



Corporate Social Responsibility under Companies Act, 2013

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- Applicability and Compliance
- How and Where to spend
- Amendments in CSR
- Checks and Balances
- CSR Reporting
- CSR Accounting



OVERVIEW

CSR – India and Global



- USA, UK, Europe, etc.
- France, Denmark, South Africa, China etc.
- India is the first country to have contribution requirement under a statute
- Other countries such as UAE are yet proposing to introduce contribution requirement under a statute for large companies

Evolution of CSR

2009

Corporate Voluntary Guidelines released

2011

Endorsement of United Nations Guiding Principles on Business & Human Rights by India and release of National Voluntary Guidelines

2012

SEBI mandates Business Responsibility Reporting for top 100 listed companies by market capitalization

2014

Section 135 of Companies Act, 2013 comes in to force

2015

High Level Committee on CSR (HLC-2015) makes recommendations on the CSR framework and stakeholder concerns

Evolution of CSR

2015

SEBI extends Business Responsibility Reporting to top 500 companies by market capitalization

2016

Companies Law Committee reviews the recommendations of HLC-2015 for adoption

2018

The 2nd HLC on CSR constituted to review the CSR framework and Committee on BRR constituted

2018

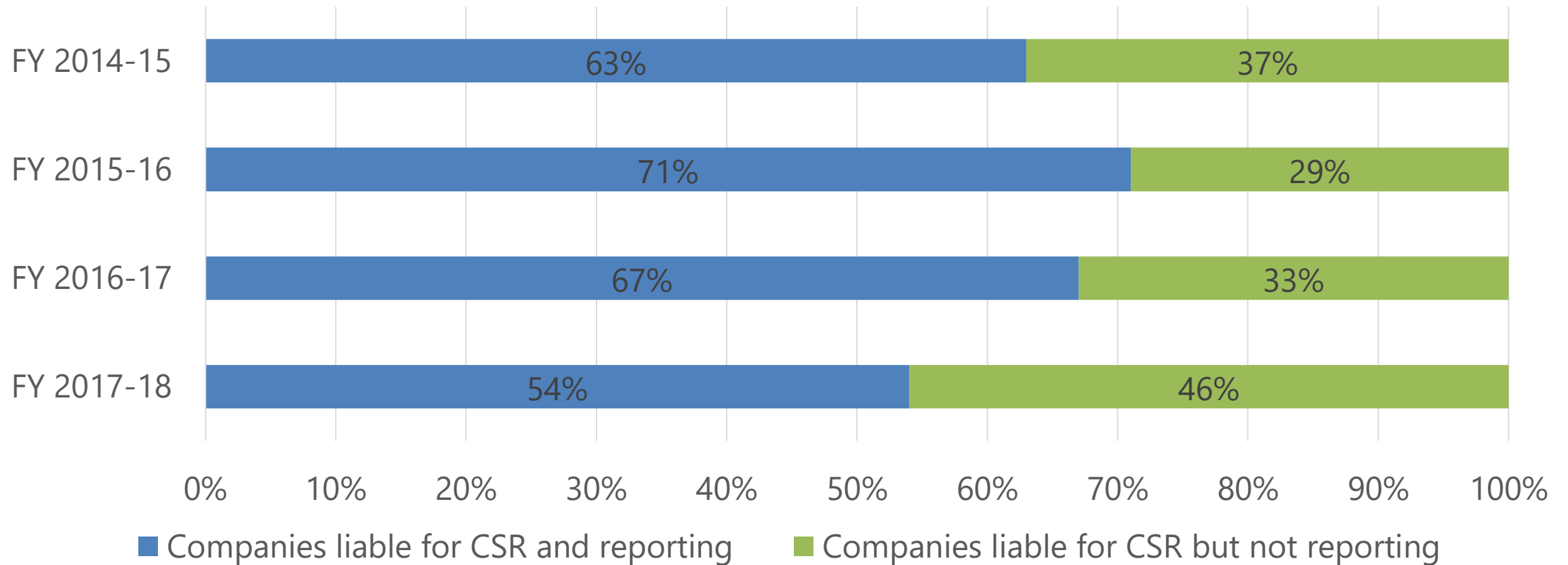
Zero Draft of National Action Plan on Business and Human Rights released by MCA

