

# Corporate Social Responsibility (CSR) under Companies Act, 2013



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## Why CSR

- Corporate Social Responsibility (CSR) refers to **voluntary** activities undertaken by a company to operate in an economic, social and environmentally sustainable manner. It denotes a company's sense of responsibility towards the community and ecological and social environment in which it operates

## Benefits of CSR

- CSR not only benefits the surrounding community but it can also be good for business by helping the company grow and address shareholder concerns

## Statutory basis

- CSR is a mandatory spend for specified companies under Companies Act, 2013 (2013 Act) w.e.f. 1 April 2014

# Applicability under Companies Act, 2013

## Which Companies?

All companies including a holding or subsidiary company in India



## Applicability – if any 1 of following criteria is met

Net worth of ₹ 500 crores or more

Turnover of ₹ 1000 crores or more

Net profit of ₹ 5 crore or more



## How much?

Minimum 2% average net profit in last 3 FY

**Q – Are Indian branch or project offices of foreign companies covered under CSR provisions?**

## Computation of profit for CSR

- Manner of computation of profit
- Whether to consider Profit Before Tax (PBT) or Profit After Tax (PAT)?
- What if there is loss in 1 of the 3 preceding financial years?
- Whether to set-off accumulated loss in computation of profit?
- Whether to re-compute profits calculated as per Companies Act, 1956?
- Profit from foreign branches?
- Dividend received from subsidiaries?

## Compliance requirements

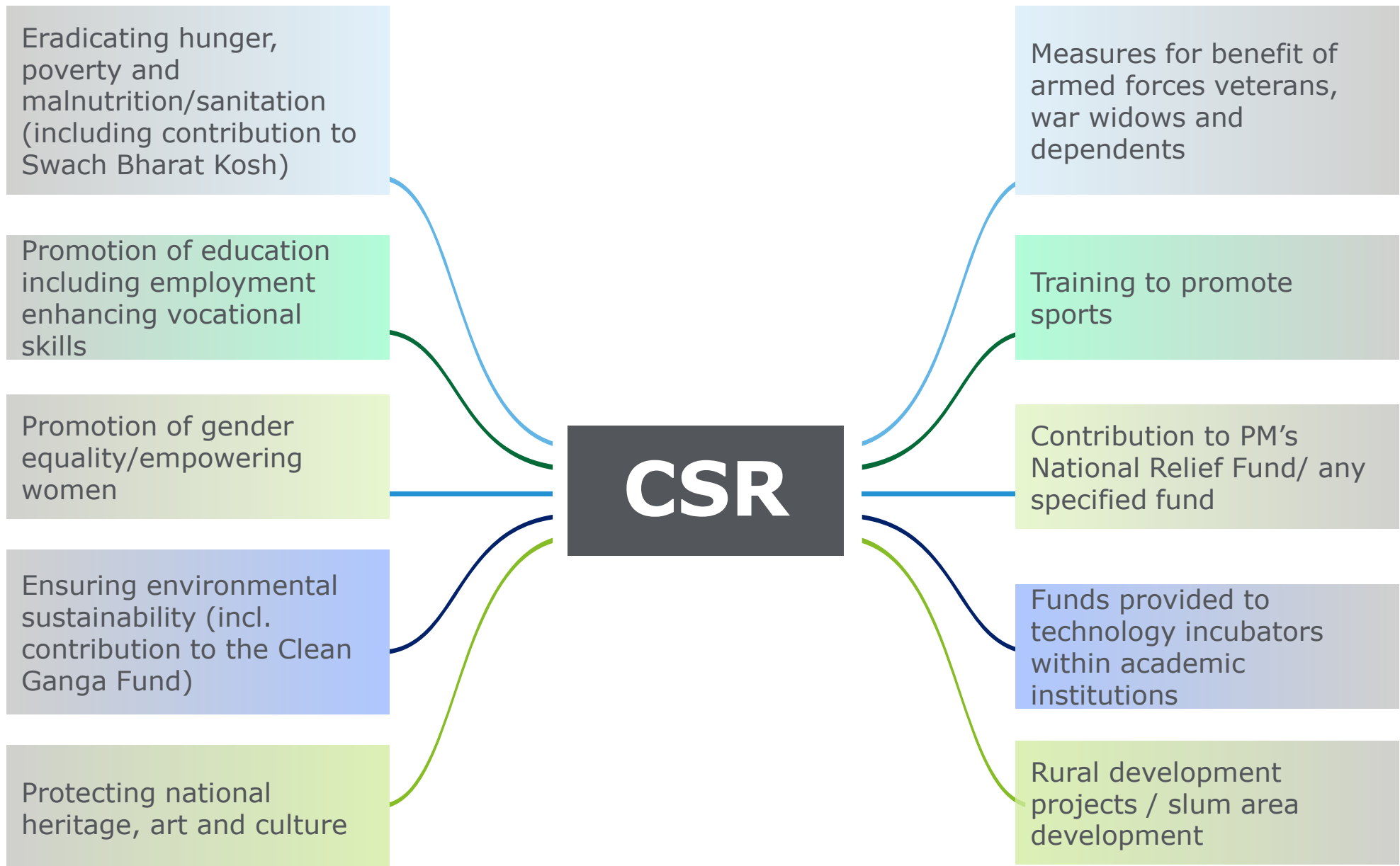
CSR provisions require covered companies, through Board processes, to:

