarification with regard to provisions of Corporate Social Responsibility (CSR) under section 135 of the Companies Act, 2013.

Sir,

In continuation of the General Circular No. 21 of 2014 dated 18.06.2014, the following clarifications are hereby issued:

- (i) Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014; and
- (ii) Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted.

2. This issues with the approval of Competent Authority.

Yours faithfully,

(Seema Rath)
Assistant Director (CSR)
Tel: 011-23384657

Copy to:

1. PSO to Secretary
2. PPS to Additional Secretary
3. PS to DG(IICA)
4. PS to JS(M)/JS(B)/JS(ADM)/JS(SP)/DII (NS)/EA/DII (Policy)
5. DIR (AK)/ DIR (NC)/ DIR(PS)/DIR (R&A)
6. e-Governance Cell for uploading on website of MCA
7. Guard File.

*Annexure 5***General Circular No. 21/2014**

**No. 05/01/2014- CSR
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing,
Shastri Bhawan, Dr. R. P. Marg
New Delhi - 110 001
Dated: 18th June, 2014

To,

All Regional Director,
All Registrar of Companies,
All Stakeholders

Subject: - Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013.

Sir,

This Ministry has received several references and representation from stakeholders seeking clarifications on the provisions under Section 135 of the Companies Act, 2013 (herein after referred as 'the Act') and the Companies (Corporate Social Responsibility Policy) Rules, 2014, as well as activities to be undertaken as per Schedule VII of the Companies Act, 2013. Clarifications with respect to representations received in the Ministry on Corporate Social Responsibility (herein after referred as ('CSR')) are as under:-

- (i) The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, 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 amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure.
- (ii) It is further clarified that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. One-off events such as

marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.

- (iii) Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- (iv) 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.
- (v) "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.
- (vi) Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
- (vii) 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act 1956, for those States where registration of Trust is not mandatory.
- (viii) Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies 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 of the Act.

2. This issues with the approval of Competent Authority.

Yours faithfully,

Sd/-
(Seema Rath)
Assistant Director (CSR)
Phone No. 23389622

**Annexure referred to at para (i) of General Circular No. 21/2014
dated 18.06.2014**

Sl. No.	Additional items requested to be included in Schedule VII or to be clarified as already being covered under Schedule VII of the Act	Whether covered under Schedule VII of the Act
1.	<p>Promotion of Road Safety through CSR:</p> <p>(i) (a) Promotions of Education, "Educating the Masses and Promotion of Road Safety awareness in all facets of road usage,</p> <p>(b) Drivers' training,</p> <p>(c) Training to enforcement personnel,</p> <p>(d) Safety traffic engineering and awareness through print, audio and visual media" should be included.</p> <p>(ii) Social Business Projects : "Giving medical and Legal aid, treatment to road accident victims" should be included.</p>	<p>(a) Schedule VII (ii) under "promoting education".</p> <p>(b) For drivers training etc. Schedule VII (ii) under "vocational skills".</p> <p>(c) It is establishment functions of Government (cannot be covered).</p> <p>(d) Schedule VII (ii) under "promoting education".</p> <p>(ii) Schedule VII (i) under 'promoting health care including preventive health care.'</p>
2.	Provisions for aids and appliances to the differently- able persons - 'Request for inclusion	Schedule VII (i) under 'promoting health care including preventive health care.'
3.	The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR	Item no. (ii) of Schedule VII under the head of "promoting education" and "vocational skills"

	<p>initiatives for the benefit of the predominately rural farming community:</p> <p>(a) Capacity building for farmers covering best sustainable farm management practices.</p> <p>(b) Training Agriculture Labour on skill development.</p> <p>(c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices(Applied research) with a focus on water management.</p> <p>(d) To do Product Life Cycle analysis from the soil conservation point of view</p>	<p>and "rural development."</p> <p>(a) "Vocational skill" livelihood enhancement projects.</p> <p>(b) "Vocational skill"</p> <p>(c) 'Ecological balance', 'maintaining quality of soil, air and water'.</p> <p>(d) "Conservation of natural resource" and 'maintaining quality of soil, air and water'.</p>
4.	<p>To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).</p> <p>(i) Providing effective consumer grievance redressal mechanism.</p> <p>(ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution.</p> <p>(iii) Consumer protection activities.</p> <p>(iv) Consumer Rights to be mandated.</p> <p>(v) All consumer protection programs and activities" on the same lines as Rural Development, Education etc.</p>	<p>Consumer education and awareness can be covered under Schedule VII (ii) "promoting education".</p>

