**Corporate Social Responsibility.**

1. **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 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,—

   (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,—

   (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

---

1. Enforced with effect from 1-4-2014.
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.—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

---

**RELEVANT RULES : COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) RULES, 2014**

**Short title and commencement.**

**Rule 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.**

**Rule 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.

(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 (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.

Corporate Social Responsibility.

Rule 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.

(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.**

**Rule 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 [including expenditure on administrative overheads.] shall not

---

1. Inserted by the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2014, w.e.f. **12-9-2014.**
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.**

**Rule 5:** (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.

**CSR Policy.**

**Rule 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.

**Rule 7:** 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 an item not in conformity or not in line with activities which fall within the purview of Schedule VII of the Act.

CSR Reporting.

**Rule 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.

**Rule 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.

ANNEXURE

**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:
<table>
<thead>
<tr>
<th>(1)</th>
<th>(2)</th>
<th>(3)</th>
<th>(4)</th>
<th>(5)</th>
<th>(6)</th>
<th>(7)</th>
<th>(8)</th>
</tr>
</thead>
<tbody>
<tr>
<td>S. No.</td>
<td>CSR project or activity identified</td>
<td>Sector in which the project is covered</td>
<td>Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was undertaken</td>
<td>Amount outlay (budget project or program-wise)</td>
<td>Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs (2) Overheads</td>
<td>Cumulative expenditure up to to the reporting period</td>
<td>Amount spent: Direct or through implementing agency*</td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*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)  
Sd/- (Person specified under clause (d) of sub-section (1) of section 380 of the Act)  
(whatever applicable)
RELEVANT RULE: RULE 9 OF THE COMPANIES (ACCOUNTS) RULES, 2014

Disclosures about CSR Policy.

Rule 9: The disclosure of contents of Corporate Social Responsibility Policy in the Board's report and on the company's website, if any, shall be as per annexure attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

COMMENTS

135.1 Legislative history

135.1-1 Corresponding provisions of the 1956 Act
This is a new section. There was no corresponding provision in the 1956 Act.

135.1-2 Comparative study: 2013 Act vis-a-vis the 1956 Act
Section 135 of the 2013 Act is a new section. This section provides that every company having networth of `500 crore or more or turnover of `1000 crore or more or net profit of `5 crore or more during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the committee shall be included in the Board's Report. The Committee shall formulate policy including the activities specified in Schedule VII of the 2013 Act. The Board shall disclose the content of policy in its report and place on website, if any of the company. This section further provides that the Board shall ensure that at least 2% of average net profits of the company made during three immediately preceding financial years shall be spent on such policy in every financial year. If the company fails to spend such amount, the Board shall give in its report the reasons for not spending. There was no provision along these lines for mandatory CSR policy and CSR spends in the 1956 Act.
135.1-3 Parliamentary Standing Committee Recommendations (2009-10)

Part II of the Report of the Parliamentary Standing Committee on Finance on the Companies Bill, explains the rationale for mandatory CSR spends provisions of section 135 as under:

“13………….. corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits. Accordingly, the Committee recommend that Clause 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified by substituting the words ‘shall make every endeavour to ensure’ with the words ‘shall ensure’. Further, the Committee recommend that the said clause shall also provide that CSR activities of the companies are directed in and around the area they operate.”

135.2 Concept of CSR

United Nations Industrial Development Organization (UNIDO) defines ‘Corporate Social Responsibility’:

‘Corporate Social Responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders. CSR is generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives (“Triple-Bottom-Line-Approach”), while at the same time addressing the expectations of shareholders and stakeholders.’[http://www.unido.org/en/what-we-do/trade/CSR/what-is-csr.html]

Thus, CSR is a responsibility voluntarily assumed by a company in its enlightened self-interest. It is not something imposed by law. Rather, it is something which a business does beyond what is required by law.

135.3 Legal provisions regarding CSR in other countries

Legislative intervention world over is not by way of imposing CSR obligations on company by law but requiring companies to disclose what they are doing by way of CSR if they are at all doing it. And if companies are not doing anything by way of CSR, they have to state the fact. Thus, legislative intervention is not by way of mandating CSR but by encouraging companies to disclose their CSR initiatives if at all they are implementing CSR. The concept of CSR world-wide is that it is a voluntary strategic management concept which needs to be encouraged by mandating disclosures if companies are implementing CSR. A classic example of this is the Danish Financial Statements Act in Denmark. The Explanatory Notes in the Proposal for amending the Danish Financial Statements Act clarify as under:
"The Proposal implements an initiative laid down in the Action Plan of the Danish Government on Corporate Social Responsibility. The purpose of the Proposal is to encourage about 1,000 of the largest Danish businesses, listed companies and state-owned public limited companies covered by the Danish Financial Statements Act to work actively on ways in which they can contribute to solving social challenges. Social responsibility means that the business must voluntarily integrate considerations for human rights, societal, environmental and climate conditions and combating corruption in its business strategy and activities. Thus the business will not be obligated to this under the legislation in the country in which the business is operating. Therefore, it is proposed that such businesses be obligated to make an account of their work on social responsibility as part of their financial reporting.

The Proposal will be introduced with a sole requirement that businesses covered by the Proposal must provide information about their policies on social responsibility, how such policies are realised by the business, and the assessment of the business on what has been achieved as a result of its work on social responsibility in the financial year, and any future expectations to the work. Businesses without policies on social responsibility are obliged to provide information in this respect.

Despite the Proposal, corporate social responsibility remains a voluntary matter. The business chooses if and how it wishes to integrate the above considerations in its business strategy and activities. The disclosure requirement thus does not obligate businesses covered by the Proposal to draw up a policy on social responsibility, and there are no requirements on how the individual business works on social responsibility.

In support of the objective to make Denmark well known for responsible growth, Danish businesses and their work on social responsibility should be based on an internationally recognised reference framework. Therefore, businesses and investors may profit from basing their work on the UN principles for social responsibility, i.e. the UN Global Compact and the UN principles for responsible investments (UN PRI)."

The Explanatory Notes clarify the voluntary character of CSR as under:

"The purpose of the Proposal is to encourage businesses and investors to work actively on social responsibility. Businesses may contribute to solving social challenges through their business driven social responsibilities, and at the same time, create better business opportunities for themselves. Business-driven social responsibility means that the social responsibility of the business must be combined with its core business activities."

Further:

3.2 Corporate Social Responsibility (CSR)

In this Proposal, Corporate Social Responsibility (CSR) means that businesses voluntarily integrate considerations for human rights, societal, environmental and climate concerns, and combating corruption in their business strate-
gies and activities. “Voluntarily” refers to activities etc. that are not subject to Danish legislation or the legislation applicable in the foreign country where the business is operating.

Societal concerns may consist in work on helping foreign suppliers observe workers’ and human rights. Societal concerns may also be about health and safety at work, employee satisfaction and development, or consist of businesses making special efforts to retain or integrate people who are disabled, seniors, persons with reduced capacity or persons with other ethnic background in the labour market.

Environmental and climate concerns may be about preventing pollution, reducing consumption of energy and other resources, developing or using environmentally efficient technologies or eco-labelling products.

Thus corporate social responsibility may embody many different activities, and the above are merely examples. The individual business can choose which activities will be of the greatest value to the business and society.

In UK, section 172(1) of the UK Companies Act, 2006 provides as under regarding duties of directors:

“172 Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

(a) the likely consequences of any decision in the long term,
(b) the interests of the company’s employees,
(c) the need to foster the company’s business relationships with suppliers, customers and others,
(d) the impact of the company’s operations on the community and the environment,
(e) the desirability of the company maintaining a reputation for high standards of business conduct, and
(f) the need to act fairly as between members of the company.”

135.4 Mandatory CSR provisions introduced by the 2013 Act

The Companies Act, 1956 (“the 1956 Act”) contained no mandatory provisions regarding Corporate Social Responsibility. The Companies Act, 2013 (“the 2013 Act”) introduces mandatory CSR provisions for the first time. These mandatory CSR provisions may be classified as (i) CSR provisions which are Universally applicable to all companies and (ii) CSR provisions which are applicable to specified companies.
Section 166(2) of the 2013 Act requires a director of a company to act in good faith to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, its shareholders, the community and for the protection of environment. The words “its employees, its shareholders, the community and for the protection of environment” were introduced based on the following suggestion of ICSI before the Parliamentary Standing Committee:

“Specific reference for duty of directors towards shareholders, employees, environment and community should be given.”

The Parliamentary Standing Committee's recommendations in this regard in Para 11.80 of its Report (2009) are as under:

“11.80 The Committee welcome the proposed changes with regard to the duties of a director to promote the objects of the company in the best interests of its employees, the community and the environment as well, particularly in the backdrop of Corporate Social Responsibility, which is proposed to be included in this statute.”

Section 135 of the 2013 Act provides that every company having specified net worth or turnover or net profit during any financial year shall constitute the Corporate Social Responsibility Committee of the Board. The composition of the Committee shall be included in the Board's Report. The Committee shall formulate policy including the activities specified in Schedule VII of the 2013 Act. The Board shall disclose the content of policy
in its report and place on website, if any of the company. This section further provides that the Board shall ensure that at least 2% of average net profits of the company made during three immediately preceding financial years shall be spent on such policy in every financial year. If the company fails to spend such amount, the Board shall give in its report the reasons for not spending. There was no provision along these lines for mandatory CSR policy and CSR spends in the 1956 Act.

Part II of the Report of the Parliamentary Standing Committee on Finance on the Companies Bill, 2011 explains the rationale for mandatory CSR spends provisions of section 135 as under:

"13………….. corporates in general are expected to contribute to the welfare of the society in which they operate and wherefrom they draw their resources to generate profits. Accordingly, the Committee recommend that Clause 135(5) of the Bill mandating Corporate Social Responsibility (CSR) be modified by substituting the words 'shall make every endeavour to ensure' with the words 'shall ensure'. Further, the Committee recommend that the said clause shall also provide that CSR activities of the companies are directed in and around the area they operate."

The Hon’ble Minister for Corporate Affairs while replying to the debate on the Bill in Lok Sabha on 18-12-2012 clarified the CSR provisions as under:

- Schedule VII of the 2013 Act lists out a few things that could be taken as a guiding force.
- Some companies have had this fear that once the Government comes into the picture and the money has to come to the Government first and then to CSR activities, then monitoring becomes difficult, then accountability and responsibility to fix particularly will become a little difficult. Therefore, companies should be allowed to do the work that they want to do.
- Somebody wants to do environment-friendly work; somebody wants to do vocational schools and colleges; somebody wants to build hospitals.
- Incidentally, if you have a CSR activity in which you open a school and if you make a profit on that, that certainly will not be a CSR. The idea is not to make profit from a CSR budget. The idea is to give a better quality of life to the people that you are working along with.
- They are: promotion of education; promoting gender equality; reducing child mortality; ensuring environment’s sustainability; enhancing vocational skills; and any other matters that the companies feel that they can contribute.
- The Bill says that the companies have to spend this money; report it - self reporting and self declaration - but it will be visible to all, viewed
to all. If the companies are not able to spend that money for whatever reason, then they are obliged to state in their books of records and accounts why they have not spent it. If they do not spend and if they do not report, then section 134 will be invoked, and they will be fined and penalized.

If some company wants to work through a NGO or a Trust or a Foundation of its own, we must allow them that freedom because if a company has a speciality in education or in certain area, then they have expertise in that.

Ministry of Corporate Affairs (MCA) clarified the CSR provisions before the Parliamentary Standing Committee on finance as under:

“There was no mention in the earlier Companies Act about corporate social responsibility. We are just mentioning that there will be a Corporate Social Responsibility Policy in each and every company beyond a certain limit, which are profitable companies and which are of certain size.” [Para 9.42 of the 2009 Report]

Further:

“The whole emphasis of the Act is disclosure method. Whatever is being done, what is being done will be in public domain. It will be disclosed. It will be given in the report. It will come to the Ministry and anybody can monitor that way. But if you think of an oversight mechanism that some Government officer will look into it, then no, we have not conceived of that idea. We have not put up that type of idea there.” [Para 9.44 of the 2009 Report]

**135.4-1 Mandatory CSR provisions of the 2013 Act made applicable w.e.f. 1-4-2014**


The Ministry of Corporate Affairs has issued the following Press Release dated 27th February, 2014:

“CSR Rules Finalised After Extensive Consultations - Sachin Pilot

Notifications were issued here today to give effect to section 135 and Schedule VII of the Companies Act, 2013, which relate to CSR (Corporate Social Responsibility) related spending by companies. Shri Sachin Pilot, Minister for Corporate Affairs, has said that the concerned rules have been finalised...
after extensive consultations with all stakeholders. He elaborated that the Rules provide for the manner in which CSR Committee shall formulate and monitor the CSR Policy, manner of undertaking CSR activities, role of the Board of directors therein and format of disclosure of such activities in the Board’s report.

After issuance, the Notifications have been sent for publication in the Official Gazette. They are available on the website of the Ministry of Corporate Affairs and would be effective from 1st April, 2014.

