



EXPOSURE DRAFT

Frequently Asked Questions On the provisions of Corporate Social Responsibility under Section 135 of the Companies Act 2013 and Rules thereon

**Comments/suggestions may kindly be sent to the following address/ e-mail within
15 days i.e. upto 7th February, 2015**

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Preamble

The background of these Frequently Asked Questions (FAQs) is to give clarifications regarding treatment of Corporate Social Responsibility (CSR) spending in the books of accounts and disclosures in the Financial Statements. It is important to note that these FAQs are guidance to such interpretation and have to be read in the light of the clarifications issued by the Ministry of Corporate Affairs as per Circular No 21/2014 dated June 18, 2014 that a liberal interpretation has to be taken in the matter. The nature of CSR being a way of conducting business in which such organization recognizes interest of all stakeholders to become socially responsible citizens to integrate economic, environmental and social objectives with the company's operations and growth needs to be taken as a broad guiding principle behind such CSR activities. Such CSR activities should also be in line with the CSR Policy approved by the Board in line with Schedule VII of the Companies Act, 2013.

These FAQs have been approved by the Corporate Laws & Corporate Governance Committee of the Institute of Chartered Accountants of India. It was decided that public comments may be invited on these FAQs. The document is uploaded on ICAI website for public comments with in 15 days i.e., upto 7th February, 2015.



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Frequently Asked Questions (FAQs) on the provisions of Corporate Social Responsibility under Section 135 of the Companies Act 2013 and Rules thereon

1. Whether CSR expense is a Capital expenditure or a revenue expenditure

Treatment in books of accounts- where an expenditure of revenue nature is incurred on any of the activities mentioned in Schedule VII to the Act by the company on its own, the same should be charged as an expense to the statement of profit and loss. In case the expenditure incurred by the company is of such nature which may give rise to an asset, it should be recognised by the company in its balance sheet, provided the control over the asset is with the Company and future economic benefits are expected to flow to the company. Otherwise it takes the character of enabling Asset and hence to be charged off to P&L. Where any CSR asset is recognized in its balance sheet, the same may be classified under natural head (e.g. Building, Plant & Machinery etc.) with specific subhead of CSR Asset if the expenditure satisfies the definition of asset. For example, a building used for CSR activities where the beneficial interest has not been relinquished for Lifetime by a company and from which any economic benefits flow to a company, may be recognised as CSR Building for the purpose of reflecting the same in the balance sheet. If an amount spent on an asset has been shown as CSR spend, then the depreciation on such asset cannot be claimed as CSR spend again. Once cost of the asset is included for CSR spend, then the depreciation on such asset will not be included for CSR spend even if the asset is capitalized in the books of accounts and depreciation charged thereon.

Disclosure of CSR spend- Item 5 (a) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires that in case of companies covered under Section 135, the amount of expenditure incurred on Corporate Social Responsibility Activities shall be disclosed by way of a note to the statement of profit and loss. The note should also disclose the details with regard to the expenditure incurred in construction of a capital asset under a CSR project.



- 2. Whether CSR spends are to be shown in books of accounts under a separate CSR head or are they to be included under the normal heads of accounts or are they to be shown in the notes to accounts.**

All expenditure on CSR activities that qualifies to be recognized as expense may either be recognized as a separate line item as ‘CSR expenditure’ or under natural heads of expenses in the statement of profit and loss with disclosure of the break-up and the total amount spent on CSR activities during the year. Some of the items which are charged to the profit & loss account in the normal course, meeting the criteria for CSR expenditure, would also be eligible to be considered as a CSR expenditure. Disclosure of CSR spend is already covered in answer to question no 1 above.

- 3. Please give illustrations of certain types of CSR spending apart from CSR spends which are easily identifiable by the company.**

The following are examples of expenditures can be classified as CSR expenditure if it is within the areas covered by Schedule VII and is as per CSR policy approved by the Company's Board of Directors. These are only illustrations and companies are required to apply facts and circumstances in each case for categorization of such spends.

