CSR under Companies Act,2013

Section 135 of the Act

Corporate
Social
Responsibility

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What is CSR under the Companies Act?

- There is no definition in the Companies Act

- Rules defines it as:
- "CSR means and includes but is not limited to,

i. Projects and 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 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.

Applicability and constitution of a CSR Committee (Sec.135(1))

- Section 135(1) of the Act states 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 or more during any financial year

  shall constitute a Corporate Social Responsibility Committee of the Board

- The committee shall comprise of three or more directors, out of which at least one director shall be an independent director.

Corporate Social Responsibility [Sec 135]

Net worth ≥ 500 crores

Turnover ≥ 1000 crores

Net Profit ≥ 5 crores

CSR Committee

Composition

Consists of 3 or more director Functions out of which One director independent director

Functions

1. Formulate And recommend CSR Policy
2. Recommend amount of CSR expenditure to be incurred
3. Monitor CSR Policy

Contribution

Company need to spend minimum 2% of its average net profits made during the 3 immediately financial years

Boards Report (Sec.135(2))

- As per section 135(2) of the Act:

  Boards Report shall disclose composition of Corporate Social Responsibility committee.

- As per Section 134(3)(o) of the Act Boards Report shall disclose the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year;

The Role of CSR Committee (Section 135(3))

- to 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;
- to recommend the amount of expenditure to be incurred on the activities referred to above;
- to monitor the Corporate Social Responsibility Policy of the company from time to time

Responsibility of the Board (Section.135(4))

The Board of every company referred to above shall after taking into account the recommendations made by 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
- ensure that the activities as are included in CSR Policy of the company are undertaken by the company, and
- ensure that the company spends, in every financial year, at least two per cent of the average net profits made during the preceding 3 financial years.
- If the Company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount
- Company shall give preference to the local areas.

Schedule VII

- Schedule VII had been modified by MCA notification dated 27th February, 2014.
- The new schedule VII, gives much clarity on what is CSR under the Act.

CSR Activities under Sch.VII

1. Eradicating hunger, poverty and malnutrition, promoting preventive health care and 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 facilities for senior citizens and measures for reducing in equalities faced by socially and economically backward group.

CSR Activities under Sch.VII Contd..

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

5. Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of arts and handicrafts.

6. Measure for the benefit of armed forces veterans, war widows and their dependents

CSR Activities under Sch.VII Contd..

7. Training to promote rural sports, nationally recognised sports, Paralympics sports and Olympic sports

8. Contribution to the Prime Minister's National Relief Fund or other fund set up by the Central Government for socio-economic development and relief and welfare of the Schedule Castes, the Schedule Tribes, other backward classes, minorities and women.

9. Contributions or funds provided to technology incubators located within academics institutions which are approved by the Central Government.

10. Rural development projects.

Companies (Corporate Social Responsibility Policy) Rules, 2014

brief details

- Notified on 27th February 2014
- Will be effective from 1st day of April 2014
- CSR defined as Projects as per Sch.VII
- CSR Policy is defined as Sch VII activities
- CSR Committee is defined & modified
- Net profit is defined
- Turnover is defined

CSR Applicability (Rule 3(1))

a) Every Company including its holding and subsidiary, which fulfills the criteria under Sec 135(1)

b) A Foreign company having branch / project office in India, which fulfills the criteria under Sec 135(1) of the Act

Non-Applicability: Every company which ceases to be a company covered u/s.135(1) for 3 consecutive FY need not comply with Section 135 till such time it meets the criteria u/s.135(1).

CSR Committee (Rule 3(2) and Rule 5)

a) Applicable Companies shall constitute CSR Committee **consisting of 3 or more directors out of which at least 1 director shall be independent director.**

b) Unlisted public company or private company which is not required to appoint independent director **shall have its CSR committee without independent director.**

c) Private Company having **only 2 Directors** on its Board shall constitute CSR Committee with only 2 directors.

d) The committee shall institute a transparent monitoring mechanism for implementing CSR projects undertaken by the company.

CSR Policy (Rule 6)

The CSR Policy shall include:

- **A list of CSR Projects;**
- **The projects shall relate to Sch.VII of the Act;**
- **Modalities of execution of the project,**
- **Implementation schedule,**
- **Monitoring Process of the Projects;**
- **The surplus arising out of CSR projects shall not form part of business profits of the company.**

"Provided that CSR Activities does not include activities undertaken in the ordinary course of business."

CSR Expenditure (Rule 4 &7)

Shall include

- all expenditure including contribution to corpus of the CSR projects, approved by the Board on recommendation of the CSR Committee;

Shall not include

- any expenditure on an item **not in** conformity with activities listed in Sch.VII
- Contribution to Political parties
- Projects that benefit only employees/their families
- Projects outside India
- administrative expenses beyond 5% of CSR Exp.

