

# **PROVISIONS OF COMPANIES (CSR) RULES, 2014**

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# PROVISIONS OF COMPANIES (CSR) RULES, 2014

## UNDERSTANDING THE PROVISIONS OF CSR RULES, 2014

**1.1.1** The Ministry of Corporate Affairs has notified the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('the Rules') to be effective from 1 April, 2014. These Rules provide the detailed manner in which CSR is to be implemented. The text of the Rules is provided in **Annexure 2**. A brief overview of the Rules is discussed hereunder.

## DEFINITION OF CSR AS PER RULES

**1.2.1** As per the clause 2(1)(c) CSR is defined as under :

“‘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.”

**1.2.2** It may be noted that the above Rule starts with the wordings that ‘CSR includes but is not limited to’, which implies that the projects and programmes can be beyond the project specified in Schedule VII. However, such broad implication will not be relevant as section 135(3)(a) categorically provide that the projects and programmes have to be as specified in Schedule VII.

## CSR COMMITTEE AND CSR POLICY UNDER CSR RULES, 2014

**1.3.1** As per the clause 2(1)(d) and (e) of the CSR Rules, CSR Committee and CSR Policy are defined as under :

“(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;”

**1.3.2** The CSR Committee and the CSR policy have not been exhaustively defined in the Rules. The Rules specifies that the CSR activities should be as per Schedule VII of the Act, though Schedule VII has to be interpreted liberally. **One notable thing is that activities undertaken in pursuance of normal course of business of a company are excluded.** There is no explanatory note in this regard, however, it is understood that a company cannot claim its normal activities as CSR. For example, a company engaged in plantation cannot claim that the plantation is made as a part of its CSR activity on environment.

## NET PROFIT UNDER CSR RULES, 2014

**1.4.1** As per the clause 2(1)(f) of the CSR Rules, Net Profit is defined as under :

“(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 (1) 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.”

**1.4.2** The Net Profit shall be computed as per the provisions of Companies Act. The Net Profit shall not include any profit derived from foreign branches of the company. The Net Profit will also not include any dividend received from other Companies which are covered under CSR.

**1.4.3** In case of Foreign Companies, the Net Profit of such company shall be determined as per the profit and loss account prepared under section 381(1)(a) read with section 198 of the Companies Act, 2013.

## APPLICABILITY OF FOREIGN COMPANIES UNDER CSR RULES, 2014

**1.5.1** As per the clause 3(1) of the CSR Rules, all company including foreign company are covered. The clause 3(1) is provided as under :

“3(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 fulfils the criteria specified in sub-section (1) 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.”

**1.5.2** It may be noted that Section 135 of the Act does not make reference to foreign company regarding applicability of CSR. The section starts with the line “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.....”. The Section 135(1) refers only to a company and only the Rules include foreign company under the ambit of CSR. Legally any Rule cannot increase or decrease the scope of the Act. Under Section 2(20) of the Act, a company has been defined as “company means a company incorporated under this Act or under any previous company law;”.

**1.5.3** Therefore, technically the Act does not cover Foreign Companies but the Rules provide that the foreign company shall also be liable. ***Whether Rules can mandate something which is not provided in the Act is a matter of legal debate.***

**1.5.4** ***The issue is, can the term ‘company’ used in section 135 be understood in a generic sense or the definition of company as per the Act can be used.***

## **WHEN COMPANY CEASES TO BE UNDER CSR**

**1.6.1** As per the clause 3(2) of the CSR Rules, all company including Foreign company shall cease to be covered under CSR if it does not fulfill the financial criteria for 3 consecutive years. The clause 3(2) is provided as under :

“(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-sections (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.”

**1.6.2** In other words, even when a company ceases to come under CSR criteria, it has to continue CSR activities for 3 years. Only if the CSR criteria do not apply for three consecutive financial years, then the company can stop complying with the CSR regulations.

## **CSR ACTIVITIES UNDER CSR RULES, 2014**

**1.7.1** Clause 4(1) of the CSR Rules provides the procedure and methods to implement the CSR activities. An overview of major points provided in clause 4(1) is as under:

- The CSR activities have to be undertaken as per CSR policy. The CSR policy should be based on the permitted activities as per Schedule VII.
- The CSR activities will not include any activity undertaken in the normal course of activity.
- The Board should conduct the CSR activity on recommendations of CSR Committee.
- The Board has multiple options of implementing the CSR activities. It may implement the CSR activities :
- Directly
- Through other registered Trust, Society or Section 8 company, in this case such registered trust or society should have at least 3 years proven experience in similar activities.
- Through Trust, Society or Section 8 Company promoted by the company, in such case 3 years’ experience would not be required.
- Through its holding or subsidiary company.
- In implementation a company may exercise any of the aforesaid options in collaboration with other companies. However, if CSR activities are jointly undertaken then the companies should report individually and separately.
- The company should specify the modalities of utilization and the monitoring as well as reporting mechanism.
- The CSR activity should be conducted in India only.
- Any activity for the benefit of the employees and their families shall not be considered as CSR.



- However, a company may spend up to 5% of the total CSR expenditure on the capacity building of its own personnel and the implementing organisation.
- Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

**1.7.2** The text of Clause 4(1) of the CSR Rules is provided as under:

**“CSR Activities**

**“4.(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 by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

**Provided that—**

- (i) if such trust, society or company is not established by the company or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
- (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 provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to 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 shall not exceed five per cent 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.”