- a) Any company supplying its goods or services manufactured/ provided by it free of cost or at a concessional rate to people affected by natural calamities like flood, earthquake etc.
- b) A company decides that for every pack of pencils sold by the company, Rupee 0.50 will go towards education of a girl child. The amount earmarked from such sale will not be automatically considered as CSR and only such of the amounts which are spent will qualify to be considered as CSR spend
- c) Environmental Sustainability – Essence of Schedule VII includes ensuring environmental sustainability, ecological balance, protection of flora and fauna, conservation of natural resources, and maintaining the quality of soil, air and water. Companies which help in generation of renewable energy like solar/ wind and water tend to save natural resources like hydro carbon/ fossil fuel aiding ecological balance which is one of the areas covered by Schedule VII. Cost of setting up renewable energy for captive



consumption and/ or the cost of procuring renewable energy which leads to conservation of fossil fuels / hydro carbon should be considered as CSR provided that such spends are for renewable energy consuming companies and not for companies who are in the business of production or distribution of such renewable energy for sale in the ordinary course of their business.

d) Spending in Technical and Vocational Training for skill building based on training cum apprenticeship results in enhancing the employability of such trainees. Cost of such expenses such as stipend, faculty, infrastructure costs etc will be included as CSR activities. It will not deprive the company which is providing such training to hire a trainee from that pool of talent. However, if such a training is provided to existing employees then it shall not qualify as CSR.

4. Will CSR spend be an Appropriation or a charge on P&L.

While any CSR spend which is covered above being direct in nature and related to its business processes shall be a charge in the Profit and Loss Account, any expense not covered by above explanations like for example CSR spend in adopting a village for overall development where such village development activity is not related to its business or its earnings or where such spend has no impact on its costs/ operations may be treated as an appropriation out of the profits.

However, both the above type of spends shall be aggregated and reported for the purpose of CSR spends reporting required to be made by the company under the Companies Act 2013 and rules thereunder.

5. Are overseas Branch profits / losses included in Net Profit for calculating CSR spend?

Net Profit for the purpose of calculating CSR spend shall not include any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise. In addition any dividend received from other companies in India,



which are covered under and complying with the provisions of section 135 of the Act as well as any dividend received from a company incorporated outside India shall also be excluded from the Net Profit. This is built on the rationale that CSR spend outside India does not qualify as CSR spend under Section 135 of the Companies Act, 2013. As a corollary, income earned outside India shall also not be considered for determining CSR spend in India.

6. How do we treat CSR spending in the ordinary course of business vs CSR expenses not incurred in the ordinary course. Does it include CSR spending that also includes employees of the Company or their families who are also beneficiaries of such CSR spend?

CSR activities shall exclude activities undertaken in pursuance of its normal course of business. For example, an electricity distribution company connecting the last house in a village cannot classify such expense as CSR. Similarly a tea plantation company planting trees and shrubs in close proximity to such tea plantations cannot be classified as CSR spending since they are in the ordinary course of business of such businesses.

Similarly, Programmes or projects or activities that are carried out as a pre-condition for setting up a business or as part of a contractual obligation undertaken by the company or in accordance with any other law, should not be considered as CSR. Such spending on installation of rain water harvesting or a device to prevent pollution which are mandatorily required to be carried out by law shall not qualify as CSR spend. Such requirements under relevant regulations prescribed as a necessary part of running of the business, would be considered to be the activities undertaken in the normal course of business of the company and, therefore, would not be considered CSR activities.

CSR projects or programmes or activities that benefit only the employees of the company and their families shall not be considered as CSR. However, programme or activities that are for the benefit of all, but, which also includes some employees or their families will still be considered as CSR as long as such benefits are not exclusively for the benefit of such employees. For example recreational facilities provided for employees and their families in



the employee quarters shall not be considered as CSR. However, if the Company maintains say a stadium for promotion of sports in a city used by residents of that place and not exclusively by its employees then such spending shall be still considered as CSR provided that such facilities are not inside the premises of a Company.

7. Treatment of shortage in CSR spend and disclosure and possibility of carry forward of excess spending of CSR. Is there any need for creation of a provision in the event of a shortage in spending?