CSR Profit

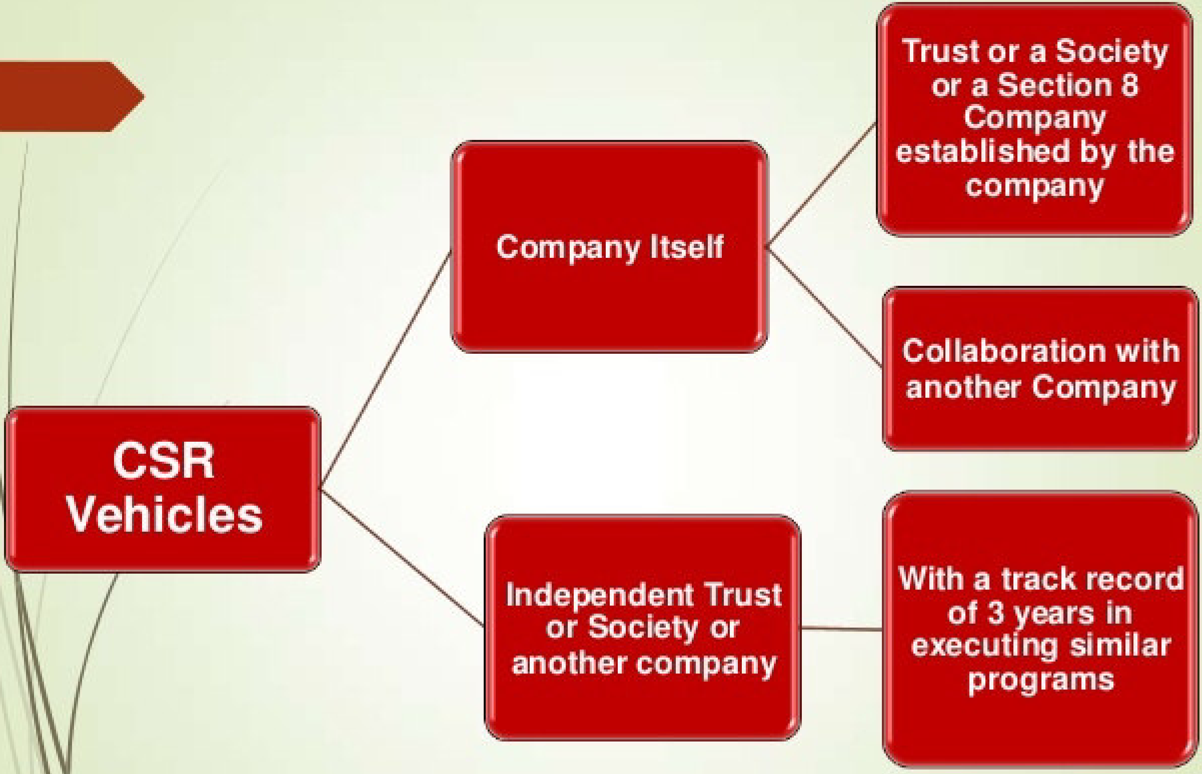
1. For the purpose of First CSR reporting the Net Profit shall mean average of the annual net profit of the preceding three financial years.

2. 'Net Profit' shall mean, net profit before tax as per books of accounts but shall not include:

- profits arising from branches outside India.
- Any dividend from other companies in India, which are covered under and complying with CSR provisions.

CSR Vehicles

- **CSR activities can be carried on:**
- by the company itself.
- through a Trust or a Society or a Section 8 Company established by the Company for such purpose.
- through collaboration with another Company provided such expenditure can be separately reported as per the procedure stated in the Rules.
- An independent Trust or Society or another company with a track record of 3 years in executing similar programs like CSR activities.


CSR Vehicles
Company Itself
Trust or a Society or a Section 8 Company established by the company
Collaboration with another Company
Independent Trust or Society or another company
With a track record of 3 years in executing similar programs

Is there any penal provision? What can be done if not provided.??

- If the company does not spend 2% of net profits as required, then Board to report the reasons in the Board's report.

- If a company fails to disclose CSR Policy and its implementation in Board's Report, the company shall be punishable with fine ranging from fifty thousand 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 ranging from fifty thousand rupees but which may extend to five lakh rupees, or with both

Conclusion

- The Companies Act, 2013 require big and profitable companies to have a CSR Policy, CSR Committee.
- CSR Committee shall formulate, recommend and monitor CSR Policy.
- Board shall approve the CSR Policy and disclose it in its report and in companies website.
- Board shall ensure at least 2% of average net profit is spent every year.
- The board shall specify reasons for not spending in its report.
- Non reporting shall result in prosecution.