

# Companies Act 2013 - Key Points relating to Corporate Social Responsibility

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This Presentation relates primarily to CSR provisions as applicable to Indian companies.  
Statutory requirements related to foreign companies are not covered.

# Contents

- A. Deciding if CSR is Applicable
- B. How much to spend?
- C. Constitution of CSR Committee
- D. Permitted Activities
- E. How to spend?
- F. Reporting Requirements
- G. Penalties

# A. Deciding If CSR is Applicable

- A1. Companies Responsible for CSR
- A2. Calculation of Net Worth
- A3. Calculation of Turnover
- A4. Calculation of Net Profit

## A1. Companies Responsible for CSR

Every company (whether private or public) with:

- Net Worth of Rs. 500 Crores (Rs. Five Billion) or more OR
- Turnover of Rs. 1000 Crores (Rs. Ten Billion) or more OR
- Net Profit of Rs. 5 Crores (Rs. Fifty Million) or more

## A1. Companies Responsible for CSR (Continued)

**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.



## A2. Calculation of Net Worth

- Add paid up Share Capital
- Add Reserves created out of Profit and Securities Premium Account
- Subtract Accumulated Losses
- Subtract Deferred Expenditure
- Subtract Miscellaneous Expenditure not written off
- Reserves created out of Revaluation of Assets, write-back of depreciation and amalgamation should not be included

All figures to be as per the Audited Balance Sheet

Example: A company was incorporated fifty years ago with a paid-up capital of Rs. Two Lakhs. The company bought 50 acres of urban land at Rs. 3000- per acre. The company did nothing else in the past fifty years. The land is valued now at about Rs. 20 Crores per acre. The company has done revaluation of the land in its balance sheet. For CSR purposes, the net worth of the company is about Rs. 1.5 Lakhs and not Rs. 1000 Crores.

## A2. Calculation of Net Worth (Continued)

(57) “net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and 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;

Section 2(57)

## A3. Calculation of Turnover

- Include realization from sale, supply or distribution of goods
- Include realization on account of services rendered
- Other income may not need to be included (Example - a manufacturing company has an interest income of Rs. 10 Crores and rent income of Rs. 5 Crores. For the purpose of calculating Turnover, rent income will be included while interest income will be excluded).
- To be calculated for a financial year



## A3. Calculation of Turnover (Continued)

(91) “turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

Section 2(91)

## A4. Calculation of Net Profit

- Include subsidies received from Government – 198(2)
- Do not Include Profits of capital nature – 198(3)
- Deduct all normal business expenses – 198(4)
- Do not deduct income tax, voluntary damages or compensation, loss of capital nature, change in carrying amount of asset or liability – 198(5)
- This calculation is independent of Income Tax Act or any other provision of Companies Act.

## A4. Calculation of Net Profit (Continued)

**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.

Section 198(1)



## A4. Calculation of Net Profit (Continued)

(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 authorised in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

Add to Profit all that is received from Government, unless directed otherwise

Section 198(2)



## A4. Calculation of Net Profit (Continued)

(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.

### Section 198(3)

## A4. Calculation of Net Profit (Continued)

(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;

Section 198(4)(a-i)

## A4. Calculation of Net Profit (Continued)

- (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.

### Section 198(4)(j-o)



## A4. Calculation of Net Profit (Continued)

(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.

### Section 198(5)



## B. How much to spend?

B1. Amount to be Spent

## B1. Amount to be Spent

- 2% (Two per cent) of Average Net Profit of the previous three financial years
- Net Profit to be calculated as per sec. 198 (discussed earlier)
- If during the past two years before the current year, the company has made losses, the company may still have to spend on CSR if the average net profit is positive.
- So, advisable to set aside the CSR provision based on past profits as well as current year profits

**Example A** – A company with net worth and turnover less than the prescribed limits has made profits of MORE than Rs. Five Crores in the current year. However, its average net profit for the past three years are negative due to past losses. The company will have to constitute a CSR committee and form a CSR Policy even though it will not be required to spend any money.

**Example B** - A company with net worth and turnover less than the prescribed limits has made profits of LESS than Rs. Five Crores in the current year. The company's average net profit for past three years is more than Rs. Five Crores. The company need not do anything as regards CSR in the current year.

