

# **Technical Guide on Accounting of CSR Funds by Third Parties**



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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Authors : : CA. Pramod Jain, CA. Rajesh Mittal,  
CA. Sonali Das Halder, CA. Shakun Goel

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Committee/Department : CSR

E-mail : [csr@icai.in](mailto:csr@icai.in)

Website : [www.icai.org](http://www.icai.org)

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# Foreword

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The Government of India, vide the enactment of Companies Act, 2013, has introduced the Corporate Social Responsibility (CSR) as a mandatory provision by imposing statutory obligation on Companies to take up CSR projects towards social welfare activities. This has made India the only country which has regulated and mandated CSR for some select categories of companies registered under the Act.

As per the data available on the National CSR Data Portal of the Ministry of Corporate Affairs, Government of India, total CSR spend was Rs. 18,655 crore in the year 18-19 and Rs. 7,823 crore in the year 19-20. A majority of these CSR programs are implemented through third parties like NGOs, Societies, Trusts and Section 8 Company. Therefore, a need was felt to guide the members on the accounting of the CSR Funds in the books of the third parties. Accordingly, CSR Committee of the ICAI thought it fit to come out with this publication and provide requisite guidance to the members.

I complement the CSR Committee and its Chairman CA. Pramod Jain, Vice Chairman CA. Charanjot Singh Nanda and all committee members for their active support in timely bringing out this 'Technical Guide on Accounting of CSR Funds by Third Parties'. I also compliment the Committee Secretariat in providing active support in the release of the same.

**CA Atul Kumar Gupta**  
**President**

Date: 01.02.2021



## Preface

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Corporate Social Responsibility is consistently gaining importance as it has become a tool of achieving the sustainable development goals through public-private partnership. The Companies Act, 2013, has mandated that companies fulfilling certain criterion, has to spend 2% of its net profit on certain activities as specified in Schedule VII of the Companies Act, 2013. The Schedule VII is overlapping with the United Nations Sustainable Development Goals 2030, to which India is a signatory.

With the enactment of the Companies Act, 2013, huge funds have been made available for investment in development projects. However, it has been reported that majority of the companies are engaging in the projects through separate NGOs, Societies, Trusts and Section 8 Companies. Therefore, a need was felt to monitor the implementation of the projects and record the movement of funds with the third parties. The CSR Committee had issued an Advisory for Members of the Institute and Companies to whom CSR provisions under Companies Act, 2013 apply, for the certification of utilization of funds with the third parties.

With the release of this Technical Guide on Accounting of CSR Funds by Third Parties, an effort has been made to guide the members on the accounting entries to be made for the recording the movement of the CSR Funds with the third parties.

I am thankful to CA. Atul Kumar Gupta, President and CA. Nihar Niranjan Jambusaria, Vice President for their support in bringing out this Technical Guide. I would also like to place on record my deep appreciation for the valuable inputs of the members of the CSR Committee including CA. M. P. Vijay Kumar (Central Council Member) and CA. Charmi Shah, in the publication of the Technical Guide. I also place on record my sincere thanks to CA. Rajesh Mittal, CA. Sonali Das Halder and CA. Shakun Goel for the drafting of the Technical Guide.

Place : New Delhi  
Date : 01.02.2021

**CA. Pramod Jain**  
**Chairman**  
**CSR Committee**



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## Introduction

1. Section 135 of the Companies Act, 2013 (the Act), requires the Board of Directors of every company having a net worth of Rupees 500 crore or more, or turnover of Rupees 1,000 crore or more or a net profit of Rupees 5 crore or more, during the immediate preceding financial year, to constitute a Corporate Social Responsibility Committee of the Board.
2. The Corporate Social Responsibility Committee has to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject as specified in Schedule VII of the Act.
3. The Board has to ensure that the company spends in every financial year at least 2% of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, on Corporate Social Responsibility (CSR) in pursuance of its policy in this regard.
4. Once the CSR expenditure is recognised and measured by the company, the next step is accounting of the expenditure on CSR activities by companies for which the CSR Committee of the Institute of Chartered Accountants of India (ICAI) has already issued a “Technical Guide on Accounting for Expenditure on Corporate Social Responsibility Activities”.