The following important new activities have been included in Schedule VII:

(a) Promoting preventive health care and sanitation and making available safe drinking water;

(b) 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;

(c) Ensuring ecological balance, protection of flora and fauna, animal welfare, agro-forestry, conservation of natural resources and maintaining quality of soil, air and water;

(d) Livelihood enhancement projects;

(e) 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;

(f) Measures for the benefit of armed forces veterans, war widows and their dependents;

(g) Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;

(h) Contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;

(i) Rural development projects.”

135.5 India’s mandatory CSR spends provisions makes it ‘corporates’ socialist responsibility

Nowhere in the world is Corporate Social Responsibility enforced by law by requiring a certain percentage of profits of a company to be spent on specified activities such as eradicating hunger, poverty and malnutrition, promoting preventive healthcare and sanitation, making available safe drinking water etc. India has become the first country in the world to enforce CSR by making provisions in the Companies Act, 2013 which require companies having specified net worth or turnover or net profit to spend in every financial year at least 2% of average net profits of the company on specified activities such as eradicating hunger, poverty and
malnutrition, promoting preventive healthcare and sanitation, making available safe drinking water etc.

It isn't really even a tax. Tax monies flows into Government’s coffers. Here, the Government seems to be saying:

“Dear corporates, we want to impose a CSR tax of 2% p.a. on your average net profits. But a former PM of India said that just 15 paise in a rupee reaches the poor. This new 2% p.a. if raised by us as a tax and spent on CSR may suffer no different fate. So, please don't pay us this 2% thing. You yourself take responsibility to spend them on specified activities to achieve goals like eradication of poverty, hunger, malnutrition etc. Socialism by Government hasn't worked. So, here is our experiment of Socialism by corporates”.

**Considering the way CSR is enforced through section 135 of the 2013 Act, one may as well say that what is described as Corporate Social Responsibility in the 2013 Act is actually ‘Corporates’ Socialist Responsibility’.**

**135.6 Overview of section 135**

The various provisions of the 2013 Act as regards CSR are as under:

- Section 166(2) - Duties of directors (see paras 135.7 and 135.8)
- Section 135(1) - Companies required to comply with mandatory CSR provisions (see paras 135.9 to 135.17)
- Section 135(1) - Composition of CSR Committee (see para 135.18)
- Section 135(2)/134(3)(o) - CSR Disclosures required in Board’s report (see para 135.18)
- Section 135(3) - Role of CSR Committee (see para 135.18)
- Section 135(4) - Formulation of CSR Policy by Board (see para 135.19)
- Section 135(5) - Mandatory CSR Spends (see para 135.21)
- Schedule VII - Activities which may be included by Companies in their CSR Policy or on which CSR spends may be made (see para 135.16).

The various provisions of the CSR Rules are as under:

- Rule 1(2) - Commencement of CSR Rules
- Rule 2(1)(c) - Definition of Corporate Social Responsibility
- Rule 2(1)(e) - Definition of CSR Policy
- Rule 2(1)(f) - Definition of ‘Net Profit’
- Rule 3 - Companies to which CSR applies
- Rule 4 - CSR activities
- Rule 5 - CSR Committees
- Rule 6 - CSR Policy
135.7 CSR obligations applicable to all companies-director’s specific duty towards stakeholders

Section 166(2) of the 2013 Act requires a director of a company:
- to act in good faith to promote the objects of the company
- for the benefit of its members as a whole, and
- in the best interests of:
  - the company,
  - its employees,
  - its shareholders,
  - the community and
  - for the protection of environment.

Section 166(2) dealing with the duties of directors applies universally to directors of all companies.

So directors of a company have a specific duty to reconcile the interests of company and all stakeholders and environment as shown in the following diagram.
135.8 How section 166(2) differs from section 172(1) of UK Companies Act, 2006?

In UK, section 172(1) of the UK Companies Act, 2006 provides as under regarding duties of directors:

“172. Duty to promote the success of the company

(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

(a) the likely consequences of any decision in the long term,
(b) the interests of the company’s employees,
(c) the need to foster the company’s business relationships with suppliers, customers and others,
(d) the impact of the company’s operations on the community and the environment,
(e) the desirability of the company maintaining a reputation for high standards of business conduct, and
(f) the need to act fairly as between members of the company.”
The difference between section 172(1) of the UK Act and section 166(2) of the 2013 Act is noteworthy. The words in section 172(1) are “having regard to” the interests of employees, suppliers, customers, community and environment. So it would appear that the stakeholders cannot sue any director for ignoring their interest. The words “having regard to” only denote discretion and do not cast any mandatory obligation. According to Advanced Law Lexicon by PR Aiyar:

“The phrase ‘have regard to’ has generally directory effect and not a binding effect”.

The phrase ‘having regard to’ means the matters to which regard is to be had are to be a guide and not a fetter - State of Karnataka v. Ranganatha Reddy AIR 1991 SC 215.

However, section 166(2) of the 2013 Act is worded differently. Section 166(2) provides that “A director of a company shall act……………and in the best interests of the company, its employees, the shareholders, the community and the protection of environment”. Section 166(2) of the 2013 Act seems to cast a binding obligation on the directors of companies. It may happen that the directors may be sued by stakeholders because of section 166(2). This is clear if we examine the background behind the insertion of the words “its employees, the shareholders, the community and the protection of environment” in section 166(2).

The words “its employees, its shareholders, the community and for the protection of environment” were introduced based on the following suggestion of ICSI before the Parliamentary Standing Committee on finance:

“Specific reference for duty of directors towards shareholders, employees, environment and community should be given.”

The Parliamentary Standing Committee's recommendations in this regard in Para 11.80 of its Report (2009) are as under:

“11.80 The Committee welcome the proposed changes with regard to the duties of a director to promote the objects of the company in the best interests of its employees, the community and the environment as well, particularly in the backdrop of Corporate Social Responsibility, which is proposed to be included in this statute.”

This is onerous. As CSR Policy of EXXON Europe states:

“…. But we cannot be all things to all people. We must balance the needs of a variety of stakeholders.”...

There appears to be a clear case for amending the wording of section 166(2) in conformity with section 172(1) of the UK Act. It will be better if MCA clarifies this.
135.9 Companies to which CSR obligations under section 135 apply

There are two aspects of the applicability of CSR obligations to companies:

(i) Applicability to Indian companies - i.e. Companies registered in India [See Para 135.10]

(ii) Applicability to foreign companies [See Para 135.11].

135.10 Applicability of obligations to Indian Companies

According to section 135(1), mandatory CSR obligations under section 135 of the 2013 Act apply to every company having:

- a net worth (see para 135.12) of ` 500 crores or more or
- a turnover (see para 135.13) of ` 1000 crores or more during any financial year or
- a net profit (see para 135.14) of ` 5 crores or more during any financial year

“Any financial year” referred under sub-section (1) of section 135 of the Act read with rule 3(2) of Companies CSR Rules, 2014, implies ‘any of the three preceding financial years’. - Circular No. 21/2014, dated 18-6-2014.

If either of the three above criteria in section 135(1) apply, company will have to comply with CSR. CSR obligations shall apply to companies covered by section 135(1) irrespective of their listing status and whether

---

**Criteria for applicability of CSR u/s 135(1)**

- Either of the following 3 criteria

  - **Turnover criterion**
    - Turnover during financial year is ` 1000 crores or more

  - **Net Profit criterion**
    - Net profit during financial year is ` 5 crores or more

  - **Net Worth criterion**
    - Net worth is ` 500 crores or more
they are public or private. This is clear from Rule 5 of the CSR Rules which deals with setting up of CSR Committees [see Para 135.18] for unlisted public companies and private companies.

135.10-1 Applicable to every company including its holding company or subsidiary which fulfils criteria in section 135(1)

Rule 3(1) of the CSR Rules provides that ‘every company including its holding company or subsidiary’ which fulfils the criteria specified in sub-section (1) of section 135 shall comply with section 135 and CSR Rules. Question arises what exactly is meant by ‘every company including its holding company or subsidiary’ in Rule 3(1). Does it mean that the net worths, net profits and turnovers of a company, its holding company and subsidiaries should be clubbed to determine applicability of CSR obligations under section 135? Or does it merely mean that overseas subsidiaries/holding companies of Indian companies which fulfil section 135(1) will also have to comply with CSR?

Section 135(5) provides that “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.......”. In view of section 135(5), it cannot be the intention of Rule 3(1) that the net worths, net profits and turnovers of a company, its holding company and subsidiaries should be clubbed to determine applicability of CSR obligations under section 135. Such an interpretation shall be ultra vires the provisions of section 135(5). Of course, such clubbing may be done in circumstances which justify lifting of the corporate veil between the holding company and its subsidiary. However, such clubbing is not envisaged as a matter of routine by Rule 3(1). Thus, it appears that what Rule 3(1) merely means is that overseas subsidiary/holding company of an Indian company would also be liable to CSR if such overseas company fulfils the criteria in section 135(1). MCA needs to clarify this.

135.10-2 Relevant date for reckoning net worth, turnover and net profit

It is Turnover or net profit ‘during any financial year’ and not ‘at any time during any financial year’ that is relevant. So, for example, if turnover reaches or breaches `500 crores mark on say September 2014 and falls below `500 crores as on 31-3-2015 due to sales returns, CSR under section 135 will not apply for financial year 2014-15 by virtue of this criteria. Likewise if net profit touches or crosses `5 crores during the financial year but falls below `5 crores on 31st March due to losses, provisions of CSR under section 135 shall not apply.

It is not clear as to net worth as of what date should be considered since this is neither specified in the 2013 Act nor in the CSR Rules. Whether net profit and turnover criteria are fulfilled will be known only as at the end
of the relevant financial year. So it appears that the net worth criteria should be applied by taking net worth as at the relevant financial year-end.

135.10-3 “Once under CSR always under CSR”?

It’s quite possible that in one financial year (e.g., 2014-15) either of the three above criteria are met while in the next financial year (e.g., 2015-16) none of the above criteria are met. A question arises if CSR obligations will apply for financial year 2015-16 in this case?

Section 135(1) of the 2013 Act provides that “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…….”. Section 135(5) provides that “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”. Conjoint reading of sub-sections (1) and (5) of section 135 seems to suggest that if covered under sub-section (1) “during any financial year”, the minimum CSR spends of 2% of average net profit will have to be ensured “in every financial year” irrespective of whether section 135(1) is fulfilled or not. Thus, “once under CSR always under CSR”. This is of course subject only to the condition that the average of net profits is a positive figure. This interpretation derives support from Rule 3(2) of the CSR Rules which relaxes the rigours of the “once under CSR always under CSR” rule that flows from sub-sections (1) and (5).

Rule 3(2) provides that once a company is covered by section 135(1), it will be out of the purview of CSR only if it ceases to be covered by section 135(1) for three consecutive financial years. Thus, in the above example, CSR will apply to the company for financial years 2015-16, 2016-17 and 2017-18 whether or not section 135(1) criteria is fulfilled for these financial years or not. However, if section 135(1) criteria is not fulfilled for these three financial years then from 2018-19 the company will cease to be under CSR purview till such time it again meets the criteria specified in section 135(1).

135.10-4 Is there any way unlisted public companies and private companies covered by section 135(1) may escape the rigours of CSR?

The Limited Liability Partnership Act, 2008 (the LLP Act) contains enabling provisions pursuant to which a private limited company would be able to convert itself into a Limited Liability Partnership (LLP). These provisions are contained in section 56 and the Third Schedule to the LLP Act, 2008.
The LLP Act also contains enabling provisions in section 57 and the Fourth Schedule pursuant to which an unlisted public company can convert itself into LLP. Needless to say, such conversion decision should be taken after proper evaluation of all pros and cons such as comparison of tax benefits and tax liabilities of LLP vis-a-vis company, future plans etc. and not solely by CSR.

**135.10-5 Will CSR obligations apply if company has been in existence for less than 3 financial years preceding the financial year in question?**

Company to which section 135(1) applies is required to spend at least 2% of average net profits for three immediately preceding financial years. Question arises what if such company has been in existence for say only 2 preceding financial years? Or what if the company was incorporated only in the immediately preceding financial year? In such a case, since average of 3 years net profit can’t be calculated, can it be said that CSR obligations shall not apply in such a case? Or can it be said CSR obligations other than CSR spends such as setting up CSR Committee, formulating CSR policy etc. shall apply? It may be noted that ICAI had opined in the context of applicability of CARO requirements on internal audit to unlisted companies on the basis of average turnover criterion as under:

“…. Since average turnover of three financial years immediately preceding the year under audit is to be considered, it follows that a company cannot be covered under this clause during the first three years of its operation on the basis of the turnover criterion....” [Para 61(g) of ICAI’s Statement on CARO, 2003]

On the same analogy, it can be opined that a company covered by section 135(1) will not be required to comply with mandatory corporate spends obligations in the first three years of its operations. It is pointless to set up CSR Committee, formulate CSR Policy etc. if the obligation of CSR spends doesn’t apply. Basic idea of CSR Committee, CSR Policy etc. is to ensure that CSR spends are well directed and well spent to achieve desired social outcomes. It is desirable for MCA to clarify this aspect.