- Constitute a CSR Committee
- Formulate a CSR Policy (by CSR committee)
- Spend on CSR
- Monitor and report adherence to the CSR Policy

**Q – What if company satisfies Net Worth / Turnover criteria but has made loss during preceding 3 financial years?**

**Q – What if Net Worth / Turnover / Net Profit criteria is met during 1 FY and not for subsequent FY?**

# Eligible activities for CSR Policy



## Whether eligible activities for CSR?

- Employee training programmes?
- Contribution to political party?
- Sponsoring Standard Chartered Marathon?
- Compensation for acquisition of land?
- Donations to IIM [A] for conservation of buildings?
- Promoting primary education in African country?



## Activities that will not qualify as CSR

Activities that are meant exclusively for employees and/or their families will not qualify for CSR activities.

Contribution to one-off events such as marathons, awards, charitable contribution, advertisement, sponsorship of TV programs, etc.

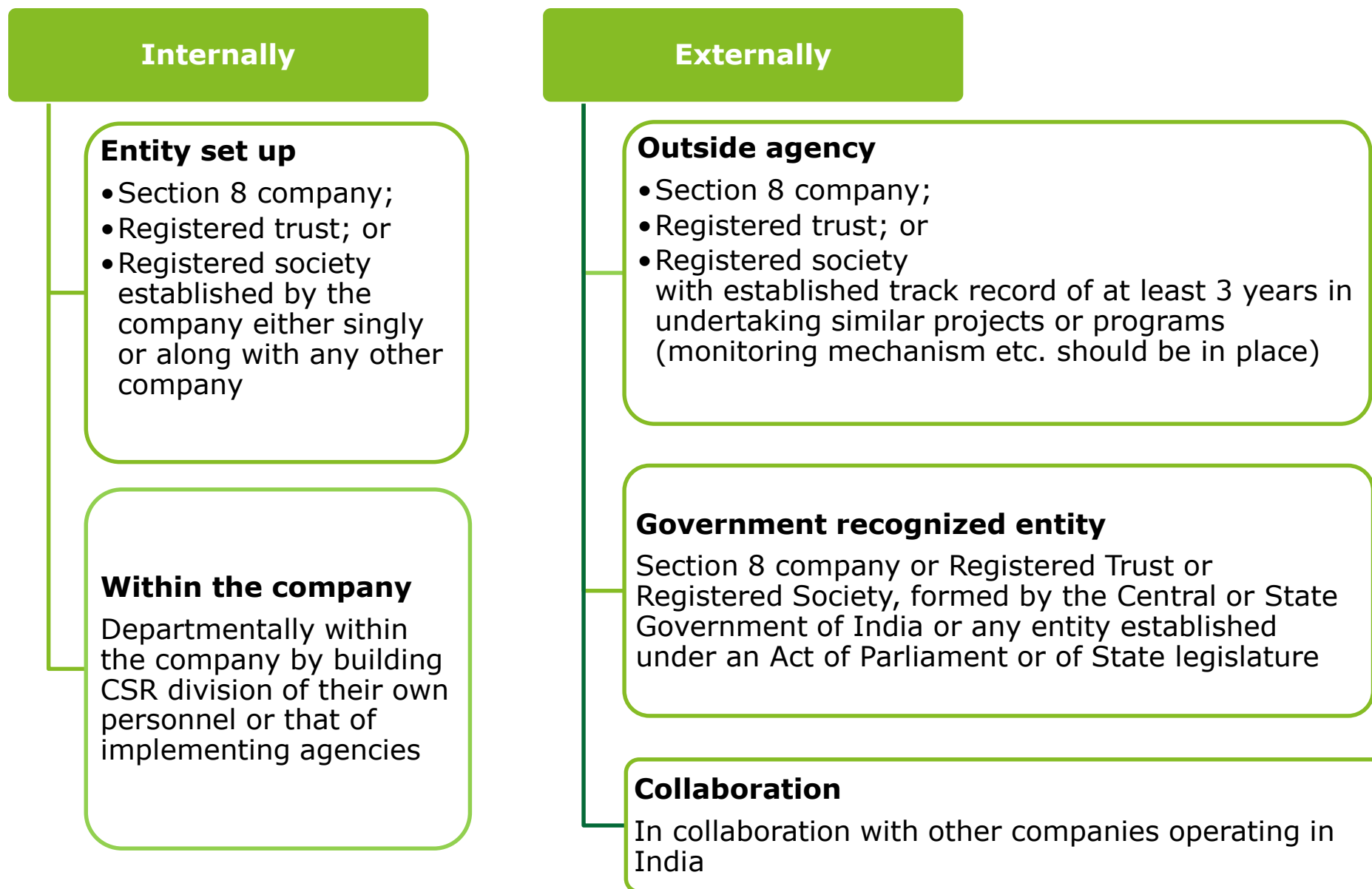
Contribution of any amount directly or indirectly to any political party

Expenses incurred for the fulfillment of any Act or Statute of regulations i.e., CSR expenditure should not be for an activity for which the company is already bound to do as an application of any other law

Activities undertaken in pursuance of normal course of business of a company

Projects or programmes or activities undertaken outside India