## Objective

5. The objective of this Technical Guide is to provide guidance on the accounting, presentation and disclosure of CSR funds by the entities receiving the CSR contribution for implementing the CSR activities on behalf of the Company i.e. the cases wherein the CSR activities are carried out by the company through third parties.

## **Scope**

6. What constitutes CSR activities is specified in Schedule VII to the Act. Reference is also invited to the circular issued by the Ministry of Corporate Affairs (MCA) No. 21/2014, Notification dated October 24, 2014 and clarification by MCA on COVID activities and contribution to PM CARES fund. This Technical Guide does not deal with identification of activities that constitute CSR activities but only provides guidance on accounting for CSR funds by third parties.

## **Definitions**

7. For the purpose of this Technical Guide, the definitions mentioned at sl. nos. (a) to (e) are reproduced from the Companies Act, 2013, and the applicable Companies (Corporate Social Responsibility Policy) Rules, 2014 (the Rules), as amended by the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 read with clarification issued in general circular by MCA and in the event of any change in the Act or the Rules made thereunder, these definitions shall stand automatically revised/modified to that extent:
  - (a) *Financial Year*: As per sub-section (41) of section 2 of the Act, "Financial Year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary or Associate of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the ROC may, on an application made to it, if it is satisfied, allow any period as its financial year, whether or not that period is a year:
  - (b) *Company* means a company incorporated under this Act or under any previous company law;
  - (c) *Net Profit*: According to Explanation to sub-section (5) of section

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135 of the Act, "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198. Further clause (h) of sub-rule (1) of Rule 2 of the Rules, "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 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 (1) of section 381, read with section 198 of the Act.

- (d) *Turnover*: As per sub-section (91) of section 2 of the Act, "Turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;

## **Implementation of CSR Activities**

8. The amended Rule 4(1) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 requires that the Board of Company shall ensure that the CSR activities are undertaken by the company itself or through third parties.

The third parties as defined in above sub-rule (1) are as under:-

- A Any of the below entity established by the company, either singly or along-with any other company which are registered u/s 12A and 80G of the Income Tax Act, 1961 being:**
- a company established under section 8 of the Act, or
  - a registered public trust, or

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- a registered society.

or

**B Any of the below entity established by the Central Government or State Government:**

- a company established under section 8 of the Act, or
- a registered trust, or
- a registered society.

or

**C Any entity established under an Act of Parliament or a State legislature**

or

**D Any of the following entity which have an established track record of three years in undertaking similar programs or projects and which are registered u/s 12A and 80G of the Income Tax Act, 1961 being:-**

- a company established under section 8 of the Act, or
- a registered public trust, or
- a registered society

9. It is important to note that as per the amended Rule 4 (2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 all the third parties as mentioned at Para 8 above who intends to undertake any CSR activity, has to register itself with the Central Government by filing the Form CSR-1 electronically with the Registrar, with effect from the 1<sup>st</sup>April 2021.

However, such registration would not be mandatory as per Proviso to sub-rule (2) of Rule 4 where the CSR projects or programmes are approved prior to 1<sup>st</sup>April 2021.

10. The implication of this rule is that requirements for CSR have been robust so as to utilise the expertise of a third party to undertake CSR activities on behalf of the Company. Also, such outsourcing may be desirable as it allows for non-profits organizations who are specialised

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in carrying out a particular kind of social activity, to undertake it for other companies as well.

11. Many corporate houses in India are working or implementing their “Corporate Social Responsibility” programs through their own foundations being a society or a section 8 company or trust, which is established by the company (or group of companies) which is required to comply with CSR regulations. These organizations contribute the required amount to be spent on CSR during the financial year to such entity established by them. These entities engage in various types of charitable or philanthropic activities, which are the activities as specified in Schedule VII of the Companies Act 2013.