5.	<p>a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as “promoting education” and hence eligible for compliance of companies with Corporate Social Responsibility.</p> <p>b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as “protection of national heritage, art and culture, including restoration of buildings and sites of historical importance” and hence eligible for compliance of companies with CSR.</p>	<p>Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as “promoting education”.</p>
6.	<p>Non Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.</p>	<p>Schedule VII (ii) under “promoting education”, if approved by Department of Science and Technology.</p>
7.	<p>Disaster Relief</p>	<p>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,</p> <p>(i) Medical aid can be covered under ‘promoting health care including preventive health care.’</p> <p>(ii) Food supply can be covered under eradicating hunger, poverty & malnutrition.</p>

		(iii) Supply of clean water can be covered under 'sanitation and making available safe drinking water'.
8.	Trauma care around highways in case of road accidents.	Covered under 'health care'.
9.	Clarity on "rural development projects"	Any project meant for the development of rural India will be covered under this.
10.	Supplementing of Govt. schemes like mid-day meal by corporate through additional nutrition would qualify under Schedule VII.	Yes, covered under item no. (i) of the Schedule VII of the act.
11.	Research and Studies in the areas specified in Schedule VII.	Yes, under the respective areas of items defined in Schedule VII. Otherwise under 'promoting education'.
12.	Capacity building of government officials and elected representatives – both in the area of PPPs and urban infrastructure.	Not Covered.
13.	Sustainable urban development and urban public transport systems	Not covered.
14.	Enabling access to, or improving the delivery of, public health systems be considered under the head "preventive healthcare" or "measures for reducing	Can be covered under both the heads of "healthcare" or "measures for reducing inequalities

	inequalities faced by socially & economically backward groups”?	faced by socially & economically backward groups”, depending on the context.
15.	Likewise, could slum re-development or EWS housing be covered under “measures for reducing inequalities faced by socially & economically backward groups”?	Yes, it is covered.
16.	Renewable energy projects	Covered under ‘Environmental sustainability, ecological balance and conservation of natural resources’
17.	(i) Are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count? (as per 2(c)(ii) of the Final Rules, they will count)	Item no. (i) & (ii) of Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the schedule.
18.	US-India Physicians Exchange Program – broadly speaking, this would be program that provides for the professional exchange of physicians between India and the United States.	Not Covered.

Annexure 6**Business Responsibility Report – Suggested Framework****Section A: General Information about the Company**

1. Corporate Identity Number (CIN) of the Company:
2. Name of the Company:
3. Registered address:
4. Website:
5. E-mail id:
6. Financial Year reported:
7. Sector(s) that the Company is engaged in (industrial activity code-wise):
8. List three key products/services that the Company manufactures/ provides (as in balance sheet):
9. Total number of locations where business activity is undertaken by the Company
 - i. Number of International Locations (Provide details of major 5):
 - ii. Number of National Locations :
10. Markets served by the Company – Local/State/National/ International:

Section B: Financial Details of the Company

1. Paid up Capital (INR):
2. Total Turnover (INR):
3. Total profit after taxes (INR):
4. Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%):
5. List of activities in which expenditure in 4 above has been incurred:-
 - a.

b.

c.

