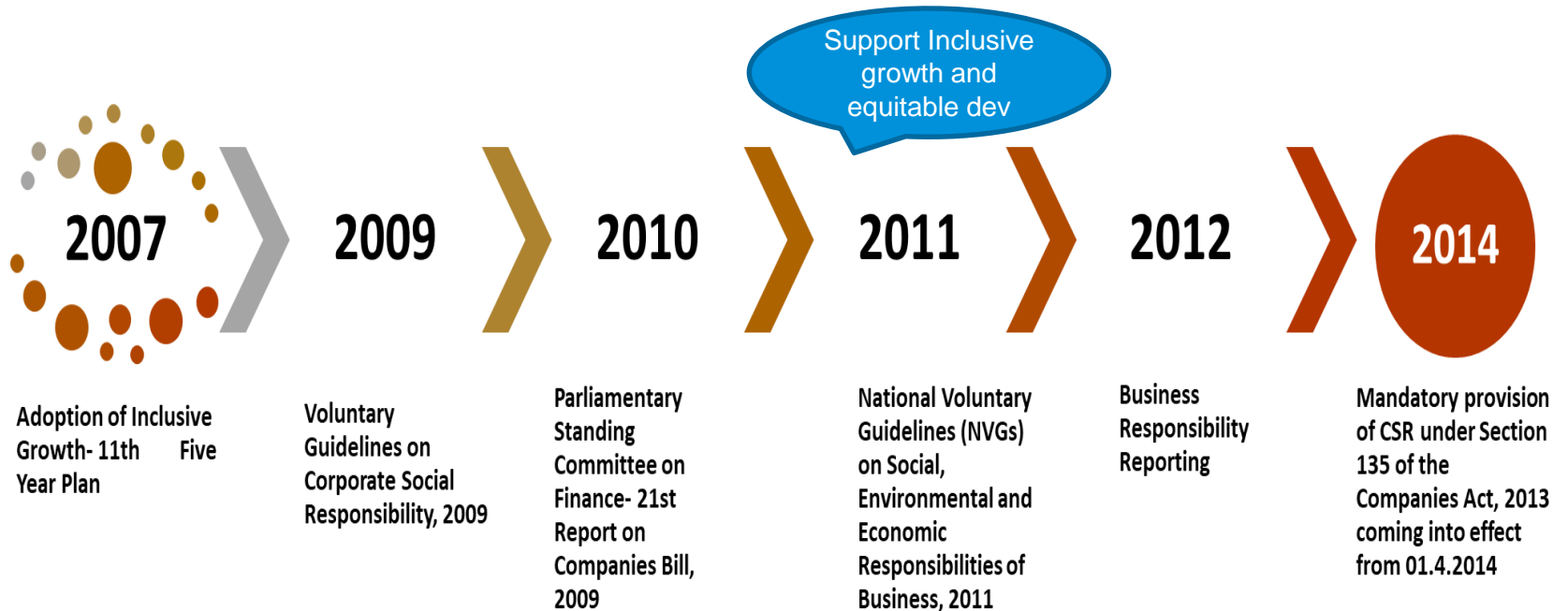


CSR Legal Aspects

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Setting the Context: Historical Perspective of CSR Legislation



Corporate Social Responsibility (CSR) is an instrument integrating social, environmental and human development concerns in the entire value chain of corporate business.

Source -<https://csr.gov.in/CSR/page-history.php>

Global Context - CSR Definitions

Commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve their quality of life

World Business Council for Sustainable Development (WBCSD)

A concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment.

European Commission

Operating a business in a manner that meets or exceeds the ethical, legal, commercial and public expectations that society has of business.

Business for Social Responsibility

India Context

"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".

Key Features of Section 135 of The Companies Act 2013

Who	What	How
<ul style="list-style-type: none">● All companies in India meeting any one or more of the following conditions*:<ul style="list-style-type: none">- Sales \geq INR 1000 Cr- Net worth \geq INR 500 Cr- Net Profit \geq INR 5 Cr	<ul style="list-style-type: none">● Board to appoint a 3-member CSR committee including one Independent Director **● Company shall give preference to the local area and areas around it where it operates● Develop CSR Policy which shall indicate activities to be undertaken by the company as specified in Schedule VII***.	<ul style="list-style-type: none">● CSR contribution<ul style="list-style-type: none">- 2% of average net profit before tax for last three financial years● Mandatory reporting on CSR under Section 135● Failure to spend - reasons to be disclosed in board report● Penalties for non disclosure