Other Corporate Houses, which have not established any society, section 8 company or trust of their own; either utilize their in-house facilities or engage, permitted third party trusts, societies or Section 8 Companies for their CSR compliance. A company must follow a thorough and stringent selection process to ensure that the organizational goals towards CSR are achieved in the most transparent, effective and efficient manner.

12. As per amended Rule 4(3) A company may engage international organisations 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. The International organization has been defined in Rule 2(1)(g) as under:

“International Organisation” means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.

13. Rule 4(4) of the Companies (Corporate Social Responsibility Policy) Rules, 2014 provides that a company may collaborate with other companies for undertaking projects or programmes 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 the CSR rules.

## **Accounting of Expenditure in the books of Company**

14. The CSR Committee of Institute of Chartered Accountants of India (ICAI) has already issued a “Technical Guide on Accounting for Expenditure on Corporate Social Responsibility Activities” in June 2020.
15. The brief issues elaborated in the above publication are narrated as under:
  - General Recognition & Measurement criteria of CSR Spend
  - Treatment of Unspent CSR Amount
  - Treatment of Excess CSR Spent
  - Measurement of CSR spend made in Kind
  - Treatment of Surplus arising out of CSR Activities
  - Presentation & Disclosure Requirements

All the above issues have already been dealt with in detail for which reference is drawn to the Technical Guide issued by CSR Committee of ICAI.

## **Brief of Third Parties**

16. In India, social activities can be undertaken through various legal structures such as registered public trusts, registered societies or companies with charitable objects. The choice of a legal structure may depend on several aspects including limitation on liability of persons involved and ease of regulatory compliances.
17. Section 8 Company is a Company that is licensed under Section 8 of the Companies Act, 2013 (erstwhile referred as the Section 25 Company under the Companies Act, 1956) which has its main object; inter alia, promoting research, social welfare, religion, charity, commerce, art, science, sports, education, and the protection of the environment or any such other object, provided that the profits, if any, or the other income is applied for promoting only towards the objects of the company and are not to be distributed as dividend. However, in sec. 8(2) of Companies Act 2013, it is expressly provided

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that these companies will enjoy the privileges and be subject to all the obligations of limited companies.

18. Therefore, section 8 companies are treated as limited companies and unless there is a specific deviation provided for (in terms of compliance with any provisions of the Act), have to comply with the provisions applicable to a regular limited company.
19. Societies may be registered with the charitable objectives under the Central / State Government regulations. The Law / Act applied to societies is Societies Registration Act, 1860.
20. Trusts with the charitable objectives may be registered under the State Government regulations, if any, like in Maharashtra it is regulated by the Bombay Public Trust Act, 1950, in Rajasthan is governed by the Rajasthan Public Trust Act, etc. There are various states, which do not have any regulation to register such charitable trusts. In such cases, they should be registered with the Income Tax Act, 1961.
21. It is important here to note that as per the amended rules the above referred Section 8 Company or registered public Trust or registered Society should be registered both under section 12A as well as under section 80G of the Income Tax Act, 1961.
22. For receiving funds from foreign companies such entities should have registration under Foreign Contribution Regulation Act (FCRA).

### **CSR contribution received by third parties from a foreign source**

23. The charitable entities can accept foreign contribution from a foreign source only if they are registered under Foreign Contribution Regulation Act (FCRA). Without FCRA approval, charitable entities in India cannot legally receive foreign contributions. The FCRA deems an Indian subsidiary of a foreign company to be a foreign company, and consequently, a foreign source. Further, Indian companies with foreign ownership of more than 50% may also be treated as foreign source if the nominal value of its share capital is not within the limits specified for foreign investments under FEMA 1999.
24. The Proviso to Section 2(1)(j) of FCRA provides that:

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*“Provided that where the nominal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act 1999, or the rules or regulation made thereunder, then, notwithstanding the nominal value of share capital of a company being more than one half of such value at the time of making the contribution, such company shall not be a foreign source.”*

25. Hence, in case of an Indian subsidiary of a foreign company, or an Indian company which have foreign ownership of more than 50% need to ensure that in case they utilise the services of a non-profit organization (NPO) to carry out their CSR activities, such entity must have obtained prior permission from the Central Government under FCRA. The permission, when granted, would apply to only a specific project and specific amount, which means that the NPO cannot use contribution for a different project or for any additional funding for the same project.