**135.10-6 Illustrations on the applicability of section 135(1)**

**Illustration 1** - The following figures are available in respect of PQR Ltd. for financial year 2014-15

<table>
<thead>
<tr>
<th></th>
<th><code>Crores</code></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit</td>
<td>5</td>
</tr>
<tr>
<td>Turnover</td>
<td>900</td>
</tr>
<tr>
<td>Net Worth</td>
<td>450</td>
</tr>
</tbody>
</table>

The company is an unlisted company. It was incorporated on 1st December 2012. The net profits for financial years 2012-13 and 2013-14 are as under:
Even though net profit of the company is ` 5 crores or more, the CSR obligations are not attracted as the company is into only its third financial year since incorporation.

**Illustration 2** - The following figures are available in respect of PQR Ltd. for financial year 2014-15

<table>
<thead>
<tr>
<th>` Crores</th>
<th>` Crores</th>
<th>` Crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>Turnover</td>
<td>900</td>
<td></td>
</tr>
<tr>
<td>Net Worth</td>
<td>450</td>
<td></td>
</tr>
</tbody>
</table>

The company is an unlisted company. It was incorporated on 1st December, 2011. The net profits for financial years 2011-12, 2012-13 and 2013-14 are as under :

<table>
<thead>
<tr>
<th>` Crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011-12</td>
</tr>
<tr>
<td>2012-13</td>
</tr>
<tr>
<td>2013-14</td>
</tr>
</tbody>
</table>

Net profit of the company is ` 6 crores, i.e., ` 5 crores or more for the year 2014-15. Further, the company has been in existence for three preceding financial years. Therefore, CSR obligations apply to the company.

**Illustration 3** - Suppose the following figures are available in respect of PQR Ltd. for financial years 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 & 2020-21.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>` Crores</td>
<td>` 5</td>
<td>` 1</td>
<td>` 2</td>
<td>` 3</td>
<td>` 3</td>
<td>` 4</td>
<td>` 6</td>
</tr>
<tr>
<td>Turnover</td>
<td>300</td>
<td>400</td>
<td>450</td>
<td>500</td>
<td>600</td>
<td>700</td>
<td>900</td>
</tr>
<tr>
<td>Net Worth</td>
<td>350</td>
<td>351</td>
<td>353</td>
<td>356</td>
<td>360</td>
<td>364</td>
<td>370</td>
</tr>
</tbody>
</table>

The company was incorporated in 2000 and has registered office in Kolkata.
It can be seen that company is covered under section 135(1) under the net profit criteria. However, it is not satisfying either of the three criteria-net worth, net profit and turnover for the next 4 financial years. Rule 3(2) provides that once a company is covered by section 135(1), it will be out of the purview of CSR only if it ceases to be covered by section 135(1) for three consecutive financial years. Therefore, even though company doesn’t satisfy any of the three criteria during 2015-16, 2016-17 and 2017-18, the CSR obligations will apply for these years too. However, from financial year 2018-19, company will be out of CSR purview till it satisfies one of the three criteria. Thus company will not be covered under CSR for financial years 2018-19 and 2019-20. The company will again be covered under CSR in 2020-21 when it again satisfies the net profit criteria.

**Illustration 4** - Suppose the following data is available for XYZ Ltd. (unlisted company) as at 31-3-2015:

<table>
<thead>
<tr>
<th><code>Crores</code></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid-up share capital</td>
<td>200</td>
</tr>
<tr>
<td>Revaluation Reserve</td>
<td>200</td>
</tr>
<tr>
<td>Surplus i.e. balance in statement of P&amp;L</td>
<td>150</td>
</tr>
</tbody>
</table>

Is CSR applicable to the company on the basis of the net worth criteria? According to section 2(57), revaluation reserve is not to be considered for calculating the net worth. Therefore, net worth is `350 crores [` 200 crores (paid-up capital) plus `150 crores (surplus)]. Since net worth is less than `500 crores, CSR obligations under section 135 are not attracted based on net worth criteria.

**135.11 Applicability of CSR to foreign companies**

The following are the ingredients of definition of ‘foreign company’ in section 2(42)—

- It must be a company or body corporate;
- It must be incorporated outside India;
- It has a place of business in India whether by itself or through an agent physically or through electronic mode and conducts any business activity in India in any other manner.

Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014 as well as Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014 define “electronic mode” means carrying out electronically based, whether main server is installed in India or not, including, but not limited to—

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;

(iii) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;

(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and

(v) all related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

Rule 3 of the Companies (Registration Offices and Fees) Rules, 2014 provides that every company including foreign company shall be deemed to have carried out business in India if it carries out its business through electronic mode, whether its main server is installed in India or outside India, which—

(i) undertakes business to business and business to consumer transactions, data interchange or other digital supply transactions;

(ii) offers to accept deposits or invites deposits or accepts deposits or subscriptions in securities, in India or from citizens of India;

(iii) undertakes financial settlements, web based marketing, advisory and transactional services, database services or products, supply chain management;

(iv) offers online services such as telemarketing, telecommuting, telemedicine, education and information research; or

(v) undertakes any other related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

According to Rule 3(1) of the CSR Rules, a foreign company defined under section 2(42) having its branch office or project office in India shall comply with section 135 and the CSR Rules if it fulfils the criteria in section 135(1).
The proviso to rule 3(1) provides that net worth, turnover or net profit of a foreign company of the Act shall be computed in accordance with the 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.

Section 381(1)(a) of the 2013 Act read with Rule 4 of the Companies (Registration of Foreign Companies) Rules, 2014 refers to accounts of foreign company relating to its Indian business operations prepared in accordance with Schedule III to the 2013 Act.

**135.11-1 Definitions of ‘branch office’ and ‘project office’**

The expressions ‘branch office’ and ‘project office’ have not been defined in the CSR Rules. Rule 2(2) provides that words not defined in CSR Rules but defined in the 2013 Act will have to be understood as defined in the 2013 Act. Section 2(14) of the 2013 Act defines ‘branch office’. Accordingly, ‘branch office’ in relation to a company means any establishment described as such by the company. It must be noted that ‘branch office’ in section 2(14) has been defined in relation to a ‘company’ and ‘company’ does not include ‘foreign company’. The expression ‘project office’ is not defined in the 2013 Act as well. So, it appears that these terms will have to be understood as per the definitions under FEMA,1999 since RBI approval letter required for a foreign company to set up a branch office or a project office.

‘Branch’ shall have the meaning assigned to it in sub-section (9) of section 2 of the Companies Act, 1956 [Regulation 2(c) of the FEM (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000].

‘Project Office’ means a place of business to represent the interests of the foreign company executing a project in India but excludes a Liaison Office; [Regulation 2(f) of the FEM (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000] ‘Liaison Office’ means a place of business to act as a channel of communication between the principal place of business or head office by whatever name called and entities in India but which does not undertake any commercial/trading/industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel; [Regulation 2(e) of the FEM (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000].

MCA needs to clarify whether the “branch office” and “project office” should be understood as defined under FEMA.
135.11-2 Will CSR obligations apply if the branch office/project office of foreign company in India hasn’t completed three financial years of operations?

Since net profit is to be reckoned on the basis of accounts of Indian business operations prepared under section 381(1)(a), it may be opined [See Para 135.11-1 above] that branch office/project office will not be required to comply with CSR obligations in first 3 years of its operations.

135.12 Net worth

Section 2(57) of the 2013 Act defines ‘net worth’ to mean:
the aggregate value of:
+ the paid-up share capital;
+ all reserves created out of the profits; and
+ Securities Premium Account.

after deducting the aggregate value of:
+ accumulated losses,
+ deferred expenditure; and
+ miscellaneous expenditure not written off.

All the above figures taken to compute net worth should be as per the audited balance sheet.

The following reserves should not be included for computation of net worth:
+ reserves created out of revaluation of assets,
+ reserves created out of write-back of depreciation and
+ reserves created out of amalgamation.

135.12-1 Reserves created out of the profits

The words “out of the profits” means out of the net profit. An agreement to pay an annual sum “out of the profits” of a business, refers to net profits (per Parke B., Bond v. Pittard 7 L.J. Ex. 78). (Stroud’s Judicial Dictionary). The above interpretation seems reasonable since the definition expressly excludes the following items from computation of net worth:
+ reserves created out of revaluation of assets,
+ reserves created out of write-back of depreciation and
+ reserves created out of amalgamation.

What is common between the three above reserves excluded from computation of the net worth by the definition is that they are not created out
of net profits - i.e. by appropriation out of the net profit. Thus, it would appear that any “reserve” (including capital redemption reserve, debenture redemption reserve, Tonnage Tax Reserve created under the IT Act, 1961) which is created out of the net profit will qualify as “reserves created out of the profits”. As long as it is created by appropriation of net profits, it will be considered for calculation of net worth. It does not matter whether appropriation is pursuant to a statutory compulsion or voluntary. Also it does not matter whether the reserve created out of profits is available for dividends or not. The three reserves expressly excluded from computation of net worth should be regarded as illustrative and not as exhaustive. In other words, any other reserve not created by appropriation of net profits would also have to be excluded from the computation of net worth - for example, capital reserve created by crediting subsidy in the nature of promoters’ contribution/by crediting profit on reissue of forfeited shares would not be included in computation of net worth. The Mimansa Principle of Interpretation Kakebhyo Dadhi Rakshitam¹ (Protect the curds from the crow where crow should be understood in an illustrative sense) applied by the Allahabad High Court supports the above view.

135.12-2 Whether profits carried forward in P&L account is to be included in net worth

A mass of undistributed profits (i.e. P&L account credit balance or ‘surplus’) does not automatically become a reserve. Somebody passing the required authority must clearly indicate that a portion thereof has been earmarked or separated from the general mass of profits with a view to constituting it into a general reserve or a specific reserve [Vazir Sultan Tobacco Co. Ltd. v. CIT [1981] 7 Taxman 28 (SC)]. Therefore, since profit and loss balance (surplus) have not been expressly included by definition in computation of net worth, it would appear that the same is not covered by “all reserves created out of profits” and cannot be included in computation of net worth.

135.12-3 Whether auditor’s qualifications should be adjusted for calculating net worth?

Though the definition requires figures to be taken as per audited balance sheet, there is no mention of whether the auditor’s qualifications in the audit report should be taken into account to compute the net worth.

¹. See LIC writ petition No. 3807 of 1993, decided on 9-4-1998 by the Allahabad High Court reported in 1998 (2) All CJ 1364 where this rule of interpretation was applied.
135.13 Turnover

According to section 2(91) of the 2013 Act, “turnover” means the aggregate value of realization made by the company during a financial year from:

◆ the sale, supply or distribution of goods or
◆ services rendered or
◆ both

135.13-1 ICAI’s views on turnover

The following views of ICAI expressed by it in Statement on CARO, 2003 are relevant with regard to the definition of ‘turnover’:

◆ Turnover is the aggregate amount (i.e. gross consideration) for which the sales are effected by the company/services are rendered by the company.
◆ For an agent, turnover is the amount of commission earned.
◆ Turnover should be calculated in accordance with the method of accounting regularly adopted by the company. That is to say, whether to include certain items such as sales tax/excise duty collected would depend upon the method of accounting regularly employed by the company.
◆ If the principal business of the company is letting out of property of the company, then only the rental income should be considered as part of ‘turnover’ for the purposes of determining the applicability of CARO, 2003 to a private limited company. Interest/dividend income should be treated as turnover for the aforesaid purpose only if the company is an investment company.

According to ICAI’s Guidance Note on Tax Audit, the following points should be kept in mind while determining ‘turnover’:

◆ For an agent, turnover is the commission earned by him and not the aggregate amount for which sales are effected or services are rendered.
◆ Trade discount should be deducted from sales.
◆ Commission allowed to third parties should not be deducted from ‘sales’.
◆ Sales of scrap shown under ‘miscellaneous income’ should be included in ‘turnover’.
◆ Goods returned, price adjustments, trade discount and cancellation of bills for the period under audit should be deducted from total sales.
Ancillary charges - packing, freight, forwarding, interest, commission etc. should be excluded from turnover. However, where separate demarcation of these charges is not possible due to the method of accounting followed by the assessee or where company does not show these charges separately in its bill/invoice, turnover will include these charges. If charges such as packing, freight, forwarding and handling represent reimbursement of actual cost, these will not form part of ‘turnover’.

If sales tax/excise duty are included in sales price, no adjustment should be made in respect of these for determining the turnover. This method of accounting may be said to be the ‘inclusive method’.

If sales tax/excise duty recovered are credited to separate accounts (Excise Duty Payable account/Sales Tax payable account) and payments to the authority are debited to the said separate account (exclusive method), these would not form part of turnover. However, ICAI’s ‘Guidance Note on Accounting for State-Level VAT’ specifies that the right way to account for taxes collected is the exclusive method.

135.13-2 Whether auditor's qualifications should be adjusted for calculating turnover

The definition is silent on the issue of whether auditors’ qualifications should be adjusted in determining turnover.

135.14 Net profit

The expression ‘net profit’ is important in two ways in the context of CSR provisions. Firstly, it is one of the criteria to determine whether company is covered by section 135(1) so as to attract CSR provisions. Secondly, minimum quantum of CSR spends is stipulated as a percentage of average net profits.