## B1. Amount to be Spent (Continued)

(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:

Section 135 (5)

## C. Constitution of CSR Committee



## C1. Constitution of CSR Committee

- Three or more directors out of which at least one to be an independent director
- A company without independent director can have a committee without an independent director
- If a private company has only two directors, the committee can have only two directors

## C1. Constitution of CSR Committee (Continued)

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

Section 135 (1) and Rule 5(2)

## C1. Constitution of CSR Committee (Continued)

- (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;

Rule 5(1)(i) and (ii)

## D. Permitted Activities



## D1. Permitted Activities

- Eradicating hunger, poverty and malnutrition
- Promoting healthcare and sanitation; Safe drinking water
- Promoting education
- Various facilities and activities for women and elderly
- Conservation of natural resources incl. soil, air, water, animals etc.
- National heritage, art and culture
- Armed forces veterans, war widows and dependants
- Sports
- Contribution to Prime Minister Relief Fund or any other Govt. fund
- Contribution to technology incubators located in approved institutions
- Rural development projects
- Slum area development

## D1. Permitted Activities (Continued)

“(i) 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;

Schedule VII (i-iii)

## D1. Permitted Activities (Continued)

(iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water;

(v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional 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;

Schedule VII (iv-vii)



## D1. Permitted Activities (Continued)

(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.”

“(xi) slum area development.

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

Schedule VII (viii-xi)



## E. How to spend?

- E1. Restriction on Activities
- E2. Mode of Carrying CSR Activities

## E1. Restriction on Activities

- Should be as per the Company's CSR Policy – Rule 4(1)
- Activities should not be normal course of business – Rule 4(1)
- Activities must be within India – Rule 4(4)
- Activities benefitting only employees or families not allowed – Rule 4(5)
- Building CSR capabilities of employees allowed subject to 5% of CSR expenditure – Rule 4(6)
- Contribution to political party not allowed – Rule 4(7)

## **E1. Restriction on Activities** (Continued)

(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.

Rule 4(1)

## E1. Restriction on Activities (Continued)

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

Rule 4(5,6&7)



## E2. Mode of Carrying CSR Activities

- Can be done through a trust / society / section 8 company set up by the company either singly or along with any other company – Rule 4(2)(a)
- Can be done through a trust / society / section 8 company set up by the Central or state government– Rule 4(2)(b)
- If done through an independent entity, the entity should have three years track record – Rule 4(2) proviso
- Mandate to concerned entity should specify modalities of utilizing funds as well as monitoring and reporting mechanism – Rule 4(2) proviso
- May also collaborate with other companies – Rule 4(3)

## E2. Mode of Carrying CSR Activities (Continued)

“(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through

(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or alongwith any other company, or

(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature :

Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism”.

Rule 4(2)

## **E2. Mode of Carrying CSR Activities** (Continued)

- (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.

Rule 4(3&4)

## F. Reporting Requirements



# F1. Reporting Requirements

- Directors' Report to include contents of CSR Policy – Sec. 135(4)(a)
- Directors' Report to General Meeting to include a report about CSR initiatives as per format in Rules – Sec. 134(3)(o) and Rule 8
- Company website to disclose company's CSR Policy – Sec. 135(4)(a) and Rule 9
- If there is a failure to spend CSR amount, Board shall in its report specify the reasons – Sec. 135(5) Proviso

## F1. Reporting Requirements (Continued)

(3) There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include—

(o) the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

(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

Section 134(3)(o) and 135 (4)(a)

## F1. Reporting Requirements (Continued)

(1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1<sup>st</sup> day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.

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.

Rule 8(1) and 9



## F1. Reporting Requirements (Continued)

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.

Section 135(5) proviso



## G. Penalties

G1. Failure in Reporting

G2. Failure in Spending

# G1. Failure in Reporting

- Refers to non-compliance under section 134(3)(o) relating to Directors' Report
- More serious offence than not spending CSR money
- Minimum fine on company Rs. 50,000- Maximum fine Rs. 25,00,000- (Rs. Two and a half million)
- Officer in default liable for imprisonment up to three (3) years and / or Fine of Rs. 50,000- to Rs. 500,000-

## G1. Failure in Reporting (Continued)

(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 134(8)

## G2. Failure in Spending

- Less serious offence – only fine and no imprisonment
- No specific punishment provided. Covered under sec. 450 and 451, which are residual provisions
- Fine of up to Rs. 10,000 and in case of continuing default Rs. 1000 per day
- In case of repeated default within three years double fine. No imprisonment even for repeated offence
- Moral – Spending is less important than reporting.



## G2. Failure in Spending (Continued)

**450.** If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

**451.** If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

### Section 450 and 451

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