### Accounting for CSR Funds by Third Parties

26. The third parties i.e. section 8 company, or a registered trust or registered society may receive Corpus donation, which could be a CSR expenditure in the hands of the donor company if the required conditions are complied with. Corpus donations are with a specific direction regarding the use of the funds and characteristically capital in nature. MCA in General Circular No.21/2014 dated 18th June 2014 has clarified that 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 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.
27. The accounting entry for such corpus donations received may be as under: -

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<b>Corpus Donation</b>	
Bank A/c                      Dr.	.....
To Corpus Donation	.....



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Such corpus donation received by the third party should be taken to the Balance Sheet of the third party and not charged to the Income and Expenditure A/c.

28. Other than making corpus donations as stated in previous paragraph, a company may make CSR contribution to third parties specifying the projects or programs to be undertaken and the modalities of utilization of funds of such projects as required by CSR Rules. The amounts received by such third parties have to be recognized accordingly in the books of accounts.

The accounting entry for such CSR contribution received and expenditure on the specified project may be as under: -

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<b>CSR Contribution</b>	
Bank A/c                      Dr.	.....
To CSR Contribution ABC (Fund Type as per donor projects)	.....
<b>Expenses out of CSR Donation</b>	
CSR Project Expenditure (or any relevant Expenditure Account)      Dr.	.....
To Bank	.....
<b>Fixed Assets acquired out of CSR Donation</b>	
Fixed Asset A/c                      Dr.	.....
To Bank	.....

Both, the contribution received and expenditure made should be charged to the Income and expenditure A/c of the third party. Fixed assets acquired should be taken to the Balance Sheet of the third party.

29. There may be instances wherein the CSR contribution is received in kind. The accounting entry for such CSR contribution received in kind and its utilization may be as under: -

<i>Particulars</i>	<i>Amount (in Rs.)</i>
<b>CSR Contribution in kind being Fixed Asset or forming part thereof</b>	
Fixed Asset / Capital WIP      Dr.	.....

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To CSR Contribution ABC (Valuation to be the cost to donor)	.....
<b>Receipt of CSR Contribution in kind being items to be distributed in a project</b>	
Item A/c Dr.	.....
To CSR Donation in kind A/c (Valuation to be the cost to donor)	.....
<b>Distribution of CSR Contribution in kind</b>	
CSR Expenditure (or any relevant Expenditure Account) Dr.	.....
To Item A/c	.....

30. If the third party is receiving contribution from different companies for different projects, then the amounts should be identified project-wise and the receipts as well as amounts spent corresponding to that projects should be marked and reflected separately.

The accounting entry for such CSR contributions received for various projects and corresponding expenditure may be as under: -

S. No.	Particulars	Dr. Amount (in Rs.)	Cr. Amount (in Rs.)
1	<b>CSR Contribution for different projects</b>		
	Bank A/c Dr.		.....
	To CSR Contribution A / Project A (Fund / project name as per donor projects)		.....
22	Bank A/c Dr.		.....
	To CSR Contribution B / Project B (Project name as per donor projects)		.....
3	<b>Expenses out of CSR Donation</b>		
	CSR Expenditure Project A A/c Dr.		.....
	CSR Expenditure Project B A/c Dr.		.....
	To Bank A/c		.....
	(Expenditure can be booked with its name of its nature and identified to related project. In case of amounts utilized for acquisition of capital asset, the capital asset head should be debited)		

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Both, the contribution received and expenditure made should be charged to the Income and expenditure A/c of the third party. Fixed assets acquired should be taken to the Balance Sheet of the third party.

31. The CSR donations received by the third parties must be applied for agreed project(s) within the specified period as per the projects / programs in CSR policy of the donor. In case the CSR donations are not utilized within the specified period during the year, the same may either be returned to the donor or the same should be utilized as specified in the agreement /MOU with the donor company.