## **CSR COMMITTEES UNDER CSR RULES, 2014**

**1.8.1** Clause 5(1) of the CSR Rules provides about the constitution of CSR Committee. An overview of major points provided in clause 5(1) is as under:

- It may be noted that section 135(1) requires CSR Committee with 3 or more Directors, out of which at least one should be an Independent Director.
- The CSR Rule provides explanation to the requirement of section 135(1). It provides that private company which is not required to appoint Independent Director under section 149(4), shall be exempted from appointment of Independent Director.

- A private company having only two Directors shall constitute its CSR Committee with 2 such Directors only.
- In case of foreign company the CSR Committee should comprise of at least 2 person of which one should be specified under section 380(1)(d) and another person should be nominated by such foreign company. It may be noted that under section 380(1)(d) a foreign company is required to provide the name & address of one or more persons **resident in India authorised** to accept on behalf of the company service of process and any notices or other documents required to be served on the company.
- The CSR Committee is required to develop a transparent monitoring mechanism for implementation of CSR projects.

**1.8.2** The text of Clause 5(1) of the CSR Rules is provided as under :

**“CSR Committees**

**5.(1)** The companies mentioned in 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.”

**CSR POLICY UNDER CSR RULES, 2014**

**1.9.1** Clause 6(1) of the CSR Rules provides about the CSR policy of a company. An overview of major points provided in clause 6(1) is as under:

- The CSR Policy of the company shall include a list of CSR projects or programs which a company plans to undertake falling within the purview of the Schedule VII of the Act.
- The CSR Policy of the company shall specify modalities of execution of such project or programs and implementation schedules for the same.
- The CSR Policy of the company shall also specify the monitoring process of such projects or programs.
- The CSR Policy of the company should ensure that the CSR activities shall not include the activities undertaken in pursuance of normal course of business of a company.
- The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

**1.9.2** The text of Clause 6(1) of the CSR Rules is provided as under :

**“CSR Policy**

**6.(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 specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.”

**CSR EXPENDITURE UNDER CSR RULES, 2014**

**1.10.1** Clause 7 of the CSR Rules provides about the CSR expenditure of a company. An overview of major points provided in clause 7 is as under:

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

**1.10.2** The text of Clause 7 of the CSR Rules is provided as under:

**“CSR Expenditure**

**7.** CSR expenditure shall include all expenditure including contribution to corpus, or on 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 an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.”

**CSR REPORTING UNDER CSR RULES, 2014**

**1.11.1** Clause 8 of the CSR Rules provides about the CSR reporting of a company. An overview of major points provided in clause 8 is as under:

1. The Board’s Report of a company shall include an annual report on CSR in the format as provided in **Annexure 1**.
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.

**1.11.2** The text of Clause 8 of the CSR Rules is provided as under:

**“CSR Reporting**

**8.(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.”

**DISPLAY OF CSR ACTIVITIES ON WEBSITE UNDER CSR RULES, 2014**

**1.12.1** Clause 9 of the CSR Rules provides that the company shall display on its website, the content of CSR policy and also the CSR report.

**1.12.2** The text of Clause 9 of the CSR Rules is provided as under:

**“Display of CSR activities on its website**

**9.** 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.”



**FORMAT OF REPORTING UNDER CSR RULES, 2014****FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT**

1. A brief outline of the company's CSR policy, including overview of projects or programs proposed to be undertaken and a reference to the web-link to the CSR policy and projects or programs.
2. The Composition of the CSR Committee.
3. Average Net Profit of the company for last three financial years
4. Prescribed CSR Expenditure (two per cent. of the amount as in item 3 above)
5. Details of CSR spent during the financial year.
  - (a) Total amount to be spent for the financial year;
  - (b) Amount unspent, if any;
  - (c) Manner in which the amount spent during the financial year is detailed below.

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR project or activity identified.	Sector in which the project is covered	Projects or programs (1) Local area or other (2) Specify the state and district where projects or programs was undertaken	Amount outlay (budget) project or program wise	Amount spent on the projects or programs Subheads: (1) Direct expenditure on projects or programs (2) Overheads:	Cumulative expenditure upto the reporting period.	Amount spent: Direct or through implementing agency
1							
2							
3							
<b>TOTAL</b>							

\* Give details of implementing agency:

6. In case the company has failed to spend the two per cent, of the average Net Profit of the last three financial years or any part thereof, the company shall provide the reasons for not spending the amount in its Board report.
7. A responsibility statement of the CSR Committee that the implementation and monitoring of CSR Policy, is in compliance with CSR objectives and Policy of the company.

Sd/-  
(Chief Executive Officer  
or Managing Director or  
Director)

Sd/-  
(Chairman  
CSR Committee)  
(wherever applicable)

Sd/-  
(Person specified under clause (d)  
of sub-Section (1) of Section 380  
of the Act)



## COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014 NOTIFICATION [FILE NO.1/18/2013-CL.V], DATED 27-2-2014

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:—

### Short title and commencement

1. (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.

### Definitions

2. (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.

**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-sections (2) to (5) of the said section, till such time it meets the criteria specified in sub-section (1) of section 135.

### CSR Activities

4. (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:*** 1 established by the company or its holding or subsidiary or associate company under section 8 of the Act or otherwise:

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. 2*** or its holding or subsidiary or associate company, it shall have an established track record of three years in undertaking similar programs or projects;
  - (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 provisions of sub-section (5) of section 135 of the Act, the CSR projects or programs or activities undertaken in India only shall amount to 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 ***“including expenditure on administrative overheads,”***<sup>3</sup> shall not exceed five per cent 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.

#### CSR Committees

5. (1) The companies mentioned in 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.

#### CSR Policy

6. (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 specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.

#### **CSR Expenditure**

7. CSR expenditure shall include all expenditure including contribution to corpus, or on 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 an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

#### **CSR Reporting**

8. (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.

#### **Display of CSR activities on its website**

9. 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.