The term ‘net profit’ is not defined by section 135 or by any other provision of the 2013 Act. According to Rule 2(1)(f) of the CSR Rules, ‘Net Profit’ means net profit 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 provisions of section 135 of the Act.
Rule 2(1)(f) doesn’t clarify what net profit means. Nor does it clarify whether it is net profit before tax or after tax. ICAI’s Revised Guidance Note on Tax Audit defines “Net Profit” as “net profit before tax” and as “excess of revenue over the expenses in a particular period”. A question arises whether adjustments contemplated by section 198 are to be made to calculate ‘net profits’ both purposes - i.e. to determine applicability of CSR provisions as well as quantifying minimum required CSR spends?

The second proviso to Rule 2(1)(f) provides that in case of a foreign company covered under these rules [See Para 135.11 above, 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 and section 198 of the Act. So, in case of a foreign company, adjustments required by section 198 required to calculate net profits for both purposes. In case of an Indian company, it would appear that section 198 adjustments to be made only for quantifying minimum CSR spends required to be made. Whether section 135(1) is attracted on the basis of the ‘5 crores net profit criteria is to be determined on the basis of section 2(1)(f) alone. It is desirable that MCA clarifies this issue.

The first proviso to Rule 2(1)(f) provides that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the 1956 Act shall not be re-calculated in accordance with the 2013 Act. It is clear that this first proviso has application only for calculation of average net profits for calculating CSR spends. Question arises whether net profits of past years for which accounts were prepared in accordance with the 1956 Act should be adjusted in accordance with section 198 of the 2013 Act? Or should they be adjusted in accordance with corresponding section 349/350 of the 1956 Act? Or they need no adjustments at all? It appears that, in view of the provisions of the above first proviso, net profits of past years for which the 2013 Act was not in force need not be adjusted at all. MCA needs to clarify this issue.

135.15 Qualifying CSR activities/expenditure

According to section 135(3)(a) of the 2013 Act, CSR Policy of a company “shall indicate the activities to be undertaken by the company as specified in Schedule VII”.

CSR expenditure 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 2013 Act [Rule 7 of the CSR Rules].

According to Rule 2(1)(e) of the CSR Rules:

“CSR Policy’ relates to the activities as specified in Schedule VII to the Act and the expenditure thereon, excluding the activities undertaken in pursuance of the normal course of business of a company”
According to Rule 2(1)(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 2013 Act.

(ii) Projects or programs relating to activities undertaken by the board of directors of a company in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy shall cover subjects enumerated in Schedule VII to the 2013 Act.

Circular No. 21/2014, dated 18-6-2014 issued by MCA clarifies that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the 2013 Act, 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.

135.16 Activities specified in Schedule VII to the 2013 Act

Schedule VII as amended by the Notification No. GSR 130(E), dated 27-2-2014, GSR 261(E), dated 31-3-2014 and GSR 568(E), dated 6-8-2014 and Notification F. No. 1/18/2013-CL-V, dated 24-10-2014, specifies activities which companies may include in their CSR Policies. These are activities relating to:

(i) Eradicating hunger, poverty and malnutrition
   - Promoting health care including preventive healthcare and sanitation including contribution to the Swach Bharat Kosh set up by the Government for promotion of sanitation
   - 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
   - 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
   - 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
- Maintaining quality of soil, air and water including 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 of public libraries
- Promotion and development of traditional arts and handicrafts

(vi) Measures for the benefit of armed forces veterans, war widows and their dependants

(vii) Training to promote
- Rural sports
- Nationally recognized sports
- Paralympic sports
- 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 SC/ST/OBC, minorities and women

(ix) Contributions or funds provided to technology incubators located within academic institutions which are approved by Central Govt.

(x) Rural development projects.

(xi) slum area development.

Explanation.—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.

135.16-1 MCA’s clarification on scope of Schedule VII
Circular No. 21/ 2014, dated 18-6-2014 issued by MCA clarifies 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 and are intended to cover a wide range of activities as illustratively mentioned in the Table below:
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Activities</th>
<th>Whether covered under Schedule VII of the Act</th>
</tr>
</thead>
</table>
| 1.     | Promotion of Road Safety through CSR:  
   (i) (a) Promotions of Education, “Educating the Masses and Promotion of Road Safety awareness in all facets of road usage,  
   (b) Drivers' training.  
   (c) Training to enforcement personnel,  
   (d) Safety traffic engineering and awareness through print, audio and visual media” should be included.  
   (ii) Social Business Projects: “giving medical and Legal aid, treatment to road accident victims” should be included. | (i) (a) Schedule VII(ii) under “promoting education”.  
   (b) Drivers training etc. Schedule VII(ii) under “vocational skills”.  
   (c) It is establishment functions of Government (cannot be covered).  
   (d) Schedule VII(ii) under “promoting education”.  
   (ii) Schedule VII (i) under ‘promoting health care including preventive health care.’ |
| 2.     | Provisions for aids and appliances to the differently-able persons - ‘Request for inclusion’ | Schedule VII(i) under ‘promoting health care including preventive health care.’ |
| 3.     | The company contemplates of setting up ARTIIC (Applied Research Training and Innovation Centre) at Nasik. Centre will cover the following aspects as CSR initiatives for the benefit of the predominately rural farming community:  
   (a) Capacity building for farmers covering best sustainable farm management practices.  
   (b) Training Agriculture Labour on skill development.  
   (c) Doing our own research on the field for individual crops to find out the most cost optimum and Agri-ecological sustainable farm practices.(Applied research) with a focus on water management.  
   (d) To do Product Life Cycle analysis from the soil conservation point of view. | Item No. (i) of Schedule VII under the head of “promoting education” and “vocational skills” and “rural development”.  
   (a) “Vocational skill” livelihood enhancement projects.  
   (b) “Vocational skill”  
   (c) ‘Ecological balance’, ‘maintaining quality of soil, air and water’.  
   (d) “Conservation of natural resource” and ‘maintaining quality of soil, air and water’.
4. To make "Consumer Protection Services" eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre).
   (i) Providing effective consumer grievance redressal mechanism.
   (ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution.
   (iii) Consumer protection activities.
   (iv) Consumer Rights to be mandated.
   (v) All consumer protection programs and activities on the same lines as Rural Development, Education etc.

5. (a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as "promoting education" and hence eligible for compliance of companies with Corporate Social Responsibility.
   (b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as "protection of national heritage, art and culture, including restoration of buildings and sites of historical importance" and hence eligible for compliance of companies with CSR.

6. Non-Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.

7. Disaster Relief

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Activities</th>
<th>Whether covered under Schedule VII of the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>To make &quot;Consumer Protection Services&quot; eligible under CSR. (Reference received by Dr. V.G. Patel, Chairman of Consumer Education and Research Centre). (i) Providing effective consumer grievance redressal mechanism. (ii) Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution. (iii) Consumer protection activities. (iv) Consumer Rights to be mandated. (v) All consumer protection programs and activities on the same lines as Rural Development, Education etc.</td>
<td>Consumer education and awareness can be covered under Schedule VII (ii) &quot;promoting education&quot;.</td>
</tr>
<tr>
<td>5.</td>
<td>(a) Donations to IIM [A] for conservation of buildings and renovation of classrooms would qualify as &quot;promoting education&quot; and hence eligible for compliance of companies with Corporate Social Responsibility. (b) Donations to IIMA for conservation of buildings and renovation of classrooms would qualify as &quot;protection of national heritage, art and culture, including restoration of buildings and sites of historical importance&quot; and hence eligible for compliance of companies with CSR.</td>
<td>Conservation and renovation of school buildings and classrooms relates to CSR activities under Schedule VII as &quot;promoting education&quot;.</td>
</tr>
<tr>
<td>6.</td>
<td>Non-Academic Technopark TBI not located within an academic Institution but approved and supported by Department of Science and Technology.</td>
<td>Schedule VII(ii) under &quot;promoting education&quot;, if approved by Department of Science and Technology.</td>
</tr>
<tr>
<td>7.</td>
<td>Disaster Relief</td>
<td>Disaster relief can cover wide range of activities that can be appropriately shown under various items listed in Schedule VII. For example,</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Activities</td>
<td>Whether covered under Schedule VII of the Act</td>
</tr>
<tr>
<td>--------</td>
<td>---------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>(i) Medical aid can be covered under ‘promoting health care including preventive health care.’</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(ii) Food supply can be covered under eradicating hunger, poverty and malnutrition.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(iii) Supply of clean water can be covered under ‘sanitation and making available safe drinking water’.</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Trauma care around highways in case of road accidents.</td>
<td>Under ‘health care’.</td>
</tr>
<tr>
<td>9.</td>
<td>Clarity on “rural development projects”.</td>
<td>Any project meant for the development of rural India will be covered under this.</td>
</tr>
<tr>
<td>10.</td>
<td>Supplementing of Govt. schemes like mid-day meal by corporates through additional nutrition would qualify under Schedule VII.</td>
<td>Yes. Under Schedule VII, Item No. (i) under ‘poverty and malnutrition’.</td>
</tr>
<tr>
<td>11.</td>
<td>Research and Studies in the areas specified in Schedule VII.</td>
<td>Yes, under the respective areas of items defined in Schedule VII. Otherwise under ‘promoting education’.</td>
</tr>
<tr>
<td>12.</td>
<td>Capacity building of Government officials and elected representatives - both in the area of PPPs and urban infrastructure.</td>
<td>No.</td>
</tr>
<tr>
<td>13.</td>
<td>Sustainable urban development and urban public transport systems.</td>
<td>Not covered.</td>
</tr>
<tr>
<td>14.</td>
<td>Enabling access to, or improving the delivery of, public health systems be considered under the head “preventive healthcare” or “measures for reducing inequalities faced by socially &amp; economically backward groups”?</td>
<td>Can be covered under both the heads of “healthcare” or “measures for reducing inequalities faced by socially &amp; economically backward groups”, depending on the context.</td>
</tr>
<tr>
<td>15.</td>
<td>Likewise, could slum re-development or EWS housing be covered under “measures for reducing inequalities faced by socially &amp; economically backward groups”?</td>
<td>Yes.</td>
</tr>
<tr>
<td>16.</td>
<td>Renewable energy projects</td>
<td>Under ‘Environmental sustainability, ecological balance and conservation of natural resources’.</td>
</tr>
</tbody>
</table>
17. (i) Are the initiatives mentioned in Schedule VII exhaustive? 
   (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c)(ii) of the Final Rules, they will count)? 

<table>
<thead>
<tr>
<th>No.</th>
<th>Activities</th>
<th>Whether covered under Schedule VII of the Act</th>
</tr>
</thead>
<tbody>
<tr>
<td>17</td>
<td>(i) Are the initiatives mentioned in Schedule VII exhaustive? (ii) In case a company wants to undertake initiatives for the beneficiaries mentioned in Schedule VII, but the activity is not included in Schedule VII, then will it count (as per 2(c)(ii) of the Final Rules, they will count)?</td>
<td>(i) &amp; (ii) Schedule VII is to be liberally interpreted so as to capture the essence of subjects enumerated in the Schedule.</td>
</tr>
</tbody>
</table>

18. US-India Physicians Exchange Program - broadly speaking, this would be a program that provides for the professional exchange of physicians between India and the United States.

No.

---

**135.17 Mandatory CSR obligations of companies covered by section 135(1)**

Companies covered by section 135(1) [see Para 135.10] are required to comply with the following obligations laid down by section 135:

- To form a CSR Committee of directors (see para 135.18)
- To formulate a CSR Policy based on CSR Committee's recommendations (see para 135.19)
- To undertake activities included in CSR Policy

---

![Mandatory CSR obligations under section 135](image)
- To spend at least 2% of net profit on CSR (see Para 135.15)
- To disclose CSR Policy in Board of Director's Report as well as on the website.

### 135.18 Composition of CSR Committee of directors

Section 135(1) of the 2013 Act provides that every company to which CSR provisions apply 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.

Section 135(1) requires that the CSR Committee shall have at least one independent director. This requirement places unnecessary burden to appoint an ID on unlisted companies who were otherwise not required to appoint an ID in terms of section 149(4) of the 2013 Act. Also the minimum 3 directors requirement placed undue burden on private companies which are required to have only 2 directors.

In view of the hardships faced by unlisted companies and private companies, Rule 5(1) of the CSR Rules relaxes the requirements of section 135(1) and provides that the companies mentioned in rule 3 shall constitute CSR Committee as under:

- **an unlisted company or a private company covered under section 135(1) which is not required to appoint an independent director under section 149(4)** shall have its CSR Committee without independent director.

- **a private company having only two directors on its Board** shall constitute CSR Committee with 2 such directors.

- **with respect to a foreign company covered under these rules,** the CSR Committee shall comprise at least 2 persons of which one shall be as specified in section 380(1)(d) and another person shall be nominated by the foreign company.

Section 135(2) of the 2013 Act provides that the Board’s report under section 134(3)(o) shall disclose the composition of the Corporate Social Responsibility Committee.

### 135.18.1 Role of the CSR Committee

Section 135(3) of the 2013 Act provides that the Corporate Social Responsibility Committee shall,—

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy [see Para 135.19] which shall indicate the activity or
activities to be undertaken by the company as specified in Schedule VII (see Para 135.18-2);

(b) recommend the amount of expenditure to be incurred on the activities referred to in (a) above; and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

Rule 5(2) of the CSR Rules provides that the CSR Committee shall institute a transparent monitoring mechanism for the implementation of the CSR projects or programs or activities undertaken by the company.