In case the unspent amount is to be returned then the accounting entry may be as under: -

S. No.	Particulars	Dr. Amount (in Rs.)	Cr. Amount (in Rs.)
1	<b>Return of unspent amount</b>		
	CSR Contribution A / project A	Dr.	.....
	To Bank A/c		.....

32. In case the amount required to be spent on the project remains unspent at the end of the year, then the entity needs to accumulate the balance amount to be utilized in future period. Such unspent amount at the end of the year would be carried forward to the next year and the required formalities / Compliances (if the third party is registered under Income Tax Act) should be done. If the entity is registered u/s 12A, then the charitable entity needs to e-file Form 10 specifying the purpose of accumulation before filing of return of income.

The accounting entry for the accumulation may be as under: -

S. No.	Particulars	Dr. Amount (in Rs.)	Cr. Amount (in Rs.)
1	<b>Accumulation of unspent amount</b>		
	CSR Contribution project A	Dr.	.....
	To CSR Fund – Project A A/c		.....

The CSR Fund – Project A A/c should be taken to the Balance Sheet.

33. When the required compliances are made under the Income Tax Act, the accumulation for five years is treated as application of income in the year of accumulation under the Income Tax Act. In subsequent years,

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when the expenditure is made out of such accumulated fund, the accounting entry may be as under:

S. No.	Particulars	Dr. Amount (in Rs.)	Cr. Amount (in Rs.)
1	<b>Expenditure out of Accumulated unspent amount</b>		
	CSR Fund – Project A A/c Dr.		.....
	To Bank		.....

The amount spent out of this accumulated fund would not be charged to the Income and expenditure A/c, but would be reduced from the Fund created.

The Research Committee of ICAI in August 2009 has issued a Technical Guide on Accounting for Not-for-Profit Organisations. Guidance on Fund based accounting is given in Paras 110 to 116 both on unrestricted funds (Corpus, designated funds and general fund) as well as restricted funds (including endowment funds), which may also be referred.

## Utilization Report of CSR Contribution received by Third Parties

34. Rule 4(5) states that “The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect”.
35. Apart from registering w,e,f, 1<sup>st</sup> April 2021, the third parties are required to maintain appropriate documentation with regard to the CSR contribution and details of expenditure on CSR activities.
36. The utilization of the CSR contribution should be as per the project specified by the company making CSR contribution. It should be for a definite project and the CSR policy must specify monitoring and reporting mechanism for effective utilization of CSR funds.
37. The CSR Committee of The Institute of Chartered Accountants of India (ICAI) has recommended that the Companies should obtain Chartered Accountants / Auditor’s Report on the utilization of CSR Funds If CSR Activity is done through a third party.

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**The auditor / CA in practice of the third party before issuing the Independent Practitioner's Report on Utilization of CSR Funds should ensure that:**

- The third party has spent the funds on CSR activities as per Section 135 of the Companies Act, 2013, read with Schedule VII to the Act and related regulations.
  - Verification of the CSR spend has been done as per Guidance Note on Audit of Expenses issued by ICAI.
  - The utilization of CSR Funds report is issued in accordance with the Guidance Note on Reports or Certificates for Special Purposes issued by the Institute of Chartered Accountants of India.
38. The CSR Committee of Institute of Chartered Accountants of India (ICAI) has already issued a "Handbook on Audit of CSR Activities" in December 2020, which should be referred by the auditor of the third party for issue of such utilization reports.

## **ANNEXURES**

- A. Section 135 of the Companies Act, 2013
- B. Companies (CSR Policy) Rules 2014 as amended by Companies (CSR Policy) Amendment Rules 2021
- C. Relevant ATQs

### **A. Section 135 of the Companies Act, 2013**

**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 the immediately preceding 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.

Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.

- (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,—
  - (a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, 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,—
  - (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

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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 <sup>1</sup>[or where the company has not completed the period of three financial years since its incorporation, during such 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 <sup>2</sup>[and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year].