Any shortfall in spending in CSR shall be explained in the financial statements and the Board of Directors shall state the amount unspent and reasons for not spending that amount. Any such shortfall is not required to be provided for in the books of accounts. However, if a company has already undertaken certain CSR activity for which a contractual liability has been incurred then, a provision for the requisite amount payable to record that liability needs to be recognized as per the applicable Accounting Standards. Any amount excess spent (i.e., more than 2% as specified in Section 135) cannot be carried forward to the subsequent years. However, the company is entitled to disclose in their Annual Reports of subsequent years any such excess spending of previous years while giving reasons for not spending in those later years.

8. Is CSR spending required to be done by the Company directly or such amounts can be contributed to charity/ NGO/ section 25 company. Will such contribution qualify as CSR spend?

Yes. Contribution by the Company to such trusts, NGOs etc also qualify for CSR spend if it meets the track record and other criteria as per Rule 4(2) of Companies (CSR Policy) Rules, 2014.



9. **Net Profit calculation methodology-** Net Profit as per Section 135 is required to be calculated as per Section 198 of the Companies Act, 2013. However, Net profits as defined in the Companies (CSR Policy) Rules, 2014 defines Net Profit as Net Profit as per Financial statements prepared in accordance with the Act.

Since the Rules specify that the net profits are as per provisions of the Act and the relevant Section 135 of the Act requires such net profits calculation as per Section 198 of the Companies Act, the net profit shall be calculated u/s 198 of the Companies Act. This is based on a harmonious interpretation of the specific section in the Act and the relevant Rules framed under that Section.



Section 135 of the Companies Act 2013- Corporate Social Responsibility

- (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 Board's report under Sub-Section (3) of Section 134 shall disclose the composition of the Corporate Social Responsibility Committee.
- (3) The Corporate Social Responsibility Committee shall,ò
 - (a) 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;
 - (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
 - (c) monitor the Corporate Social Responsibility Policy of the company from time to time.
- (4) The Board of every company referred to in Sub-Section (1) shall,ò
 - (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
 - (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.
- (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:



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.

Explanation.ò For the purposes of this section áaverage net profitô shall be calculated in accordance with the provisions of Section 198.



SCHEDULE VII

(See sections 135)

Activities which may be included by companies in their Corporate Social Responsibility

Policies Activities relating to:

- (i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation ¹including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of 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;
- (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 ²including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;
- (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 veteran, war widows and their dependents;
- (vii) training to promote rural sports nationally recognized sports and Olympic sports;
- (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; and
- (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

¹ Inserted vide Notification dated 24.10.2014

² Inserted vide Notification dated 24.10.2014



(x) ³slum area development

Explanation.ò 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.

³ Inserted vide Notification G.S.R (E) 568 dated 06.08.2014



Rules for CSR under Section 135 of Chapter IX (after incorporating Amendments upto January, 2015)

New Delhi, dated 27th February, 2014

G.S.R. 129 (E).- In exercise of the powers conferred under section 135 and sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules. namely: -

1. Short title and commencement. –

- (1) These rules may be called the Companies (Corporate Social Responsibility Policy Rules. 2014.
- (2) They shall come into force on the 1st day of April, 2014

2. Definitions.-

- (1) In these rules, unless the context otherwise requires' -

- (a) "Act" means the Companies Act, 2013;
- (b) "Annexure" means the Annexure appended to these rules;
- (c) "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
- (d) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act
- (e) "CSR Policy" relates to the activities to be undertaken by the company as specified in Schedule VII to the Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company):
- (f) "Net profit" means the net profit of a company as Per its financial statement prepared in accordance with the applicable Provisions of the Act, but shall not include the following, namely :-
 - (i) any profit arising from any overseas branch or branches of the company' whether operated as a separate company or otherwise; and



(ii) any dividend received from other companies in India, which are covered under and complying with the Provisions of section 135 of the Act:

Provided that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, (1 of 1956) shall not be required to be re-calculated in accordance with the provisions of the Act:

Provided further that 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 clause (a) of sub-section (I) of section 381 read with section 198 of the Act.

- (2) Words and expressions used and not defined in these rules but defined in the Act shall have the same meanings respectively assigned to them in the Act.