135.18-2 Activities which may be included by companies in their CSR Policies [Schedule VII]

Schedule VII specifies activities which companies may include in their CSR Policies. [See Para 135.16 for Schedule VII activities]

135.19 CSR policy to be formulated and recommended to the board by CSR Committee

Section 135(3)(a) of the 2013 Act provides that the CSR Committee shall formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activity or activities to be undertaken by the company as specified in Schedule VII.

135.19-1 Definition of ‘CSR Policy’

According to Rule 2(1)(e) of the CSR Rules :

“CSR Policy’ relates to the activities as specified in Schedule VII to the Act and the expenditure thereon, excluding the activities undertaken in pursuance of the normal course of business of a company”

135.19-2 Contents of CSR Policy

Rule 6(1) of the CSR Rules provides that the CSR Policy of the company shall, inter alia, include the following namely:

(a) a list of CSR projects/programmes which a company plans to undertake during the implementation year, specifying modalities of execution in the areas/sectors chosen and implementation schedules for the same.

Note: The CSR activities does not include the activities undertaken in pursuance of the normal course of business of the company. The activities included by a company in its CSR Policy shall be related to the activities included in Schedule VII to the 2013 Act.
(b) monitoring process of such projects or programs.

(c) the CSR Policy of the company should provide that surplus arising out of the CSR activity will not be part of business profits of a company.

135.20 Board to approve CSR policy, disclose it and ensure activities included in it are undertaken

Section 135(4) of the 2013 Act provides that the Board of Directors of every company referred to in section 135(1) shall,—

(a) approve the CSR Policy for the company after taking into account the recommendations of the CSR Committee

(b) disclose contents of CSR Policy in its report (under section 134)

(c) place the CSR Policy on its website, if any, in such manner as may be prescribed

(d) ensure that the activities as are included in the CSR Policy of the company are undertaken by the company.

135.21 Mandatory CSR spends - 2% of average net profits

Section 135(5) of the 2013 Act provides that the Board of every company to which CSR provisions apply [see Paras 135.5, 135.6 and 135.7] shall ensure that at least 2% of average net profits of the company made during three immediately preceding financial years is spent in every financial year on such policy. ‘Average net profit’ shall be calculated as per section 198.

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.

Further 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.

135.21-1 “Spend”; “Spent”

The Oxford Dictionary defines “Spend” as “Give (money) to pay for goods, services, or so as to benefit someone or something:”

Stroud’s Judicial Dictionary defines ‘Spend’, “Spent” as under:

“Expenditure’: What do you expend? You expend that which you have. In common parlance, you say that a man has spent more than his income. That is common parlance, but that is not language which you would suppose the legislature to use. A man cannot spend what he has not got; he can mortgage or pledge, but he cannot actually spend” (per Kekewich J., Re Bristol [1893] 3 Ch. 161).”

41
135.21-2 'Average Net Profit'

'Average net profit' shall be calculated as per section 198 of the 2013 Act. According to Rule 2(1)(f) of the CSR Rules, 'Net Profit' means net profit 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 provisions of section 135 of the Act.

The first proviso to Rule 2(1)(f) provides that net profit in respect of a financial year for which the relevant financial statements were prepared in accordance with the 1956 Act shall not be re-calculated in accordance with the 2013 Act.

The second proviso to Rule 2(1)(f) provides that in case of a foreign company covered under these Rules [See Para 135.7], 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 and section 198 of the Act.

Thus, it appears that, in case of companies registered in India, average net profits will have to be calculated as under:

(a) Take net profit as per its financial statements prepared in accordance with the applicable provisions of the Act.
(b) Make adjustments required by section 198.
(c) Exclude the following from net profits:
   (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 provisions of section 135 of the Act.
(d) Calculate net profit for each of the preceding three financial years as per (a) to (c) above, aggregate them and divide by 3.

In case of foreign companies covered by rule 3, the average net profits will have to be calculated as under:

(a) Take net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381.
(b) Make adjustments to net profit in (a) above as required by section 198.

(c) Calculate net profits as per (a) and (b) above for each of the three preceding financial years, aggregate them and divide by 3.

135.21-3 Calculation of net profits as per section 198

In calculating net profits of a company in any financial year for managerial remuneration purposes:

◆ Credit shall be given for bounties and subsidies received from any Government or public authority unless and except in so far as the Central Government directs

◆ Credit shall not be given for the following sums:

(i) premium on shares or debentures of the company which are issued or sold by the company;

(ii) profits on sales by the company of forfeited shares;

(iii) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(iv) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets. Where the amount for which any fixed asset is sold exceeds the written down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written down value;

(v) any change in carrying amount of an asset or of a liability recognized in equity (reserves) [including surplus in P&L account] on measurement of the asset or the liability at fair value.

◆ The following amounts shall be deducted:

(a) all the usual working charges;
(b) directors' remuneration;

(c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

(d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

(e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

(f) interest on debentures issued by the company;

(g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(h) interest on unsecured loans and advances;

(i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(j) outgoings inclusive of contributions made bona fide charitable and other funds [See section 181];

The consolidated payment in respect of leasehold land is virtually indistinguishable from an advance payment of rent for a specified period of years; by this, the purchaser expends a certain sum in advance as a result of which he saves the cost of rent in future years to come. The amount annually amortized in respect of the leasehold land has, therefore, necessarily to be deducted while computing the net profits under section 349, as falling within the scope of the “outgoings” in clause (j) of section 349(4)(j) of the 1956 Act [corresponding to section 198(4)(j) of the 2013 Act]. [Source : Company News & Notes, September 1, 1963 issue.] Contributions made by a company to a political party or for a political purpose pursuant to section 293A of the 1956 Act [corresponding to section 182 of the 2013 Act] should be regarded as “outgoings” only as they are made for commercial expediency. The fact that section 293A is not specifically referred to in clause (j) of section 349(4) is not material since the language used therein, viz., “outgoings inclusive of...” is only illustrative and does not purport to be exhaustive. [MCA's Letter : No. 8/23(349)/61-PR, dated 8-1-1962.]

(k) depreciation to the extent specified in section 123;

(l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any
year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

(m) any compensation or damages to be paid in virtue of any legal liability, including a liability arising from a breach of contract;

(n) any sum paid by way of insurance against the risk of meeting any liability referred to in (m) above;

(o) debts considered bad and written off or adjusted during the year of account.

◆ The following amounts shall not be deducted:

(i) income-tax and super tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under (d) and (e) above;

(ii) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in (m) above;

(iii) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(iv) any change in carrying amount of an asset or of a liability recognized in equity (reserves) [including surplus in P&L account] on measurement of the asset or the liability at fair value.

135.22 Is there any cap on CSR spends?
Section 135 only stipulates mandatory minimum CSR spends of at least 2% of average net profits. It does not stipulate any cap/ceiling on the CSR spends. The CSR Rules also do not stipulate any cap on CSR spends.

135.23 Is ‘mandatory CSR spend’ a tax?
The element of compulsory payment without reference to services in return is there in CSR spend also. But unlike taxes, the money doesn’t flow into the Government coffers. Moreover, if company defaults on CSR, there is no provision for coercive recovery by Government.

135.24 Does CSR spend differ from charity?
Character of charity is that it is purely voluntary and there is no legal obligation to make that contribution. CSR spends even if its contribution to PMNRF lacks this purely voluntary character.
135.25 Can the company's CSR policy restrict CSR spends to only donations to PMNRF?

Contributions to the Prime Minister’s Relief Fund is one of the CSR activities specified in Schedule VII to the 2013 Act. The speciality of this CSR activity is that the company can simply contribute money and be done with it. There is no need of monitoring the spends like it may the case with Eradicating hunger, poverty and malnutrition, Promoting preventive healthcare and sanitation, Making available safe drinking water etc. Besides there is 100% deduction of contribution under section 80G of the Income-tax Act,1961 that goes with it. This is probably the one CSR activity in Schedule VII where tax treatment is clear. In view of this, the question arises whether company can frame a CSR Policy to spend entire required minimum CSR spend of 2% of ANP per financial year only on PMNRF. Answer to the question appears to be "yes". There appears to be no restriction on company spending all its required CSR spend on any one activity specified in Schedule VII.

135.26 Scope of CSR expenditure

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 [Rule 7 of the CSR Rules].

135.27 Expenditure which will not be considered as CSR spends

The CSR Rules specify the expenditure which will not be regarded as CSR spends as follows.

135.27-1 Expenditure in activities undertaken in pursuance of normal course of business

Activities undertaken in pursuance of the normal course of business of a company shall not be regarded as CSR activities. Hence, expenditure on such activities shall not be counted as CSR spends. [Rule 4(1)/ Proviso below Rule 6(1)(b) of the CSR Rules].

135.27-2 Expenditure outside India

Expenditure on only CSR activities undertaken within India shall be considered as CSR spend. Thus, expenditure on CSR activities undertaken outside India will not count as CSR spends. [Rule 4(4) of the CSR Rules].

135.27-3 Expenditure exclusively for the benefit of employees of the company or their families

Only activities which are not exclusively for the benefit of employees of the company or their families shall be considered as CSR activity. Thus,
expenditure on activities which are exclusively for the benefit of employees of the company or their families shall not count as CSR spends. [Rule 4(5) of the CSR Rules]

135.27-3a Exclusively - P.R. Aiyar’s Advanced Law Lexicon gives the following definition of the word ‘exclusively’:

“To the exclusion of all others; without admission of any others to participation”

135.27-3b Family - There is no definition of ‘family’ in the 2013 Act nor in the CSR Rules.

P.R. Aiyar’s Advanced Law Lexicon gives the following definitions of ‘family’:

“The father, the mother, and the children, ordinarily constitute a “family”. A family constitutes all who live in one house under one head”. (Page 303).


While the term may be said to have a well defined, broad, and comprehensive meaning in general, (Race v. Oldridge, 32 Am Rep 27), it is one of great flexibility and is capable of many different meanings according to the connection in which it is used. Thus it may mean ‘children’ ‘wife and children,’ ‘blood relations,’ or the members of the domestic circle, according to the context; it may be of narrow or broad-meaning as the intention of the parties using the word, or as the intention of the law using it, may be made to appear. (Ferb Rache v. Grand Lodge 1 Mo. App. 268, 271). (Bom. Act 3, 1874)

In its ordinary and primary sense the term ‘family’ signifies the collective body of persons living in one house, or under one head or manager, or one domestic government; the relations between such persons necessarily being of a permanent or domestic character, not that of persons, abiding temporarily together as strangers; a household, those who live under the same roof with the pater familias who form his fireside. In its restricted use the term would include only parents and their children, but the term, as commonly understood is not so limited (Bair v. Robinson 56 Am. Rep. 198); thus it may include grandchildren and all the persons of the same blood living together in the household; so it may include son-in-law and daughter-in-law; in fact it may include all members of the household living under the authority of the head thereof, as also the servants employed in the house, and sometimes it may include persons who are merely lodgers boarders. (19 Ame. Cyc. 451-452).

Although the term ‘family’ is sometimes used to include those descended or claiming descent from a common ancestor: it has very often, a much wider import, it is often used to indicate a body of persons formed by those who are merely connected by blood or affinity; it is sometimes used to include even a body of persons who live in one house or under one head. [Oxford Dict., of Vol. 5, p.55 quoted in 71C 436 (439)]
No definite number of persons is necessary to constitute a family when the term is used in its primary sense, except that there must be at least two persons, for it is obvious that a collection of persons must consist of more than one person; a husband and wife living together without children, servants or any one at all may constitute a family. The word is frequently used in common speech without reference to any established household, but merely for the purpose of indicating the individuals related, as husband, wife or parents and children.

‘The family consists of those who live under the same roof with the pater familias; those who form (if I may use the expression) his fire-side’ - Lord Kenyon, C.J., R. v. Inhabitants of Darlington (1792), 4 TR 800. The word “family” is elastic and capable of different interpretations. Where a will, which made a good bequest of the income of a house for religious purposes, provided: ‘The said house shall remain under the control and the supervision of the shebait for the time being, but shall be available to all the members of my’ (testator’s) ‘family both male and female for temporary residence and use,’ held that the phrase ‘members of my family’ in the will meant me members of the testator’s family who were existing at the date of his death and the bequest was valid. Their Lordships see no reason why the word ‘family’ in this will should be extended to include people other than those existing when the testator died. [24 CWN 1026 : 1921 MWN 550 : 61 IC 323 : 28 MLT 453]. Family meaning of. See 54 MLJ 357 : 109 IC 661 : 1928 M. 497 : 1928 Oudh 155. Descendants on female side if included in the word ‘family’. [See AIR 1928 Oudh 155].

The word “family” is not a term of art, but describes a ‘unit’ which has the familial characteristics, e.g. existence of blood relationship. Fitzpatrick v. Sterling Housing Association Ltd. (1999) 4 All ER 705, p. 747 (HL). [Rent Act, 1977, Sch. I, para 2].

Hindu law—The word ‘family’ in its popular sense means children. Devki Nandan v. Murlidhar AIR 1957 SC 133, 139.

The word ‘family’ does not mean a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. Ram Chavan v. Girija Nandini AIR 1966 SC 323, 329.