Section C: Other Details

1. Does the Company have any Subsidiary Company/ Companies?
2. Do the Subsidiary Company/Companies participate in the BR Initiatives of the parent company? If yes, then indicate the number of such subsidiary company(s):
3. Do any other entity/entities (e.g. suppliers, distributors etc.) that the Company does business with; participate in the BR initiatives of the Company? If yes, then indicate the percentage of such entity/entities? [Less than 30%, 30-60%, More than 60%]:

Section D: BR Information

1. Details of Director/Directors responsible for BR
 - (a) Details of the Director/Director responsible for implementation of the BR policy/policies
 - DIN Number:
 - Name:
 - Designation:
 - (b) Details of BR heads:

S. No.	Particulars	Details
1.	DIN Number(if applicable)	
2.	Name	
3.	Designation	
4.	Telephone number	
5.	E-mail id	

7	Has the policy been formally communicated to all relevant internal and external stakeholders?									
8	Does the company have in-house structure to implement the policy/policies?									
9	Does the Company have a grievance redressal mechanism related to the policy/policies to address stakeholders' grievances related to the policy/policies?									
10	Has the company carried out independent audit/ evaluation of the working of this policy by an internal or external agency?									

2a. If answer to S.No. 1 against any principle, is 'No', please explain why:(Tick up to 2 options)

Sl. No	Question	P1	P2	P3	P4	P5	P6	P7	P8	P9
1	The company has not understood the Principles									
2	The company is not at a stage where it finds itself in a position to formulate and implement the policies on specified principles									
3	The company does not have financial or manpower resources available for the task									
4	It is planned to be done within next 6 months									
5	It is planned to be done within the next 1 year									
6	Any other reason (please specify)									

3. Governance related to BR

- Indicate the frequency with which the Board of Directors,

Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 3-6 months, Annually, More than 1 year

- Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published?

Section E: Principle-wise performance

Principle 1

1. Does the policy relating to ethics, bribery and corruption cover only the company? Yes/ No. Does it extend to the Group/Joint Ventures/ Suppliers/Contractors/NGOs/Others?
2. How many stakeholder complaints have been received in the past financial year and what percentage was satisfactorily resolved by the management? If so, provide details thereof, in about 50 words or so.

Principle 2

1. List up to 3 of your products or services whose design has incorporated social or environmental concerns, risks and/or opportunities.
 - i.
 - ii.
 - iii.
2. For each such product, provide the following details in respect of resource use(energy, water, raw material etc.) per unit of product(optional):
 - i. Reduction during sourcing/production/ distribution achieved since the previous year throughout the value chain?
 - ii. Reduction during usage by consumers (energy, water) has been achieved since the previous year?
3. Does the company have procedures in place for sustainable sourcing (including transportation)?
 - i. If yes, what percentage of your inputs was sourced sustainably? Also, provide details thereof, in about 50 words or so.
4. Has the company taken any steps to procure goods and services from local & small producers, including communities surrounding their place of work?

If yes, what steps have been taken to improve their capacity and capability of local and small vendors?

5. Does the company have a mechanism to recycle products and waste? If yes what is the percentage of recycling of products and waste (separately as <5%, 5-10%, >10%). Also, provide details thereof, in about 50 words or so.

Principle 3

1. Please indicate the Total number of employees.
2. Please indicate the Total number of employees hired on temporary/contractual/casual basis.
3. Please indicate the Number of permanent women employees.
4. Please indicate the Number of permanent employees with disabilities
5. Do you have an employee association that is recognized by management?
6. What percentage of your permanent employees is members of this recognized employee association?
7. Please indicate the Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as on the end of the financial year.

S. No.	Category	No of complaints filed during the financial year	No of complaints pending as at end of the financial year
1.	Child labour/forced labour/involuntary labour		
2.	Sexual harassment		
3.	Discriminatory employment		

8. What percentage of your under mentioned employees were given safety & skill up-gradation training in the last year?

- Permanent Employees
- Permanent Women Employees
- Casual/Temporary/Contractual Employees
- Employees with Disabilities

Principle 4

1. Has the company mapped its internal and external stakeholders?
Yes/No
2. Out of the above, has the company identified the disadvantaged, vulnerable & marginalized stakeholders?
3. Are there any special initiatives taken by the company to engage with the disadvantaged, vulnerable and marginalized stakeholders? If so, provide details thereof, in about 50 words or so.