3. Corporate Social Responsibility. -

- (1) Every company including its holding or subsidiary, and a foreign company defined under clause (42) of section 2 of the Act having its branch office or project office in India which fulfills the criteria specified in sub-section (I) of section 135 of the Act shall comply with the provisions of section 135 of the Act and these rules:

Provided that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with balance sheet and profit and loss account of such company prepared in accordance with the provisions of clause (a) of sub-section (1) of section 381 and section 198 of the Act.

- (2) Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act for three consecutive financial years shall not be required to -
- (a) constitute a CSR Committee; and
 - (b) comply with the provisions contained in sub-section (2) to (5) of the said section' till such time it meets the criteria specified in sub-section (1) of section 135



4. CSR Activities.-

- (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.
- (2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through a registered trust or a registered society or a company **established under Section 8 of the Act by the company, either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company, or otherwise:**⁴

Provided that-

- (i) if such trust, society or company is not established by the company **either singly or alongwith its holding or subsidiary or associate company, or alongwith any other company or holding or subsidiary or associate company of such other company.**⁵
 - (ii) the company has specified the project or programs to be undertaken through these entities, the modalities of utilization of funds on such projects and programs and the monitoring and reporting mechanism.
- (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 the provisions of sub-section (5) of section 135 of the Act the CSR projects or programs or activities undertaken in India only (hall amount lo CSR expenditure
 - (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 ⁶**including expenditure on administrative overheads,**

⁴ Substituted vide Amendment in Rules, G.S.R. (E), dated 19.01.2015

⁵ Substituted vide Amendment in Rules, G.S.R. (E), dated 19.01.2015

⁶ Inserted vide Amendment in Rules, G.S.R. 644 (E), dated 12.09.2014



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.

5. CSR Committees,-

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:
 - (iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.
- (2) The CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.

6. CSR Policy.-

- (1) The CSR Policy of the company shall, inter-alia, include the following, namely -
- (a) a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and
 - (b) monitoring process of such projects or programs:

Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.



Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the activities included in Schedule VII of the Act.

- (2) The CSR Policy of the company shall special that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

7. CSR Expenditure- CSR expenditure shall include all expenditure including contribution to corpus, for projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on alt item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

8. CSR Reporting-

- (1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.
- (2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

9. Display of CSR activities on its website -

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.



Summary of Circulars issued by the Ministry of Corporate Affairs related to CSR

S. No	GENERAL CIRCULAR NO.	DATE	DESCRIPTION
1.	General Circular No. 21/2014	18.06.2014	Clarification with regard to provisions of Corporate Social Responsibility under Section 135 of the Companies Act, 2013:- • Clarification with respect to CSR is as under:- ➤ The statutory provision of Section 135 & provisions of CSR Rules, 2014 is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013, the entries in the said schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the amended Schedule VII of the Act, are broad based & are intended to cover a wide range of activities as mentioned in the Annexure:- ➤ CSR activities should be undertaken by the companies in project/programme mode [as referred in Rule 4(1) of Companies CSR Rules, 2014]. <i>One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.</i> ➤ <i>Expenses incurred by companies for the</i>



			fulfillment of any Act/Statute of regulations (Such as Labour Laws, Land Acquisition Act etc) would not count as CSR expenditure. ➤ Salary 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. ➤ "Any Financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014 implies any of the three preceding financial years. ➤ 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 & if the Indian Subsidiary is required to do so as per Section 135 of the Act. ➤ 'Registered Trust' (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income Tax Act, 1956 for those states where registration of Trust is not mandatory. ii) Contribution to Corpus of a Trust/ Society/Section 8 Companies etc. will qualify as CSR expenditure as long as (a) the Trust/Society/Section-8
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			<i>companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.</i>
2.	General Circular No. 36/2014	17.09.2014	Clarification with regard to provisions of Corporate Social Responsibility (CSR) under Section 135 of the Companies Act, 2013:- - In continuation of the General Circular No. 21 of 2014 dated 18.06.2014 the following clarifications are hereby issued: i) Rule 4(6) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 as notified on 27.02.2014 has been amended by notification dated 12.09.2014; and iii) Consequently, clarification (iv) in General Circular No. 21 of 2014 dated 18.06.2014, stands omitted i.e., <i>Salary 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.</i> stands omitted