The word family in a will held to mean ‘the testator’s descendants and their wives living at the time of his death. (1 CWN 671 N.)

In a joint Hindu family parents living separately are also members of the family of their son. S.K. Dev v. D.C. Gagerna AIR 1985 Del. 169, 175. [Delhi Rent Control Act (59 of 1958), S. 14(1), Proviso (e)]

The nephews should be regarded as the members of the landlord’s family. Ram Prasad Singh v. Mukandlal AIR 1952 Punj. 189. [Delhi and Ajmeer - Merwara Rent Control Act 19 of 1947, S. 9(1)(e)]

Even if members of a joint Hindu Family live in different places because of their being employed in offices or carrying on other avocations the tie is strong enough to include them within the term ‘family.’ Nanak Chand v. Tara Devi AIR 1953 Pun. 156.
‘FAMILY’ means a primary social group consisting of parents and their offspring and as such the landholder, his wife and his offspring consisting of three minor sons and three minor daughters constitute a family. State of Gujarat v. Jat Laxmanji Talsji AIR 1988 SC 825, 828. [Gujarat Agricultural Land Ceiling Act (1960), S. 6(3-B)]

‘FAMILY’ connotes a group of people related by blood or marriage. C. Krishna Prasad v. C.I.T. Bangalore AIR 1975 SC 498, 499. [Income-tax Act (43 of 1961), S. 2(31),(ii)]

Court held that the word “family” has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. The term “family” must always be liberally and broadly construed so as to include near relations of the head of the family. Baldev Sahai v. R.C. Bhasin AIR 1982 SC 1091, 1094; Madhuben Natwarlal Joravarnagar v. Prajapati Parshottam Tulsidas AIR 1996 Guj. 40, 42.

The group consisting of parents and their children; those descended or claiming descent from a common ancestor; members of family; the household, or all those who live in one house (as parents, children, servants etc.).’

135.27-4 Political contributions

Contribution of any amount directly or indirectly to any political party under section 182 of the Act shall not be considered as a CSR activity [Rule 4(7) of the CSR Rules].

This provision of Rule 4(7) is unfortunate as companies contributing to political parties in a transparent manner does make a positive societal impact.

Section 182 provides as under:

(A) The following companies are prohibited from making political contributions (i.e. contributions to any political party or to any person for a political purpose):

(i) Government Company.

(ii) a company (other than a Government company) which has been in existence for less than three financial years.

(B) A company (other than a Government company) which has been in existence for 3 or more financial years may make political contributions subject to the following conditions:

(i) the amount or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed 7.5% of its average net profits during the three immediately preceding financial years.

(ii) a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors such resolution
shall be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

135.27-4a Scope of ‘political contributions’ - Section 182(2) defines ‘political contributions’ as under:

- a donation or subscription or payment
- caused to be given by a company on its behalf or on its account
- to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party
- shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose
- the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
  (i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
  (ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

The following items will be covered by the Section in view of the words “directly or indirectly” and the same should be aggregated to determine whether the contributions covered by this Section are within the permissible limits:

(i) Contribution made directly to a political party whether in cash or in other form.

(ii) Expenditure incurred on printing and distribution of posters and leaflets, either directly concerned or connected with elections or otherwise for a political purpose.

(iii) Contribution made directly to a political party whether in cash or in other form for running an educational institution or for undertaking philanthropic activities.

(iv) A donation, contribution, or other form of support to a Trust, Society or Association in any of the under noted circumstances:
   (a) If the Trust, Society or Association has any political objectives either wholly or even partially.
(b) If the Trust, Society or Association is formed for any political purpose either wholly or even partially.

(c) If the Trustees or Governing Council or Committee of the Trust, Society or Association have the discretion of using the funds wholly or partially for a political purpose or in furtherance of a political objective. On the other hand, the mere fact that some of the objects of a particular Trust, Society or Association are similar to the objects of a particular political party but are not of a political nature should not act as a disqualification.

(v) Expenditure incurred on remuneration (including other benefits) to employees or on other establishment where the services of the employees are made available in connection with the activities of some political party, such as elections to legislative assembly, Parliament, etc.

(vi) Making available vehicles owned by the company to any political party or to any candidate seeking election to any local authority, assembly, Parliament, etc., either free of cost, or at less than market rate. [Guidance Note on section 293A of the Companies Act and the auditor issued by ICAI]

135.27-4b If political party sets up a NGO (separate section 8 company) covering CSR activity, will contributions to NGO count as CSR spends under section 135 or as political contributions under section 182? - Expenditure incurred in advertising in a souvenir, brochure, tract, pamphlet or journal published by a trade union or a labour union formed by a political party need not be regarded as hit by the section if the trade union has a separate and distinct legal entity. If the trade union or labour union formed by the political party does not have a separate and distinct legal entity, then such expenditure will have to be regarded as hit by section 182(2)(b). This is based on the opinion expressed by ICAI in Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 in the context of section 37(2B) of that Act and clause 17(c) of Form No. 3CD which cover expenditure covered by section 182(2)(b). Based on the same one can opine if the NGO is distinct legal entity from the political party and has established three-year track record, then contribution to it will be CSR spend.

135.27-5 Expenditure not in conformity or not in line with activities within the purview of Schedule VII

However, it 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 2013 Act [Rule 7 of the CSR Rules].
135.27-6 Expenditure on one-off events does not qualify as CSR spend
MCA has further clarified that CSR activities should be undertaken by the companies in project/programme mode [as referred in Rule 4(1) of Companies CSR Rules, 2014]. One-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes, etc. would not be qualified as part of CSR expenditure. - MCA’s Circular No. 21/2014 dated 18-6-2014.

135.27-7 Expenses incurred for fulfilment of any statute is not CSR spend
Expenses incurred by companies for the fulfilment of any Act/statute of regulations (such as Labour Laws, Land Acquisition Act, etc.) would not count as CSR expenditure under the Companies Act. - MCA’s Circular No. 21/2014 dated 18-6-2014.

135.27-8 In case of foreign holding companies
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 and if the Indian subsidiary is required to do so as per section 135 of the Act. - MCA’s Circular No. 21/2014 dated 18-6-2014.

135.28 Whether section 181-limits on charity applies to CSR spends?
Section 181 of the 2013 Act provides as under:

- The Board of Directors of a company may contribute to bona fide charitable and other funds.
- The prior permission of the company in general meeting shall be required for such contribution if any amount the aggregate of which, in any financial year, exceeds 5% of its average net profits for the 3 immediately preceding financial years. [Section 181]

Interestingly, section 181 of the 2013 Act doesn’t define ‘average net profits’ to be computed as per section 198.

The character of contributions under section 181 are purely charitable/voluntary. Character of charity is that it is purely voluntary and there is no legal obligation to make that contribution. CSR spends even if its contribution to PMNRF lacks this purely voluntary character. If CSR spends exceeds 2% then the excess is purely voluntary in character and thus may count for the 5% limit under section 181.
135.29 Whether contributions to national defence fund will be counted as CSR spends?

Section 183 provides as under:

◆ The Board of directors of any company or any person or authority exercising the powers of the Board of directors of a company, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Central Government for the purpose of national defence. The above power of the Board to contribute is notwithstanding anything contained in sections 180, 181 and 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company.

◆ Every company shall disclose in its profits and loss account the total amount or amounts contributed by it to the Fund referred to above during the financial year to which the amount relates.

Unlike contributions to the PMNRF, contributions to National Defence Fund is not specified in Schedule VII. Therefore, contributions by a company to NDF will not count as CSR spends.

135.30 CSR pooling allowed

CSR pooling by many companies helps avoid duplication of managerial efforts, infrastructure, personnel etc.

Companies may collaborate with other companies to undertake projects or programs or CSR activities in such a manner that the CSR activities are in a position to report separately on such projects or programs in accordance with these rules [Rule 4(3) of the CSR Rules].

135.31 CSR can be undertaken by setting up a trust/section 8 company/ society/foundation within India

CSR activities like eradicating hunger, poverty and malnutrition, making available safe drinking water, rural development projects demand specialized expertise and huge resources. These may not be capable of being fulfilled by the 2% of average net profits an individual company contributes. Having a separate entity or trust helps to attract more funding as trust can be registered under the Income-tax Act,1961 under section 80G and donors can get section 80G benefits for their donations. Also, it helps build a special and dedicated team for CSR activities and place less demands on time of company’s executives.
Rule 4(2) of the CSR Rules provides as under:

(A) The Board of a company may undertake its CSR activities approved by the CSR Committee through:
   - A registered trust or
   - A registered society or
   - A company established under section 8

(B) Such trust or society or company may be established:
   - By the company or
   - Its holding company or
   - Its subsidiary or
   - Its associate company [Rule 4(2) of the CSR Rules].

(C) Said Registered Trust/Registered society/section 8 company may not be set up by company itself (see para 135.32)

‘Registered Trust’ (as referred in Rule 4(2) of the Companies CSR Rules, 2014) would include Trusts registered under Income-tax Act 1961, for those States where registration of Trust is not mandatory. - MCA’s General Circular No. 21/2014, dated 18-6-2014.

135.32 Company allowed to ‘outsource’ by contributing to established NGOs

Proviso to Rule 4(2) of the CSR Rules provides that a company may also conduct/ implement its CSR programmes through Trusts, Societies, or section 8 companies which are not set up by the company itself or its holding company or its subsidiary or its associate company only if —

(a) such organizations have an established track record of at least three years in undertaking similar programs or projects

(b) the company has specified
   - the project or programs to be undertaken through these entities,
   - the modalities of utilisation of funds on such projects and programs and
   - the monitoring and reporting mechanism.

However, “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 SC/ST/OBCs, minorities and women” does not involve specifying projects or programs to be undertaken, modalities of fund utilisation and monitoring and reporting mechanism.
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. - MCA’s Circular No. 21/2014, dated 18-6-2014.

135.33 Capacity building of personnel
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. Such expenditure including expenditure on administrative overheads shall not exceed 5% of total CSR expenditure of company in one financial year - [Rule 4(6) of the CSR Rules].

135.34 Rationale for outsourcing CSR to established NGOs with readymade expertise
CSR activities demand expertise. Companies engaged in business and their managers cannot overnight develop the expertise in these areas. Instead of reinventing the wheel, it makes sense for a company to contribute money to established NGOs having a track record in the field.

135.35 Disclosures required in board of directors’ report
Section 134(3)(o) requires that the report by the Board of Directors shall include “the details of the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year”.

If the company fails to spend 2% of average net profits during a financial year, 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.

135.36 Annual report on CSR to be included in board of director’s report
Rule 8(1) of the CSR Rules provides that the Board’s Report of a Company covered under these Rules pertaining to a financial year commencing on or after 1st day of April, 2014 shall include an annual report on CSR containing the particulars specified in the Annexure to these Rules.

The Annexure requires that the Annual Report on CSR activities in Board’s Report shall include the following:

1. (a) A brief outline of the company’s CSR Policy,
(b) including overview of projects or programs proposed to be undertaken and
(c) 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 the last three financial years

4. Prescribed CSR Expenditure (2% of the amount as in 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 (in tabular format) given below:

| S. No. | CSR project or activity identified | Sector in which the project is covered | Projects or programs where projects or Programs was undertaken | Amount outlay (budget) project or program-wise | Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs Sub-heads: (2) Overheads: | Cumulative expenditure up to the reporting period | Amount spent directly or through implementing agency*
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6. In case the company has failed to spend the 2% 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.
135.37 In case of foreign company, balance sheet to contain annual CSR report

Rule 8(2) of the CSR Rules provides that in case of a foreign company, the balance sheet filed under section 381(1)(b) shall contain an Annexure regarding the CSR Report. (See para 135.36)

135.38 Display of CSR policy on company’s 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. [Rule 9 of the CSR Policy/ Rule 9 of Companies (Accounts) Rules, 2014]

135.39 Expenditure incurred on CSR activities [Clause (k) of Para 5(i) of Schedule III]

In case of companies covered under section 135, amount of expenditure incurred on corporate social responsibility activities is required to be disclosed by clause (k) of para 5(i) of Schedule III in notes to accounts. Schedule III uses the words “expenditure incurred”. So disclosure shall be on accrual basis. The total expenditure incurred is what is required to be disclosed and not the total payments made.

135.39-1 No requirement to disclosure break-up of CSR expenditure incurred

What Schedule III requires is the total amount of CSR expenditure incurred by the company during a financial year on Schedule VII activities computed in accordance with the provisions of CSR Rules. All that is required is to disclose the total CSR expenditure incurred. There is no requirement to disclose break-up of expenditure incurred on various activities specified in Schedule VII.

135.39-2 No requirement to disclose computation of 2% of average net profits

There is no requirement to disclose the computation of 2% of ‘average net profits’ worked out in accordance with section 198.

135.39-3 No requirement to disclosure shortfall of CSR spends/reasons therefor

There is no requirement to disclose the shortfall of CSR spends, if any, as against minimum 2% of average net profits and the reasons for such shortfall.
In fact, the reasons for shortfall of CSR spends from 2% of average net profits is required to be disclosed in the report of the Board of Directors under section 134(3)(o). There is no such requirement to disclose the reasons for shortfall in accounts.