# CSR mechanics under Companies Act, 2013



# **Compliance under the Companies Act, 2013**

# Constitution of CSR committee



## Constitution of CSR committee

- Company is required to constitute a CSR committee of the Board
- CSR committee shall constitute of 3 or more directors with at least 1 independent director

**Q – Is unlisted public company / private company required to appoint independent Director to comply with CSR committee requirement?**

**Q – Constitution of CSR committee in case of private company having only two directors?**

**Q – Constitution of CSR committee in case of foreign company registered in India?**

# Roles and Responsibilities

## + Roles and Responsibilities

<b>CSR Committee</b>	<b>Board</b>
<ul style="list-style-type: none"><li>• CSR Committee shall formulate a CSR policy which indicates the activities to be undertaken</li><li>• CSR committee shall recommend to the Board such policy formulated by them</li><li>• CSR Committee shall also recommend the quantum of CSR expenditure to be incurred on the CSR activities</li><li>• CSR Committee shall institute a transparent monitoring mechanism for implementation of the CSR projects, programs and activities undertaken by the company</li></ul>	<ul style="list-style-type: none"><li>• The Board shall consider the recommendations made by the CSR Committee and approve the CSR Policy</li><li>• The Board shall ensure that the activities included in the CSR Policy are related to the activities included in Schedule VII</li><li>• The Board shall comply with the reporting / disclosure requirements</li></ul>