Principle 5

1. Does the policy of the company on human rights cover only the company or extend to the Group/Joint Ventures/Suppliers/Contractors/NGOs/Others?
2. How many stakeholder complaints have been received in the past financial year and what percent was satisfactorily resolved by the management?

Principle 6

1. Does the policy related to Principle 6 cover only the company or extends to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others.
2. Does the company have strategies/ initiatives to address global environmental issues such as climate change, global warming, etc? Y/N
If yes, please give hyperlink for webpage etc.
3. Does the company identify and assess potential environmental risks?
Y/N
4. Does the company have any project related to Clean Development Mechanism? If so, provide details thereof, in about 50 words or so.
Also, if Yes, whether any environmental compliance report is filed?
5. Has the company undertaken any other initiatives on – clean technology, energy efficiency, renewable energy, etc? Y/N If yes, please give hyperlink for web page etc.
6. Are the Emissions/Waste generated by the company within the permissible limits given by CPCB/SPCB for the financial year being reported?
7. Number of show cause/ legal notices received from CPCB/SPCB which is pending (i.e. not resolved to satisfaction) as at the end of Financial Year.

Principle 7

1. Is your company a member of any trade and chamber or association?

If Yes, Name only those major ones that your business deals with:

- a.
- b.
- c.
- d.

2. Have you advocated/lobbied through above associations for the advancement or improvement of public good? Yes/No; if yes specify the broad areas(drop box: Governance and Administration, Economic Reforms, Inclusive Development Policies, Energy security, Water, Food Security, Sustainable Business Principles, Others)

Principle 8

1. Does the company have specified programmes/initiatives/projects in pursuit of the policy related to Principle 8? If yes details thereof.

2. Are the programmes/projects undertaken through in-house team/ own foundation/external NGO/government structures/any other organization?

3. Have you done any impact assessment of your initiative?

4. What is your company's direct contribution to community development projects- Amount in INR and the details of the projects undertaken.

5. Have you taken steps to ensure that this community development initiative is successfully adopted by the community? Please explain in 50 words, or so.

Principle 9

1. What percentage of customer complaints/consumer cases are pending as on the end of financial year.

2. Does the company display product information on the product label, over and above what is mandated as per local laws? Yes/No/N.A. / Remarks(additional information)

3. Is there any case filed by any stakeholder against the company regarding unfair trade practices, irresponsible advertising and/or anti-competitive behaviour during the last five years and pending as on end of financial year. If so, provide details thereof, in about 50 words or so.

4. Did your company carry out any consumer survey/ consumer satisfaction trends?

*Annexure 7***RELEVANT SECTIONS OF COMPANIES ACT, 2013****Section 134**

- (1) The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.
- (2) The auditors' report shall be attached to every financial statement.
- (3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include –
- (a) the extract of the annual return as provided under sub-section (3) of section 92;
 - (b) number of meetings of the Board;
 - (c) Directors' Responsibility Statement;
 - (d) a statement on declaration given by independent directors under sub-section (6) of section 149;
 - (e) in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178;
 - (f) explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made –
 - (i) by the auditor in his report; and
 - (ii) by the company secretary in practice in his secretarial audit report;
 - (g) particulars of loans, guarantees or investments under section 186;
 - (h) particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form;

- (j) the state of the company's affairs;
 - (j) the amounts, if any, which it proposes to carry to any reserves;
 - (k) the amount, if any, which it recommends should be paid by way of dividend;
 - (l) material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
 - (m) the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
 - (n) a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
 - (o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;
 - (p) in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors;
 - (q) such other matters as may be prescribed.
- (4) The report of the Board of Directors to be attached to the financial statement under this section shall, in case of a One Person Company, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- (5) The Directors' Responsibility Statement referred to in clause (c) of sub-section (3) shall state that –
- (a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
 - (b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the

state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

- (c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- (d) the directors had prepared the annual accounts on a going concern basis; and
- (e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

Explanation. – For the purposes of this clause, the term “internal financial controls” means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company’s policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

- (f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

(6) The Board’s report and any annexures thereto under sub-section (3) shall be signed by its chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

(7) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of –

- (a) any notes annexed to or forming part of such financial statement;
- (b) the auditor’s report; and
- (c) the Board’s report referred to in sub-section (3).

