


CORPORATE SOCIAL RESPONSIBILITY (SECTION 135)

<p>Introduction:</p>	 <p>The Companies Act, 2013 lays down the provisions requiring corporate to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, CSR implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.</p>
<p>Which Company is required to constitute CSR committee:</p>	<p>Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having</p> <ol style="list-style-type: none"> (1) Net worth: \geq ₹500 crores, or (2) Turnover: \geq ₹1000 crores or (3) Net profit: \geq ₹5 crore during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board. <p>Any Company fulfilling the above criteria shall constitute a Corporate Social Responsibility Committee.</p>
	<p>As per Section 2(57), “Net worth” means (Paid-up share capital + all reserves created out of the profits + securities premium account)</p> <p>– (Accumulated losses + deferred expenditure + miscellaneous expenditure not written off), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write- back of depreciation and amalgamation.</p> <ol style="list-style-type: none"> 1. Here, “average net profit” shall be calculated in accordance with the provisions of section 198. 2. “Net profit” shall not include the following: <ol style="list-style-type: none"> a) Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

	<p>b) Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.</p> <p>However, net profits in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act.</p> <p>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 section 381 read with section 198 of the Act.</p>
<p>Amount of contribution towards CSR:</p>	<p>In every financial year, the Board of every company shall ensure that the company spends: ≥ 2% of the average net profits of the company made during the 3 immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years in pursuance of its CSR Policy.</p> <p>a) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.</p> <p>b) If the company fails to spend such amount, the Board shall, in its report, specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project, transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.</p> <p>c) If the company spends an amount in excess of the requirements provided, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.</p> <p>d) Any amount remaining unspent, pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance</p>

	<p>of its obligation towards the Corporate Social Responsibility Policy within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.</p> <p>e) Until a fund is specified in Schedule VII for the purposes of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act</p> <p>f) If a company is in default in complying with the provisions, the company shall be liable to: Penalty: 2 X the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or 1 crore, whichever is less, and every officer of the company who is in default: Penalty: 1/10th. of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or 2 lakh, whichever is less.</p> <p>g) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section.</p> <p>h) Where the amount to be spent by a company does not exceed 50 lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.</p> <p>i) Companies may build CSR capacities of their own personnel as well as those of implementing agencies through institutions with established track records of at least 3 financial years but such expenditure including expenditure on administrative overhead shall not exceed 5% of total CSR expenditure of the company in 1 financial year.</p>
<p>Composition of CSR Committee:</p>	<p>1. The CSR Committee shall be consisting of 3 or more directors, out of which at least 1 director shall be an independent director.</p>

	<ol style="list-style-type: none"> 2. A company which is not required to appoint an independent director shall have its CSR Committee without such director. 3. A private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors. 4. With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company. 5. The Board's report under section 134 shall disclose the composition of the CSR Committee. 6. The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:- <ol style="list-style-type: none"> (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; (b) the manner of execution of such projects or programmes as specified; (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes; (d) monitoring and reporting mechanism for the projects or programmes; and (e) details of need and impact assessment, if any, for the projects undertaken by the company: <p>Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.</p>
<p>Duties of CSR Committee :</p>	<p>The CSR Committee shall,—</p> <ol style="list-style-type: none"> a) Formulate and recommend to the Board, a CSR 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 the CSR Policy of the company from time to time. c) Monitor the CSR Policy of the company from time to time.

<p>Duties of the Board in relation to CSR</p>	<p>The Board of every company fulfilling the above mentioned criteria—</p> <ol style="list-style-type: none"> 1. After taking into account the recommendations made by the CSR Committee, approve the CSR 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 2. Ensure that the activities as are included in CSR Policy of the company are undertaken by the company.
<p>Exclusion of Companies (Rule 3 of the Companies (CSR) Rules, 2014)</p>	<p>Every company which ceases to be a company covered under above criteria of section 135 of the Act for 3 consecutive financial years shall not be required to-</p> <ol style="list-style-type: none"> 1. constitute a CSR Committee; and 2. comply with the provisions contained in Section 135 till such time it meets the criteria
<p>CSR Activities (Rule 4 of the Companies (CSR Policy) Rules, 2014)</p>	<ol style="list-style-type: none"> 1. The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities. 2. The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through <ol style="list-style-type: none"> (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or (c) any entity established under an Act of Parliament or a State legislature; or (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities. <ul style="list-style-type: none"> • Every entity, covered above, who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 1st day of April 2021. But these provisions shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021. Form CSR-1 shall be signed and submitted electronically by the

entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. On the submission of the Form CSR- 1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

3. **A company may also collaborate with other companies for undertaking projects or programs or CSR activities** in such 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. Companies may build CSR capacities of their own personnel as well as those of implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overhead **shall not exceed 5% of total CSR expenditure of the company in one financial year.**
5. **Any surplus arising out of the CSR activities shall not form part of the business profit** of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.
6. Where a company spends an amount in excess of requirement provided under **section 135** , such excess amount may be set off against the requirement to spend up to immediate succeeding three financial years subject to the conditions that –
 - (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any.
 - (ii) the Board of the company shall pass a resolution to that effect.
7. The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -
 - (a) a company established under **section 8** of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
 - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

	<p>(c) a public authority: Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 days with the approval of the Board based on reasonable justification.</p> <p>7. Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as</p> <p>(a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or</p> <p>(b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act</p> <p>8. 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.</p> <p>9. 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.</p>
<p>What will not be considered as CSR Activities? (Rule 4 of the Companies (CSR Policy) Rules, 2014)</p>	<p>1. The CSR projects or programs or activities undertaken outside India.</p> <p>2. The CSR projects or programs or activities that benefit only the employees of the company and their families.</p> <p>3. Contribution of any amount directly or indirectly to any political party under section 182 of the Act.</p> <p>4. CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.</p> <p>5. 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.</p>

Activities specified under Schedule VII:

Activities which may be included by companies in their CSR Policies (i.e. Activities as specified under Schedule VII) are as follows:

- (1) **Eradicating hunger, poverty and malnutrition**, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (2) **Promoting education**, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (3) **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;
- (4) **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 including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
- (5) **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;
- (6) **Measures for the benefit of armed forces veterans, war widows** and their dependents;
- (7) Training to **promote rural sports, nationally recognised sports**, paralympic sports and Olympic sports;
- (8) **Contribution to the Prime Minister's National Relief Fund** or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

	<p>(9) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)</p> <p>(10) Rural development projects;</p> <p>(11) Slum area development</p> <p>(12) Disaster management, including relief, rehabilitation and reconstruction activities.</p> <p>Note: Spending of CSR funds for COVID19 is an eligible CSR activity and spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme, setting up makeshift hospitals and temporary COVID Care facilities is an eligible CSR activity under item no. (1),(2) and (12) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.</p>
<p>CSR Reporting (Rule 8):</p>	<p>(1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified.</p> <p>(2) In case of a foreign company, the balance sheet filed under section 381 of the Act, shall contain an annual report on CSR containing particulars specified.</p> <p>(3) (a) Every company having average CSR obligation of 10 crore rupees or more, in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking the impact study.</p> <p>(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.</p>

	<p>(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed 5% of the total CSR expenditure for that financial year or 50 lakh rupees, whichever is less.</p> <p>(4) Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.</p>
Penalty:	<p>The Companies Act requires that—</p> <ol style="list-style-type: none">1. The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per Section 134;2. If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report. <p>Penalty as per section 134 of Companies Act, 2013</p>