The disclosure of computation of 2% of average net profits as per section 198, shortfall from the minimum 2% target and reasons for the shortfall is necessary to make this information meaningful and relevant to users of financial statements.

135.39-4 Surplus in CSR

CSR activities can result in surplus. Only that this surplus will not form part of the business profit of the company. If it is not to be part of business profit, then how should the CSR surplus be accounted for? Credit it to a CSR reserve? Credit it to a CSR Corpus? Neither the 2013 Act nor the CSR Rules are clear on this. Is it to be inferred that the CSR surplus is not available for distribution as dividend? It appears so but no express statement on this issue in the CSR Rules. There is also no requirement in Schedule III to disclose if any surplus has been made by the company in its CSR activities.

135.39-5 Critique of disclosure requirements

The disclosure requirements of Schedule III as regards CSR spends are very primitive. Mere disclosure of total CSR spends as required by Schedule III would not be meaningful unless the following information is also disclosed:

(i) Break-up of CSR expenditure (classified according to Schedule VII)
(ii) Computation of target amount of CSR spends - 2% of average net profit computed as per section 198
(iii) Shortfall in CSR spends, if any, compared to the 2% target and reasons for shortfall
(iv) Whether CSR spends pooled with other companies
(v) Whether CSR activities undertaken by setting up a trust/section 8 company/Society/foundation within India
(vi) Whether CSR programmes through Trusts, Societies, or Section 8 companies operating in India, which are not set up by the company itself.
(vii) Whether CSR activities have resulted in a surplus.

135.40 Requirement to disclose CSR in annual return

Section 92(1) of the 2013 Act provides that every company shall prepare a return the annual return in the prescribed form containing the specified particulars as they stood on the close of the financial year.
Rule 11(1) of the Companies (Management and Administration) Rules, 2014 provides that every company shall prepare its annual return in Form No. MGT.7.

The following disclosures required regarding CSR in annual return in Form No. MGT.7.

“XV. OTHER DISCLOSURES
(1) Corporate Social Responsibility
(a) Amount spent by the company during the financial year in pursuance of its Corporate Social Responsibility policy.
(b) The amount spent as percentage of the average net profits of the company made during the three immediately preceding financial years.”

135.41 Auditor’s duties in relation to CSR

135.41-1 No specific duty to make a statement as to compliance with CSR obligations in auditor’s report

None of the provisions of the 2013 Act or the CSR Rules require any express statement in auditor’s report regarding compliance with CSR provisions in case of companies covered by section 135(1). However, it is open to the Central Government to prescribe such a requirement when issuing the order on auditor’s report under section 143(11) or while prescribing contents of auditor’s report under section 143(3)(j).

135.41-2 Duty to consider CSR while forming and expressing auditor’s opinion on truth and fairness of accounts

Sub-section (2) of section 143 of the 2013 Act provides as under:

◆ The auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which are required by or under this Act to be laid before the company in general meeting.

◆ The auditor’s report shall state whether:

(A) after taking into account:

(i) provisions of this Act,

(ii) the accounting and auditing standards and

(iii) matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made by the Central Government under section 143(11) and
Thus, section 143(2) envisages that the auditor shall form his opinion on the truth and fairness of accounts after taking into account, inter alia, the provisions of the Act. Therefore, auditor will have to take into account all compliance with all provisions affecting the accounts including provisions related to CSR in case of companies covered under section 135(1) of the 2013 Act. The auditor will have to verify compliance with provisions of section 135 and CSR Rules and qualify his report if he detects any contravention.

The auditor will have to verify whether, as required by Schedule III, companies covered under section 135 disclose in the notes to accounts the amount of expenditure incurred on corporate social responsibility activities. The auditor should also verify whether the following information is also disclosed to make CSR disclosures meaningful:

(i) Break-up of CSR expenditure (classified according to Schedule VII)
(ii) Computation of target amount of CSR spends - 2% of average net profit computed as per section 198
(iii) Shortfall in CSR spends, if any, compared to the 2% target and reasons for shortfall
(iv) Whether CSR spends pooled with other companies
(v) Whether CSR activities undertaken by setting up a trust/section 8 company/Society/foundation within India
(vi) Whether CSR programmes through Trusts, Societies, or Section 8 companies operating in India, which are not set up by the company itself
(vii) Whether CSR activities have resulted in a surplus.

**135.42 Requirement for mandatorial secretarial audit by CS**

Section 204 of the 2013 Act contains provisions pertaining to Secretarial Audit. Section 204 provides as under:

◆ Every listed company and company belonging to other class of companies as may be prescribed shall annex with its Board’s Report [See section 134(3)], a Secretarial Audit Report given by its company secretary in such form as may be prescribed (prescribed form is Form No. 13.3). [Section 204(1)] Draft Rule 13.7(1) provides that for
the purposes of sub-section (1) of section 204, the other class of companies shall be “Every public company having a paid-up share capital of ` 100 crores or more.”. Thus, private companies are outside the purview of secretarial audit.

- It shall be the duty of the company to give all assistance and facilities to the company secretary or company secretary in practice, as the case may be, for auditing the secretarial and other records of the company. [Section 204(2)]

- The Board of Directors shall explain in full in their report any qualification or observation or other remarks made by the company secretary in practice in his report. [Section 204(3)]

### 135.43 Punishment for contravention of section 166

Section 166(7) provides that if a director contravenes the provisions of section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Thus, if director violates his specific CSR duty towards company’s employees, community and environment under section 166(2), he shall be punishable under section 166(7) as above.

### 135.43-1 Punishment for contravention of section 134(3)(o) regarding CSR disclosures in board’s report

If company fails to comply with section 134 as regards CSR disclosures in Board, report—

- it shall be punishable with fine which shall not be less than ` 50,000 but which may extend to ` 25,00,000; and
- every officer who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ` 50,000 but which may extend to ` 5,00,000, or with both - Section 134(8).

### 135.43-2 Punishment for contravention of section 135

There is no specific punishment provided for defaulting on CSR spends obligations. So such defaults attracts punishment under section 450 titled “Punishment where no specific penalty or punishment is provided”. Section 450 provides as under:

(a) A company or any officer of a company or any other person contravenes:

(i) any of the provisions of this Act or the rules made thereunder, or
(ii) any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted.

(b) No penalty or punishment is provided elsewhere in this Act for the contravention as above.

(c) If conditions (a) and (b) are satisfied, the company and every officer of the company who is in default or such other person shall be punishable with:
   ◆ fine which may extend to ` 10,000, and
   ◆ where the contravention is a continuing one, with a further fine which may extend to ` 1,000 for every day after the first during which the contravention continues.

135.43-3 Whether coercive recovery action can be taken against company defaulting on

A question arises what if a company covered by section 135(1) does not make any CSR spends at all or there is a shortfall in CSR spends? Does the Act empower the Central Govt. to attach/confiscate company's assets to recover the minimum annual CSR amount of 2% of ANP/the shortfall? There is no provision empowering the Central Government to take coercive recovery steps to recover shortfall in CSR contributions from defaulting companies.

135.44 Deduction of CSR expenses under section 37(1) of the Income-tax Act, 1961

Finance (No. 2) Act, 2014 has inserted an Explanation 2 to section 37(1). New Explanation 2 provides as under:

“Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.”.

The existing provisions contained in sub-section (1) of section 37 provide that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession”.

62
Finance (No. 2) Act, 2014 has inserted a new Explanation 2 in sub-section (1) of section 37 so as to clarify that for the purposes of sub-section (1) of section 37, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

Thus, CSR expenditure is disallowed by new Explanation 2 to section 37(1) if following conditions are satisfied:

(i) The expenditure disallowed should fall within the scope of section 37(1). In other words if CSR expenditure falls within the scope of sections 30 to 36, there will not be any disallowance. Further, if the CSR expenditure falls within the scope of Chapter VI-A deductions (such as donation to Prime Minister’s National Relief Fund u/s 80G), the same will be allowed and not hit by new Explanation 2.

(ii) The expenditure incurred by the assessee is on activities referred to in section 135 of the Companies Act, 2013.

The plain language of the Explanation 2 seems to suggest that expenditure on activities referred to in section 135 of the Companies Act, 2013 shall be disallowed if incurred by any assessee. The plain language does not suggest that scope of new Explanation 2 is limited in operation to only those companies which are obliged to spend on CSR by section 135 of the Companies Act, 2013. However, the Explanatory Memorandum seems to suggest that New Explanation 2 shall apply only to companies having CSR obligations under section 135 of the Companies Act, 2013.

The Explanatory Memorandum clarifies the new Explanation 2 as under:

Corporate Social Responsibility (CSR)

Under the Companies Act, 2013 certain companies (which have net worth of `500 crore or more, or turnover of `1000 crore or more, or a net profit of `5 crore or more during any financial year) are required to spend certain percentage of their profit on activities relating to Corporate Social Responsibility (CSR). Under the existing provisions of the Act expenditure incurred wholly and exclusively for the purposes of the business is only allowed as a deduction for computing taxable business income. CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business. As the application of income is not allowed as deduction for the purposes of computing taxable income of a company, amount spent on CSR cannot be allowed as deduction for computing the taxable income of the company. Moreover, the objective of CSR is to share burden of the Government in providing social services by companies having net worth/turnover/profit above a threshold. If such expenses are
allowed as tax deduction, this would result in subsidizing of around one-third of such expenses by the Government by way of tax expenditure.

The existing provisions of section 37(1) of the Act provide that deduction for any expenditure, which is not mentioned specifically in section 30 to section 36 of the Act, shall be allowed if the same is incurred wholly and exclusively for the purposes of carrying on business or profession. As the CSR expenditure (being an application of income) is not incurred for the purposes of carrying on business, such expenditures cannot be allowed under the existing provisions of section 37 of the Income-tax Act. Therefore, in order to provide certainty on this issue, it is proposed to clarify that for the purposes of section 37(1) any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence shall not be allowed as deduction under section 37. However, the CSR expenditure which is of the nature described in section 30 to section 36 of the Act shall be allowed deduction under those sections subject to fulfilment of conditions, if any, specified therein.

This amendment will take effect from 1st April, 2015 and will, accordingly, apply in relation to the assessment year 2015-16 and subsequent years.

[Clause 13]

135.45 Taxation of surplus from CSR activity

Rule 6(2) of the CSR Rules provides that “The CSR Policy of the company shall specify that surplus arising out of the CSR activity shall not form part of business profits of a company.” So, taxability of CSR surplus as business income seems to be ruled out. However, will it be taxable as income from other sources under section 56 of the Income-tax Act, 1961? This needs CBDT’s clarification. However, one thing is clear. CSR surplus can be put out of the pale of MAT under section 115JB by crediting CSR surplus to CSR Reserve Fund/CSR corpus account so that it does not form part of ‘book profit’ for MAT calculations.

135.46 Disclosures about CSR Policy

Rule 9 of the Companies (Accounts) Rules, 2014 provides that the disclosure of contents of Corporate Social Responsibility Policy in the Board’s report and on the company’s website, if any, shall be as per annexure attached to the Companies (Corporate Social Responsibility Policy) Rules, 2014.

135.47 Listing Agreement

Clause 55 of the Listing Agreement provides that listed entities shall submit, as part of their Annual Reports, Business Responsibility Reports, describing the initiatives taken by them from an environmental, social and governance perspective, in the format suggested as under:
BUSINESS RESPONSIBILITY REPORT -
SUGGESTED FRAMEWORK

Section A: General Information about the Company

1. Corporate Identity Number (CIN) of the Company
2. Name of the Company
3. Registered address
4. Website
5. Email id
6. Financial Year reported
7. Sector(s) that the Company is engaged in (industrial activity code-wise)
8. List three key products/services that the Company manufactures/provides (as in balance sheet)
9. Total number of locations where business activity is undertaken by the Company
   i. Number of International Locations (Provide details of major 5)
   ii. Number of National Locations
10. Markets served by the Company - Local/State/National/International

Section B: Financial Details of the Company

1. Paid up Capital (INR)
2. Total Turnover (INR)
3. Total profit after taxes (INR)
4. Total Spending on Corporate Social Responsibility (CSR) as percentage of profit after tax (%)
5. List of activities in which expenditure in 4 above has been incurred:
   a.
   b.
   c.

Section C: Other Details

1. Does the Company have any Subsidiary Company/Companies?
2. Do the Subsidiary Company/Companies participate in the BR Initiatives of the parent company? If yes, then indicate the number of such subsidiary company(s)
3. Do any other entity/entities (e.g. suppliers, distributors etc.) that the Company does business with, participate in the BR initiatives of the Company? If yes, then indicate the percentage of such entity/entities? [Less than 30% 30-60% More than 60%]

Section D: BR Information

1. Details of Director/ Directors responsible for BR
   (a) Details of the Director/ Director responsible for implementation of the BR policy/ policies
      ◆ DIN Number
      ◆ Name
      ◆ Designation
   (b) Details of the BR head

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Particulars</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>DIN Number (if applicable)</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Name</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Designation</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Telephone number</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>e-mail id</td>
<td></td>
</tr>
</tbody>
</table>

2. Principle-wise (as per NVGs) BR Policy/ policies (Reply in Y/ N)

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Questions</th>
<th>P 1</th>
<th>P 2</th>
<th>P 3</th>
<th>P 4</th>
<th>P 5</th>
<th>P 6</th>
<th>P 7</th>
<th>P 8</th>
<th>P 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Do you have a policy/ policies for...</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Has the policy being formulated in consultation with the relevant stakeholders?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Does the policy conform to any national/ international standards? If yes, specify? (50 words)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Has the policy being approved by the Board? If yes, has it been signed by MD/ owner/ CEO/ appropriate Board Director?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>Does the company have a specified committee of the Board/ Director/ Official to oversee the implementation of the policy?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Indicate the link for the policy to be viewed online?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Has the policy been formally communicated to all relevant internal and external stakeholders?</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
8. Does the company have in-house structure to implement the policy/policies.