<sup>4</sup>[Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed].

Explanation.—For the purposes of this section "net profit" shall not include such sums as may be prescribed, and shall be calculated in accordance with the provisions of section 198.

<sup>3</sup>[(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special

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account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year].

- <sup>4</sup>[(7) If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.
- <sup>3</sup>[(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.
- <sup>5</sup>[(9) Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company].

1. Inserted by The Companies (Amendment) Act,2019- Yet to be Notified
2. Inserted by The Companies (Amendment) Act,2019- Yet to be notified
3. Inserted by The Companies (Amendment) Act,2019- Yet to be Notified
4. Inserted by the Companies (Amendment) Act, 2020. Yet to be notified
5. Inserted by the Companies (Amendment) Act, 2020. Yet to be notified



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### **B. Companies (Corporate Social Responsibility Policy) Rules, 2014**

#### **RULE 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.

#### **RULE 2 Definitions**

- (1) In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Companies Act, 2013 (18 of 2013);
  - (b) "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;
  - (c) "Annexure" means the Annexure appended to these rules;
  - (d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these rules, but shall not include the following, namely:-
    - (i) activities undertaken in pursuance of normal course of business of the company: Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-
      - (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

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- (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;
  - (ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;
  - (iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;
  - (iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
  - (v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
  - (vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;
- (e) "CSR Committee" means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;
- (f) "CSR Policy" means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;
- (g) "International Organisation" means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;
- (h) "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: -

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- (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 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 (1) of section 381, read with section 198 of the Act;
- (i) “Ongoing Project” means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;
  - (j) “Public Authority” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);
  - (k) “section” means a section 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. ”.

#### **RULE 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 (l) 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

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- (2) Every company which ceases to be a company covered under subsection (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 (6) of the said section,
- till such time it meets the criteria specified in sub-section (1) of section 135.

### **RULE 4 CSR Implementation**

- (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through -
- (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with 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
  - (c) any entity established under an Act of Parliament or a State legislature; or
  - (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- (2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021:
- Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.

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- (b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.
  - (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.
- (3) A company may engage international organisations 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.
  - (4) A company may also collaborate with other companies for undertaking projects or programmes 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 programmes in accordance with these rules.
  - (5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.
  - (6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period. ”.

#### **RULE 5 CSR Committees.**

- (1) The companies mentioned in the rule 3 shall constitute CSR Committee as under.-
  - (i) [a company] covered under subsection (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;

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- (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 formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-
- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
  - (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
  - (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
  - (d) monitoring and reporting mechanism for the projects or programmes; and
  - (e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect. ”.

### **RULE 6 CSR Policy – Omitted w.e.f. 22.01.2021**

### **RULE 7 CSR Expenditure**

- (1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.
- (2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

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- (3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –
- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
  - (ii) the Board of the company shall pass a resolution to that effect.
- (4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -
- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
  - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
  - (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification”.

### **RULE 8 CSR Reporting**

- “8. CSR Reporting .- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

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- (3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
- (b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
- (c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less. ”.

#### **RULE 9 Display of CSR Activities on its Website**

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

#### **10 - Transfer of unspent CSR amount**

Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.”.



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### C. Relevant ATQs

Following are the questions and answers raised during the Live Webcast on “CSR Laws, Accounting and Taxation” organised by CSR Committee of ICAI which were published (as answered by the speakers of the webcast) as Answers to the Questions (ATQs) by the Committee which are relevant from the third parties point of view:-

**“Q. “We are a charitable trust, we provide CSR activity on behalf of Entities. Is it necessary to keep the trail of mails / documents right from the beginning like pitching a donor party, deals/ quotations up to final activity closure?”**

*Ans. Yes. Maintenance of appropriate documentation of the expenditure on CSR activities is required.*

**Q. Whether land transfer to Section 8 Company for construction of Skill training centre will be treated as CSR Expenditure?**

*Ans. Yes, it may be covered in clause (ii) of Schedule VII of Companies Act, 2013*