(8) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand

rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Section-135

(1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall, –

- (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall,–

- (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and
- (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation.– For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

Section 198

(1) In computing the net profits of a company in any financial year for the purpose of section 197, –

- (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
- (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.

(2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorized in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:–

- (a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;
- (b) profits on sales by the company of forfeited shares;
- (c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
- (d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference

between the original cost of that fixed asset and its written down value;

- (e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

- (a) all the usual working charges;
- (b) directors' remuneration;
- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- (f) interest on debentures issued by the company;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
- (h) interest on unsecured loans and advances;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
- (j) outgoings inclusive of contributions made under section 181;
- (k) depreciation to the extent specified in section 123;
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);

(o) debts considered bad and written off or adjusted during the year of account.

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

(a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);

(c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Annexure 8**COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY)
RULES, 2014****Short title and commencement.**

Rule 1 : (1) These rules may be called the Companies (Corporate Social Responsibility Policy) Rules, 2014.

(2) They shall come into force on the 1st day of April, 2014.

Definitions.

Rule 2 : (1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Companies Act, 2013;
- (b) "Annexure" means the Annexure appended to these rules;
- (c) "Corporate Social Responsibility (CSR)" means and includes but is not limited to:-
 - (i) Projects or programs relating to activities specified in Schedule VII to the Act or
 - (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) 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 cover subjects enumerated in Schedule VII of the Act.
- (d) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act
- (e) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company;
- (f) "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, 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 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 Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

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

(2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

Corporate Social Responsibility, -

Rule 3 : (1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India which fulfills the criteria specified in sub-section (1) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

(2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the

Act for three consecutive financial years shall not be required to –

- (a) constitute a CSR Committee; and
- (b) comply with the provisions contained in sub-section (2) to (5) of the said section,

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

CSR Activities.

Rule 4 : (1) 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.

(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:**Provided** that-

- (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
- (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.

(3) 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 these rules.

(4) subject to provisions of sub-section (5) of section 135 of the Act the CSR projects or programs or activities undertaken in India only shall amount to CSR expenditure.

(5) The CSR projects or programs or activities that benefit only the employees of the company and their family shall not be considered as CSR activities in accordance with section 135 of the Act.

(6) Companies may 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 shall not exceed five percent of total CSR expenditure of the company in one financial year.

(7) Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

CSR Committees.

Rule 5 : (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-

- (i) an unlisted public company or a private company covered under sub-section (1) of section 135 which is not required to appoint an independent director pursuant to sub-section (4) of section 149 of the Act, shall have its CSR Committee without such director;

- (ii) a private company having only two directors on its Board shall constitute its CSR Committee with two such directors:
- (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of subsection (1) of section 380 of the Act and another person shall be nominated by the foreign company.

(2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

CSR Policy.

Rule 6 : (1) The CSR Policy of the company shall, inter-alia, include the following, namely :-

- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of 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:

Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.

Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

(2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

CSR Expenditure.

Rule 7 : CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

CSR Reporting.

Rule 8 : (1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of

April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.

(2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

Display of CSR activities on its website.

Rule 9: The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure.

FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT

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 (two percent 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)
Sr. No	CSR project or activity identified	Sector in which the activity covered	Projects or programs 1) Local area or (2) other Specify the State and district where projects or programs was undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Sub heads: (1) Direct Expenditure on projects or program (2)Over-heads	Cumulative Expenditure up to the reporting period	Amount spent: Direct or through implementing agency.
1							
2							
3							
	Total						

*Give details of implementing agency.

6. In case the company has failed to spend the two percent of the

average net profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board 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/- (Chief Executive Officer or Managing Director or Director)	Sd/- (Chairman CSR Committee)	Sd/- (Person specified under clause (d) of sub-section (1) of section 380 of the Act) (Wherever Applicable)
--	-------------------------------------	--