9. Does the Company have a grievance redressal mechanism related to the policy/policies to address stakeholders’ grievances related to the policy/policies?

10. Has the company carried out independent audit/evaluation of the working of this policy by an internal or external agency?

2a. **If answer to S.No. 1 against any principle, is ‘No’, please explain why:**
(Tick up to 2 options)

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Questions</th>
<th>P1</th>
<th>P2</th>
<th>P3</th>
<th>P4</th>
<th>P5</th>
<th>P6</th>
<th>P7</th>
<th>P8</th>
<th>P9</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The company has not understood the Principles</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>The company is not at a stage where it finds itself in a position to formulate and implement the policies on specified principles</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>The company does not have financial or manpower resources available for the task</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>It is planned to be done within next 6 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>It is planned to be done within the next 1 year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Any other reason (please specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. **Governance related to BR**

   - Indicate the frequency with which the Board of Directors, Committee of the Board or CEO to assess the BR performance of the Company. Within 3 months, 3-6 months, Annually, More than 1 year

   - Does the Company publish a BR or a Sustainability Report? What is the hyperlink for viewing this report? How frequently it is published?

**Section E: Principle-wise performance**

**Principle 1**

1. Does the policy relating to ethics, bribery and corruption cover only
the company? Yes/ No. Does it extend to the Group/ Joint Ventures/ Suppliers/ Contractors/ NGOs/ others?

2. How many stakeholder complaints have been received in the past financial year and what percentage was satisfactorily resolved by the management? If so, provide details thereof, in about 50 words or so.

Principle 2

1. List up to 3 of your products or services whose design has incorporated social or environmental concerns, risks and/or opportunities.
   i. 
   ii. 
   iii. 

2. For each such product, provide the following details in respect of resource use (energy, water, raw material etc.) per unit of product (optional):
   i. Reduction during sourcing/ production/ distribution achieved since the previous year throughout the value chain?
   ii. Reduction during usage by consumers (energy, water) has been achieved since the previous year?

3. Does the company have procedures in place for sustainable sourcing (including transportation)?
   i. If yes, what percentage of your inputs was sourced sustainably? Also, provide details thereof, in about 50 words or so.

4. Has the company taken any steps to procure goods and services from local & small producers, including communities surrounding their place of work?
   If yes, what steps have been taken to improve their capacity and capability of local and small vendors?

5. Does the company have a mechanism to recycle products and waste?
   If yes what is the percentage of recycling of products and waste (separately as <5% 5-10%>10%). Also, provide details thereof, in about 50 words or so.

Principle 3

1. Please indicate the Total number of employees.

2. Please indicate the Total number of employees hired on temporary/ contractual/ casual basis.

3. Please indicate the Number of permanent women employees.

4. Please indicate the Number of permanent employees with disabilities
5. Do you have an employee association that is recognized by management?

6. What percentage of your permanent employees is members of this recognized employee association?

7. Please indicate the Number of complaints relating to child labour, forced labour, involuntary labour, sexual harassment in the last financial year and pending, as on the end of the financial year.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Category</th>
<th>No. of complaints filed during the financial year</th>
<th>No. of complaints pending as on end of the financial year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Child labour/ forced labour/ involuntary labour</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Sexual harassment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Discriminatory employment</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

8. What percentage of your under mentioned employees were given safety & skill upgradation training in the last year?
   - Permanent Employees
   - Permanent Women Employees
   - Casual/Temporary/Contractual Employees
   - Employees with Disabilities

**Principle 4**

1. Has the company mapped its internal and external stakeholders? Yes/ No

2. Out of the above, has the company identified the disadvantaged, vulnerable & marginalized stakeholders.

3. Are there any special initiatives taken by the company to engage with the disadvantaged, vulnerable and marginalized stakeholders. If so, provide details thereof, in about 50 words or so.

**Principle 5**

1. Does the policy of the company on human rights cover only the company or extend to the Group/ Joint Ventures/ Suppliers/ Contractors/ NGOs/ others?

2. How many stakeholder complaints have been received in the past financial year and what per cent was satisfactorily resolved by the management?
Principle 6
1. Does the policy related to Principle 6 cover only the company or extends to the Group/Joint Ventures/Suppliers/Contractors/NGOs/others.

2. Does the company have strategies/initiatives to address global environmental issues such as climate change, global warming, etc.? Y/N. If yes, please give hyperlink for webpage etc.

3. Does the company identify and assess potential environmental risks? Y/N

4. Does the company have any project related to Clean Development Mechanism? If so, provide details thereof, in about 50 words or so. Also, if Yes, whether any environmental compliance report is filed?

5. Has the company undertaken any other initiatives on - clean technology, energy efficiency, renewable energy, etc. Y/N. If yes, please give hyperlink for web page etc.

6. Are the Emissions/Waste generated by the company within the permissible limits given by CPCB/SPCB for the financial year being reported?

7. Number of show cause/legal notices received from CPCB/SPCB which are pending (i.e. not resolved to satisfaction) as on end of Financial Year.

Principle 7
1. Is your company a member of any trade and chamber or association? If Yes, Name only those major ones that your business deals with:
   a.
   b.
   c.
   d.

2. Have you advocated/lobbied through above associations for the advancement or improvement of public good? Yes/No; if yes specify the broad areas (drop box: Governance and Administration, Economic Reforms, Inclusive Development Policies, Energy security, Water, Food Security, Sustainable Business Principles, others).

Principle 8
1. Does the company have specified programmes/initiatives/projects in pursuit of the policy related to Principle 8? If yes details thereof.

2. Are the programmes/projects undertaken through in-house team/own foundation/external NGO/government structures/any other organization?
3. Have you done any impact assessment of your initiative?

4. What is your company’s direct contribution to community development projects—Amount in INR and the details of the projects undertaken.

5. Have you taken steps to ensure that this community development initiative is successfully adopted by the community? Please explain in 50 words, or so.

**Principle 9**

1. What percentage of customer complaints/consumer cases are pending as on the end of financial year.

2. Does the company display product information on the product label, over and above what is mandated as per local laws? Yes/No/N.A./Remarks (additional information)

3. Is there any case filed by any stakeholder against the company regarding unfair trade practices, irresponsible advertising and/or anti-competitive behaviour during the last five years and pending as on end of financial year. If so, provide details thereof, in about 50 words or so.

4. Did your company carry out any consumer survey/consumer satisfaction trends?

**PRINCIPLES TO ASSESS COMPLIANCE WITH ENVIRONMENTAL, SOCIAL AND GOVERNANCE NORMS**

**Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability**

1. Businesses should develop governance structures, procedures and practices that ensure ethical conduct at all levels; and promote the adoption of this principle across its value chain. Businesses should communicate transparently and assure access to information about their decisions that impact relevant stakeholders.

2. Businesses should not engage in practices that are abusive, corrupt, or anti-competition.

3. Businesses should truthfully discharge their responsibility on financial and other mandatory disclosures.

4. Businesses should report on the status of their adoption of these Guidelines as suggested in the reporting framework in this document.

5. Businesses should avoid complicity with the actions of any third party that violates any of the principles contained in these Guidelines.
**Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle**

1. Businesses should assure safety and optimal resource use over the lifecycle of the product - from design to disposal - and ensure that everyone connected with it - designers, producers, value chain members, customers and recyclers are aware of their responsibilities.

2. Businesses should raise the consumer’s awareness of their rights through education, product labelling, appropriate and helpful marketing communication, full details of contents and composition and promotion of safe usage and disposal of their products and services.

3. In designing the product, businesses should ensure that the manufacturing processes and technologies required to produce it are resource efficient and sustainable.

4. Businesses should regularly review and improve upon the process of new technology development, deployment and commercialization, incorporating social, ethical, and environmental considerations.

5. Businesses should recognize and respect the rights of people who may be owners of traditional knowledge, and other forms of intellectual property.

6. Businesses should recognize that over-consumption results in unsustainable exploitation of our planet’s resources, and should therefore promote sustainable consumption, including recycling of resources.

**Principle 3: Businesses should promote the well-being of all employees**

1. Businesses should respect the right to freedom of association, participation, collective bargaining, and provide access to appropriate grievance Redressal mechanisms.

2. Businesses should provide and maintain equal opportunities at the time of recruitment as well as during the course of employment irrespective of caste, creed, gender, race, religion, disability or sexual orientation.

3. Businesses should not use child labour, forced labour or any form of involuntary labour, paid or unpaid.

4. Businesses should take cognizance of the work-life balance of its employees, especially that of women.

5. Businesses should provide facilities for the well-being of its employees including those with special needs. They should ensure timely payment of fair living wages to meet basic needs and economic security of the employees.
6. Businesses should provide a workplace environment that is safe, hygienic humane, and which upholds the dignity of the employees. Business should communicate this provision to their employees and train them on a regular basis.

7. Businesses should ensure continuous skill and competence upgrading of all employees by providing access to necessary learning opportunities, on an equal and non-discriminatory basis. They should promote employee morale and career development through enlightened human resource interventions.

8. Businesses should create systems and practices to ensure a harassment free workplace where employees feel safe and secure in discharging their responsibilities.

**Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.**

1. Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement, and commit to engaging with them.

2. Businesses should acknowledge, assume responsibility and be transparent about the impact of their policies, decisions, product & services and associated operations on the stakeholders.

3. Businesses should give special attention to stakeholders in areas that are underdeveloped.

4. Businesses should resolve differences with stakeholders in a just, fair and equitable manner.

**Principle 5: Businesses should respect and promote human rights**

1. Businesses should understand the human rights content of the Constitution of India, national laws and policies and the content of International Bill of Human Rights. Businesses should appreciate that human rights are inherent, universal, indivisible and interdependent in nature.

2. Businesses should integrate respect for human rights in management systems, in particular through assessing and managing human rights impacts of operations, and ensuring all individuals impacted by the business have access to grievance mechanisms.

3. Businesses should recognize and respect the human rights of all relevant stakeholders and groups within and beyond the workplace, including that of communities, consumers and vulnerable and marginalized groups.
4. Businesses should, within their sphere of influence, promote the awareness and realization of human rights across their value chain.

5. Businesses should not be complicit with human rights abuses by a third party.

Principle 6: Business should respect, protect, and make efforts to restore the environment

1. Businesses should utilize natural and manmade resources in an optimal and responsible manner and ensure the sustainability of resources by reducing, reusing, recycling and managing waste.

2. Businesses should take measures to check and prevent pollution. They should assess the environmental damage and bear the cost of pollution abatement with due regard to public interest.

3. Businesses should ensure that benefits arising out of access and commercialization of biological and other natural resources and associated traditional knowledge are shared equitably.

4. Businesses should continuously seek to improve their environmental performance by adopting cleaner production methods, promoting use of energy efficient and environment friendly technologies and use of renewable energy.

5. Businesses should develop Environment Management Systems (EMS) and contingency plans and processes that help them in preventing, mitigating and controlling environmental damages and disasters, which may be caused due to their operations or that of a member of its value chain.

6. Businesses should report their environmental performance, including the assessment of potential environmental risks associated with their operations, to the stakeholders in a fair and transparent manner.

7. Businesses should proactively persuade and support its value chain to adopt this principle.

Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner

1. Businesses, while pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.

2. To the extent possible, businesses should utilize the trade and industry chambers and associations and other such collective platforms to undertake such policy advocacy.
Principle 8: Businesses should support inclusive growth and equitable development

1. Businesses should understand their impact on social and economic development, and respond through appropriate action to minimise the negative impacts.
2. Businesses should innovate and invest in products, technologies and processes that promote the well-being of society.
3. Businesses should make efforts to complement and support the development priorities at local and national levels, and assure appropriate resettlement and rehabilitation of communities who have been displaced owing to their business operations.
4. Businesses operating in regions that are underdeveloped should be especially sensitive to local concerns.

Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner

1. Businesses, while serving the needs of their customers, should take into account the overall well-being of the customers and that of society.
2. Businesses should ensure that they do not restrict the freedom of choice and free competition in any manner while designing, promoting and selling their products.
3. Businesses should disclose all information truthfully and factually, through labelling and other means, including the risks to the individual, to society and to the planet from the use of the products, so that the customers can exercise their freedom to consume in a responsible manner. Where required, businesses should also educate their customers on the safe and responsible usage of their products and services.
4. Businesses should promote and advertise their products in ways that do not mislead or confuse the consumers or violate any of the principles in these Guidelines.
5. Businesses should exercise due care and caution while providing goods and services that result in over exploitation of natural resources or lead to excessive conspicuous consumption.
6. Businesses should provide adequate grievance handling mechanisms to address customer concerns and feedback.