

# **NASSCOM<sup>®</sup>**

**RECOMMENDATIONS– CORPORATE SOCIAL RESPONSIBILITY (CSR)**  
**PROVISIONS IN COMPANIES ACT, 2013**

**SUBMITTED BY NASSCOM**

*Date: March 26, 2019*

**SUGGESTIONS ON CORPORATE SOCIAL RESPONSIBILITY (CSR) PROVISIONS**

<b>Section of Companies Act 2013</b>	<b>Text of the current section</b>	<b>Recommendations</b>
Section 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.	<p>Provisions of section 135(1) also applies to companies suffering losses but having net worth of rupees or turnover or profits above the stipulated limits.</p> <p>A company may have earned profits in one year and incurred losses in the next two years. If the amount of profit earned during 1st year exceeds the total amount of losses sustained during 2nd and 3rd year, the average net profits during three immediately preceding financial years is a positive figure. Consequently, the company comes within the purview of CSR obligation under section 135 even if it has suffered losses during the last two years. In case of companies having no reserve, this situation may lead to erosion of capital.</p> <p>Hence, it is suggested that the conditions of net worth or turnover or profits specified under section 135 for mandatory CSR obligation should not be made applicable to loss making companies unless such companies have certain percentage of reserve in proportion to their share capital (say, 25% of share capital).</p>
Section 135(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	Companies falling within the ambit of section 135 may face liquidity issues for incurring full amount of CSR expenditure in every financial year as required under subsection (5) of this section. This may create problems as the provisions do not

	<p>preceding financial years, in pursuance of its Corporate Social Responsibility Policy:</p> <p>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:</p> <p>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.</p>	<p>allow companies to spend “unspent” amount of CSR expenses of current year in the next year.</p> <p>It is therefore, suggested that provisions of CSR be amended so as to give option to the companies to transfer unspent amount of CSR to a separate account specifying the timelines during which such unspent amount may be utilized.</p>
<p>Schedule VII</p>		<p>Schedule VII of the Companies Act 2013 contains list of activities that are considered as eligible CSR spend.</p> <p>The Schedule may be amended to include measures to allow companies to do CSR activities as per their strengths and specialties. CSR should not be seen as the spending of fiscal resources, but the smart spending of CSR resources. For example- telephone companies should set up telecom services in remote areas lacking such services.</p> <p>Companies should also compulsorily collaborate with specialist non-government institutions, who have acted in a particular field with specialist experience for at least three years, This will help them utilize their fiscal resources better</p>

		as dedicated NGOs will guide them in effectively implementing their aid programmes.
Schedule VII(9)	Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;	<p>The current provision is restrictive as it allows CSR only for contributions made to technology incubators located within academic institutions.</p> <p>Contribution to any institute of national importance should be allowed as eligible CSR spend. Further, the term technology incubator is restrictive. Contribution to any incubator which is incorporated as a society/ trust/ not-for-profit organization should be allowed.as eligible CSR spend.</p>
Schedule VII		<p>There is differential tax treatment for expenditure on various CSR activities enumerated which may create unforeseen distortions in allocation of funds across development sectors. E.g.- Contribution to PM relief fund or contribution to Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga qualify for deduction under section 80G of the Income Tax Act, 1961.</p> <p>It is suggested that uniformity in tax treatment be adopted for CSR expenditure across all eligible activities.</p>
Schedule VII		Schedule VII of the Companies Act 2013 lists 11 activities which can be considered as eligible CSR spend. The Ministry should consider expanding the list to incorporate all the public goods.
Rule 3(2)	Every company which ceases to be a company covered under sub-section (1) of section 135	This Rule is inconsistent with Section 135(1) in terms of the time period for eligible to comply with CSR provisions.

	<p>of the Act for three consecutive financial years shall not be required to –</p> <p>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.</p>	<p>Hence, it is suggested that the following amendment be made in the rule:</p> <p>Every company which ceases to be a company covered under sub-section (1) of section 135 of the Act in the immediate preceding financial year shall not be required to-</p> <p>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</p>
Rule 4(6)	<p>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, shall not exceed five percent. of total CSR expenditure of the company in one financial year.</p>	<p>The current allocation of 5% for administrative overheads is less. It is therefore suggested that the above percentage may be increased to 10% if the required CSR spend is above 25 crores.</p>
Circular No. 1/2016 dated 12.01.16 FAQ 23	<p>Q. Whether involvement of employees of the company in CSR project/ programme of a company can be monetized and accounted for under the head of ‘CSR expenditure’?</p> <p>A. Contribution and involvement of employees in CSR activities of the company will no doubt generate interest/ pride in CSR work and promote transformation from</p>	<p>This contradicts with point No. IV of circular 21/2014 dated June 18, 2014 which states that <i>“Salaries 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> as well as Rule 4(6) as notified on 27-02-2014. Hence, it is suggested that the FAQs be amended to delete the following:</p>

	<p>Corporate Social Responsibility (CSR) as an obligation to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of pro bono services of employees would not be counted towards CSR expenditure.</p>	<p><b>“However monetization of pro bono services of employees would not be counted towards CSR expenditure. ”</b></p>
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