**Q. Whether CSR funds can be given to an educational institution having 80 G, and 12 A, FCRA registration etc.?**

*Ans. Yes. Rule 4 of CSR Rules 2014 provides that registered society/trust is eligible for CSR funding.*

**Q. From a reporting perspective, can mere disbursement of funds to a CSR partner (NGO) considered as application of CSR funds or is it mandatory for the associated NGO partners to actually spend the allocated funds for reporting it as application of CSR funds?**

*Ans. Mere disbursement/donation of funds to eligible CSR partner is not considered as application of funds. It should be for a definite project and the CSR Policy must specify monitoring and reporting mechanism for effective utilization of the CSR Funds.*

**Q.**

- ***Whether an educational trust having 80G, 12A, FCRA, registration, can receive donation under CSR?***
- ***Some companies transfer their CSR fund through CSR committees to their separate Foundations where company and its director has no say. Is this allowed ?***
- ***Can CSR amount be donated to a Trust/Society registered with IT — Rotary, Lions, etc.***
- ***A Company donates to 80G trusts under CORPUS. Will the same be considered as eligible CSR spend?***
- ***Can a private limited company contribute towards CSR to a Trust run by and in which some of the directors/shareholders are Trustees. The said Trust is registered u/s 12AA and approved u/s 80G of the Income tax Act, 1961 and runs Schools.***
- ***Whether donation or contribution by a company to a trust doing CSR activities is considered as CSR expenditure of the company for compliance of CSR provisions?***
- ***Whether donation made to a NGO in a rural area for providing foods to needy people are covered or not under CSR?***
- ***Whether expenditure or amount given to Society Registered u/s 12A of IT Act, for the purpose of spending for Corona relief like Annadanam Free Food for Labourers and needy persons etc. qualify for CSR expenditure.***
- ***Whether Contribution to Institution like Ramkrishna Mission eligible for CSR expenditure?***
- ***A company wants to contribute to a Trust which runs a private educational institution. Such amount will be spent by the Trust solely for free schooling to poor and children with special needs. Can the Company treat the contribution to the Trust, as CSR expense, given that the school is not exclusively engaged in free schooling activity?***

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- **Does donation given to a Trust registered under Income Tax Act, 1961 which is conducting Covid-19 relief measure, comes under eligible CSR expenditure?**
- **As per the rule, can a registered NGO be engaged to complete CSR spend with a specific project assigned by the company?**
- **Would corpus donation to a Trust be eligible for CSR spend?**

*Ans. Mere donation / contribution is not CSR spend.*

*Where 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 Rule 4(2), then:*

- a) such company or trust or society shall have an established track record of 3 years in undertaking similar programs or projects; AND*
- b) the company has specified:*
  - a. the projects or programs to be undertaken;*
  - b. the modalities of utilisation of funds of such projects and programs; and*
  - c. the monitoring and reporting mechanism*

*Further as clarified by MCA through general circular No. 21/2014 dated 18th June 2014 contribution to Corpus of a Trust/ society/ section 8 company, etc. will qualify as CSR expenditure as long as:*

- (a) the Trust/ society/ section 8 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.*

- Q. a) Can a Sec 8 company engaged in one of the activities prescribed under Schedule VII (as part of its normal operation), treat its normal activity expenditure as CSR expenditure? If No, then does that mean that it needs to spend money on activities undertaken by other eligible entities?**

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**b) Will it be a different situation if the said company is also regularly generating revenue from these activities?**

*Ans. What is restricted under the CSR rules is the activities undertaken in pursuance of its normal course of business. A section 8 company is not for profit, hence not doing any business. If the activities it undertakes is covered under Schedule VII, the same would suffice. Generation of revenue is incidental to its main objects of charity.*

**Q. Amount is received by NGO registered u/s. 12AA of the Income Tax Act, from a company to implement CSR project.**

**Whether the receipts is treated as a donation or grants and 85 % utilisation is applicable to that receipts?**

*Ans. The requirement of 85% utilization is under Income Tax Laws. Under CSR Laws, 95% is required to be spent as per the agreement of the company and the NGO.”*