As per the Companies Amendment Act 2017

**In the immediately preceding year in place of any financial year*

***Companies not required to appoint independent directors has been changed to two or more directors*

****"in areas or subject, specified in Schedule VII" shall be substituted*

Schedule VII Activities

1	Health and Sanitation		7	Sports	
2	Education		8	Prime Minister`s Relief Fund	
3	Reducing Inequality		9	Technology Incubators	
4	Environment		10	Rural Development	
5	Arts and Culture		11	Slum Area Development	
6	Welfare of Armed forces		12	Disaster Management	

*To be interpreted liberally

Activities to be interpreted liberally

Roles & Responsibilities

Board

- Constitute CSR Committee
- Approve CSR Policy
- Activities as per Schedule VII
- Disclose CSR policy and its web-link in the annual report
- Ensure co spends at least 2% of PBT
- Give preference to local area spend
- To provide reason in the annual report if the expenditure is less than the prescribed limit

Committee

- Formulate CSR Policy
- Indicate CSR activities, amounts as per Schedule VII
- Get Policy and activities approved from board
- Regularly monitor the implementation of the CSR Policy
- Change/modify the CSR Policy , related projects as and when required

Focus on Governance ! Board level matter!

Profit calculations

Net profit according to section 198 for the purpose of section 135

Total Revenue of the company

Less: if following are including in total revenue

1. Profit from premium of shares/Debentures
2. Profit from sales of Forfeited shares
3. Profit in terms of capital natures (in terms of undertaking of company or any part of thereof)
4. Profit from the sale of immovable property/fixed assets/any capital nature
5. Any surplus change in carrying amount of an assets or liability recognized in equity reserves.

Total revenue after extraordinary income

Less: Total Expenditure including Operating Expenses

(i.e. Raw material, wages, stock adjustments, selling and admin expenses)

Operating Profit

Less: Interest

PBDT

Less: Depreciation

Profit before Tax

Add: if following are including in total expenditure

1. Income tax and any other tax or income
2. Compensation, damages or other payments made voluntarily
3. Loss of capital natures including loss on sale of undertaking of company or any part of thereof
4. Any transfer to assets/liabilities revaluation reserves

Net Profit according to Section 198

CSR Policy

Permissible activities

Permissible Under CSR provisions

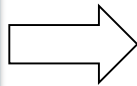
- Company can execute through own / group foundation or foundation formed with other company or through implementing agencies
- If the entity is not set up by the company then it must be an established entity (at least 3 years old)
- Companies may collaborate / pool resources together but companies should be able to report separately
- Companies may spend up to 5% of CSR expenditure on building capacity of own personnel, implementing agencies, administration and on salaries paid to CSR staff

Not Permissible Under CSR provisions

- Activities exclusively for benefit of employees and their families shall not be considered
- Activities undertaken in pursuance of normal course of business of the company shall not be considered
- Only CSR activities within India will be taken into consideration
- Contribution directly or indirectly to political parties shall not be considered as CSR spend
- Expenses incurred for fulfillment of any Act / statute of regulations (such as Labor Laws, Land Acquisition Act, etc.)

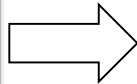
Tax Provisions Related to CSR

Insertion of
Explanation
to Section 37(1)



Explanation 2.- ...it is declared that for the purposes of sub-section (1), 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."

Budget
Memorandum



...CSR expenditure, being an **application of income**, is not incurred wholly and exclusively for the purposes of carrying on business. ... If such expenses are allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure. ...

.....it is proposed to clarify that for the purposes of section 37(1) any expenditure ... in section 135 of the Companies Act, 2013 shall not be ... allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections...

This amendment is effect from 1st April, 2015...

No tax deductibility on CSR spend, unless falling within Section 30 to 36

Guidance Note on Accounting for Expenditure on CSR

Whether provision for Unspent Amount to be created?

Can excess spent above 2% be carried over to the next financial year?

Treatment of Contribution to NGOs/ Funds

Treatment of Revenue Expenses and Capex

Recognition in P&L Statement

***Normal Couse of business
Supply of own goods as CSR***

Surplus from CSR activities

CSR Policy

Reporting Format for including in Board's report

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 financials years
4. Prescribed CSR Expenditure (two per cent 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.

Sr. No.	CSR Project or activity identified	Sector in which the Project is covered	Projects or programs (1) Local area or other (2) Specify the state and district where projects or programs were undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Subheads: (1) Direct expenditure on projects or programs (2) Overheads	Cumulative expenditure up to the reporting period	Amount spent: Direct or through implementing agency
1							
	TOTAL						

6. In case the company has failed to spend the two per cent 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