## CSR Policy

- CSR Policy of the company shall include the following:
  - List of projects or programs which the company plans to undertake as per Schedule VII of the Co. Act
  - Specifying modalities of execution of such project or program
  - Implementation schedules for the same
  - Monitoring process of such projects or programs

**Q – Surplus arising from CSR activity – whether to include in business profits?**

# Reporting / Disclosure requirement



## Annual report on CSR activities

- The Board's report of a company for FY commencing on or after 1 April 2014 shall include an annual report on CSR containing the following:
  - Brief outline of the company's CSR policy
  - Composition of CSR Committee
  - Average net profit of the company for the last 3 FYs
  - Prescribed CSR expenditure
  - Details of the amount spent in the FY towards CSR activities-
    - Total amount to be spent for the FY
    - Amount unspent, if any
    - Manner in which the amount is spent during the FY giving the required details
  - In case of failure to spend on CSR, reasons for not spending such amount
  - A responsibility statement that the implementation and monitoring of CSR Policy is in compliance with the CSR objectives and the policy of the company



## Display of CSR activities on company website

- Board of the company shall display the approved CSR Policy on its official website, if any

# Clarifications by MCA and practical issues



## Clarifications by MCA

- For deciding applicability of CSR provisions under section 135(1), networth of ₹ 500 crore, turnover of ₹ 1000 crore or net profit of ₹ 5 crore, the same needs to be tested for **any of the 3 preceding financial years**
- **Initiatives mentioned in Schedule VII are to be interpreted liberally** so as to capture the essence of subjects enumerated in the Schedule. Following are the instances of projects / activities will be covered in schedule VII:
  - Rural development projects would mean any project meant for the development of rural India
  - Research and Studies in the areas specified in Schedule VII will be covered under the respective areas of items or else under 'promoting education'.
- **CSR activities should be undertaken** by the companies **in project/ programme mode**. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not qualify as part of CSR expenditure.
- Salaries paid to regular CSR staff as well as to volunteers (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure
- Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure if:-
  - Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities; or
  - Where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act

## Clarifications by MCA

- 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.
- CSR activities must be beneficial for the community or the society in general
- **Preference to be given to the local area** and areas around it where it operates, for spending the amount earmarked for CSR activities
- Companies can collaborate for undertaking projects or programs or CSR activities provided CSR Committees of respective companies are in in position to report separately on such projects or programs

## Practical Issues

Whether CSR provisions are applicable to section 8 company?

Whether it is necessary to expend CSR amount in cash?  
Will contribution 'in kind' count?

If excess amount is spent on CSR in particular FY, can it be carried forward to next year?

Can unspent amount out of minimum CSR spend for the FY be carried forward to next year?

Whether Government has a role in monitoring CSR spend by companies?

# Penalties and punishments

## **X** Contravention regarding CSR disclosures in Board's Report

- If company fails to comply with 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
  - Every officer who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with a fine which shall not be less than ₹ 50,000 but may extend to ₹ 500,000 or with both

## **Contravention of any other CSR provisions under Co. Act**

- There is no specific penalty or punishment provided for contravention of any other CSR provisions

**Q – In absence of specific penalty or punishment, whether such contravention could attract general punishment under the Act?**

# Annexure

## Annexure I – Schedule VII

# Activities which may be included by companies in their CSR policies

Activities relating to:—

- Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water
- Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects
- Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups
- Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga
- 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

## Annexure I – Schedule VII

# Activities which may be included by companies in their CSR policies

- Measures for the benefit of armed forces veterans, war widows and their dependents;
- Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports
- Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of the scheduled castes, the scheduled tribes, other backward classes, minorities and women
- Contributions or funds provided to technology incubators located within academic institutions which are approved by the central government
- Rural development projects
- 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







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