

CSR policy to practice in current times



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Section 135 Recap

1. Applicability

all companies in India meeting any one or more of the following conditions:

- Turnover \geq INR 1000 Cr
- Net worth \geq INR 500 Cr
- Net Profit \geq INR 5 Cr

2. Board Responsibility

Board to appoint a 2 / 3-member CSR committee including one Independent Director. The Board's report shall disclose the composition of the Committee.

3. Responsibilities of CSR Committee

- formulate and recommend to the Board, a CSR Policy
- recommend the amount of expenditure to be incurred
- monitor the CSR Policy of the company from time to time.

4. CSR Expenditure

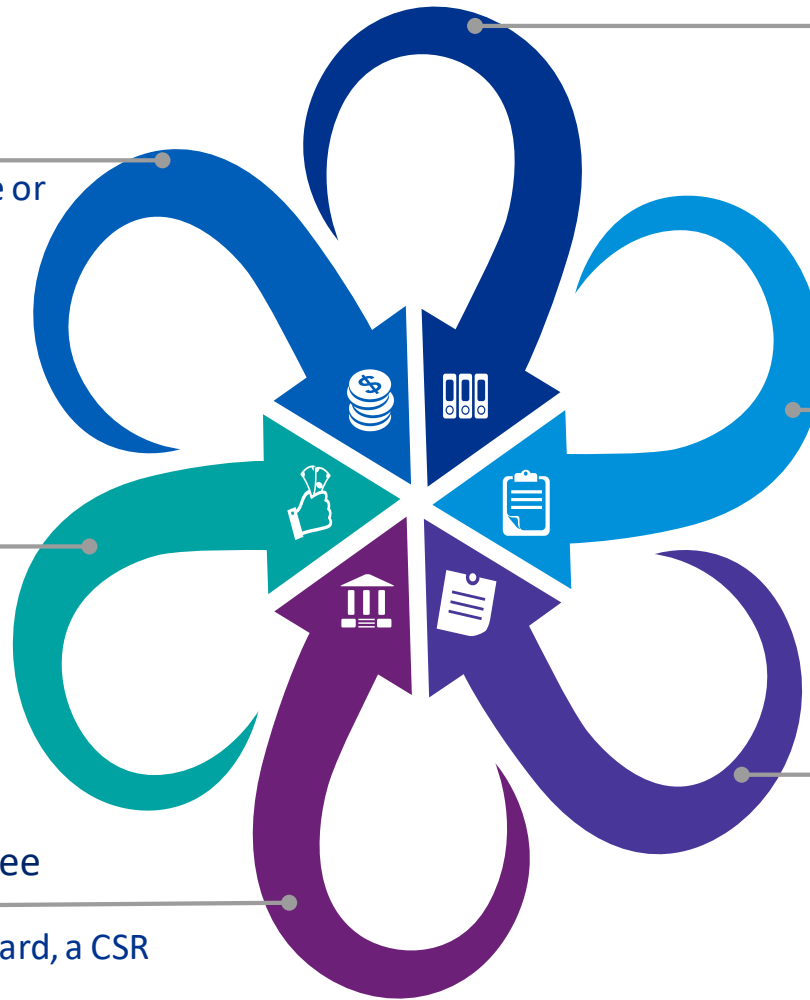
2% of average net profit before tax calculated as per Section 198 for immediately three preceding financial years.

5. Region of Expenditure

the company shall give preference to the local area and areas around it where it operates.

6. In case of failure

if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount. Penalty for non disclosure



Proposed Amendments to CSR Law – Companies Amendment Act 2019



Companies <3 years, to spend on their average net profit for **respective period of existence**

Unspent CSR amount in case of ongoing projects to be transferred to special account '**Unspent CSR Account**' to be spent within 3 financial years from the date of such transfer. Else transfer to National CSR Fund within 30 days from completion of 3rd financial year

In other cases the amount to be transferred to a National CSR Fund within a period of six months after the expiry of the financial year

Right to Central Government to give general or specific direction to spend the unspent CSR funds in a particular manner to ensure compliance

Penalty on the company can extend from Rs 50,000 to Rs 25,00,000 and every officer can be fined from Rs 50,000 to Rs 500,000 . Prosecution provisions being rolled back.

Effective date of above amendments not yet notified! **Mandatory CSR spend !**

Proposed Amendments to CSR Law – Companies (Amendment) Bill 2020



Default on section 134, penalty of Rs 3 lacs on Company and every officer in default to a penalty of Rs 50,000.

Proposal to carry forward the excess CSR spend in one year to subsequent year/s and in the manner to be prescribed

Default in compliance with either transfer to National CSR Fund / Unspent CSR Account, penalty will be least of - 1 cr or twice the amount of unspent amount and every officer in default will be liable to a penalty of lower of 1/10 th of unspent amount or INR 2 lacs.

Companies with CSR obligation upto Rs 50 lacs need not have a CSR committee, board to discharge obligations.

Greater compliance and streamlining of penal consequences.

Draft CSR Amendment Rules, 2020

- CSR Activities to be undertaken by Company itself, Section 8 company, Entity established under Act of Parliament / State Legislature, International Organization (requires prior approval of Central Government)
- A company may engage international organizations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- Implementing agency requires mandatory registration with the Government by filing Form CSR 1
- The 3 years mandatory requirement of track record appears to be done away with
- Definition of CSR includes the term “ Statutory obligation” .
- Employees can be beneficiaries only upto 25%
- Utilization certificate of the CSR disbursements to be given by the CFO

Draft CSR Amendment Rules, 2020

- Annual Action plan to be formulated and recommended by CSR Committee
- Surplus from CSR Activity ploughed back / transferred to unspent CSR A/c
- CSR Assets to be held only by Section 8 company / public authority. Retrospective requirement for earlier created assets.
- Additional disclosures / details on the website of the company and in Annual CSR report
- Possible dilution in responsibility of the CSR Committee in the annual disclosure on CSR as part of directors' report
- Impact Assessment mandatory if average CSR spend \geq INR 5 crore in the 3 immediately preceding financial years
- Administration overhead \geq 5% of total CSR expenditure but \geq 10%, if impact assessment to be conducted
- National unspent CSR fund to be set by Govt under Schedule VII

CSR Amendments post Covid-19

Notified Disaster

The Ministry of Home Affairs declares Covid-19 as a notified disaster, enabling states to spend funds from State Disaster Response Fund

14 March 2020

Covid 19 spends-CSR

Funds spent for Covid-19, under schedule VII of Companies Act (healthcare, sanitation, disaster management) eligible CSR activities

23 March 2020

PM CARES

PM CARES fund set-up for providing relief to those affected by any kind of emergency or distress situation. Contribution to PM CARES considered as CSR activity (100% deduction)

28 March 2020

CSR Amendments post Covid-19

Extension in timelines

Ordinance issued for extending various due-dates mentioned under Taxation and Benami Act

Date for making 80G donations for FY 2019-20 extended to 30 June 2020

Extended timelines also apply to donations made to PM CARES Fund

Eligible expenses considered as CSR for FY 20-21 however, deduction available in FY 19-20

31 March 2020

FAQ on CSR

Clarification that CM relief Fund / State Relief Fund not covered for CSR

Contribution to State Disaster Management Authority covered as CSR

Ex-Gratia payment to daily / casual workers covered as CSR

10 April 2020

Questions and Answers