2019

National Guidelines on Responsible Business Conduct released

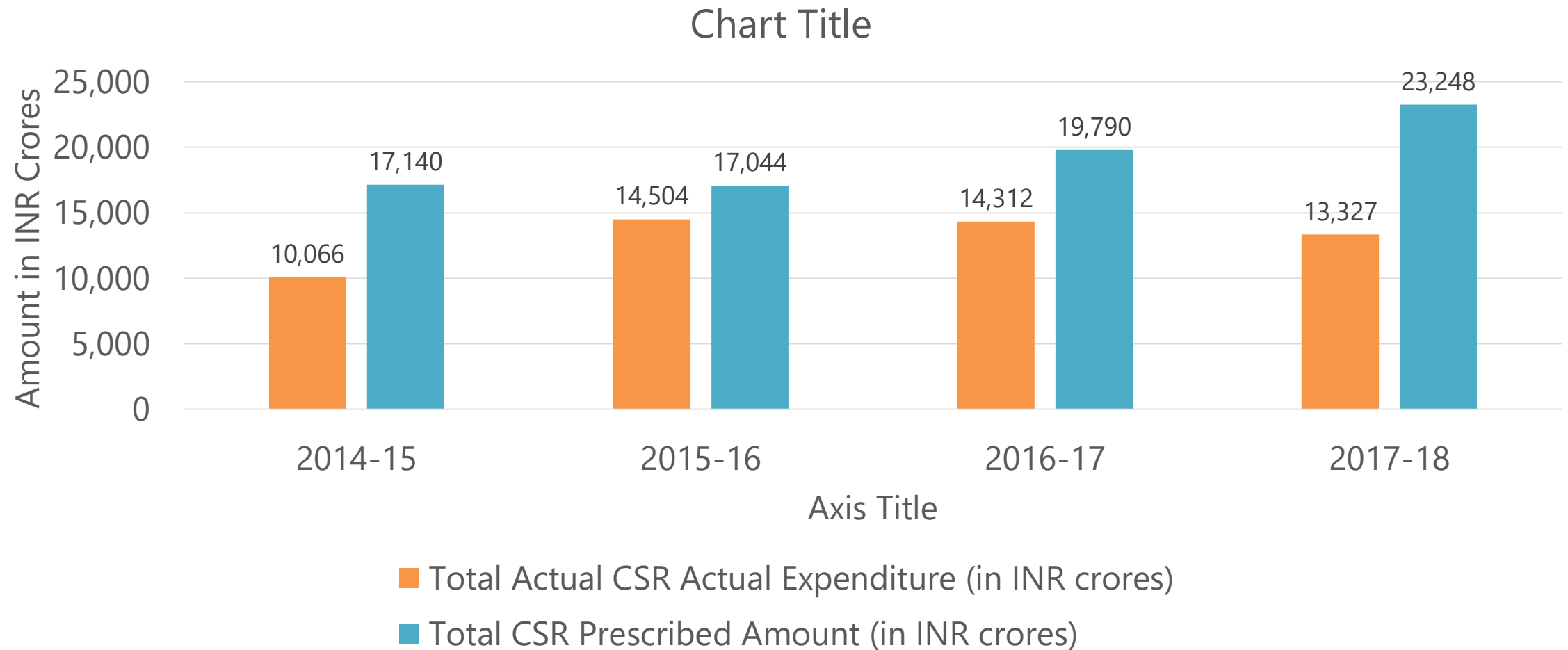
CSR trends over the last years

Percentage of liable companies reporting on CSR



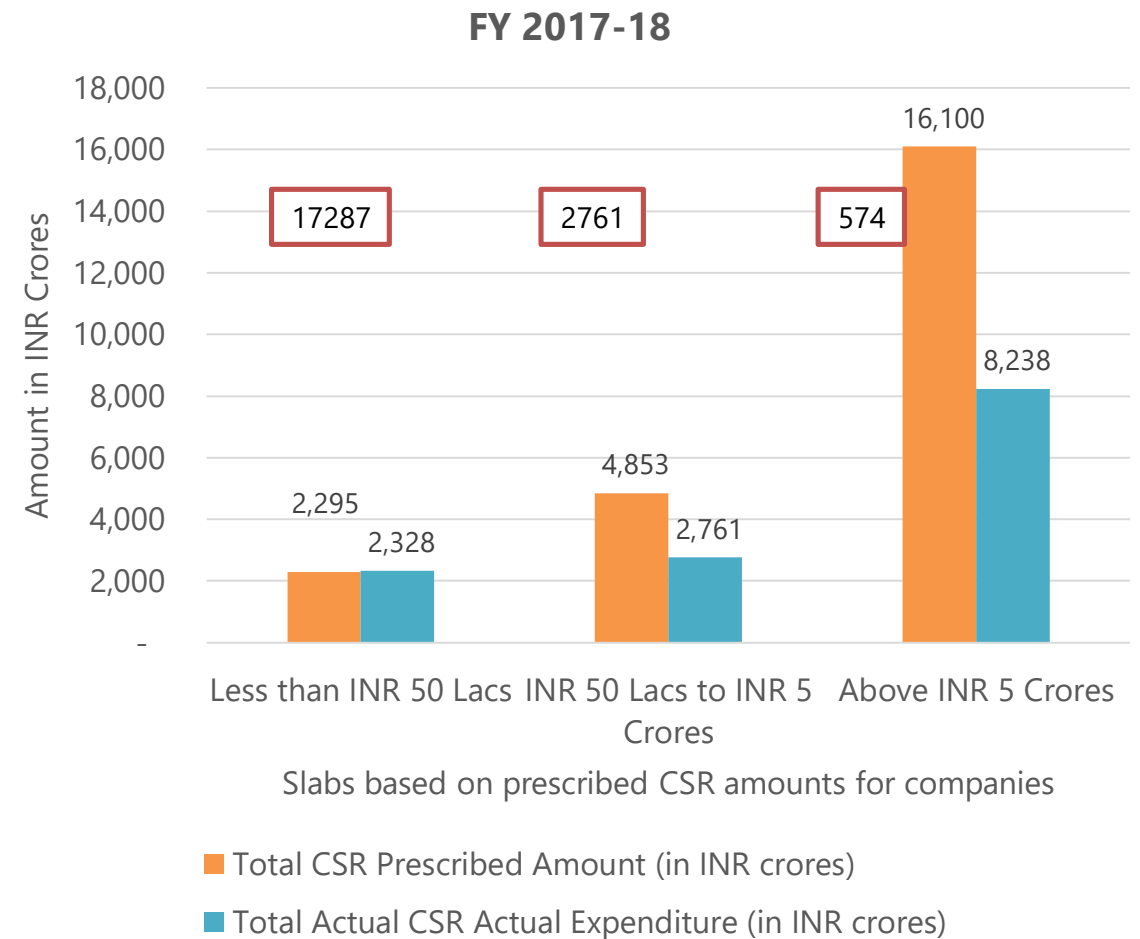
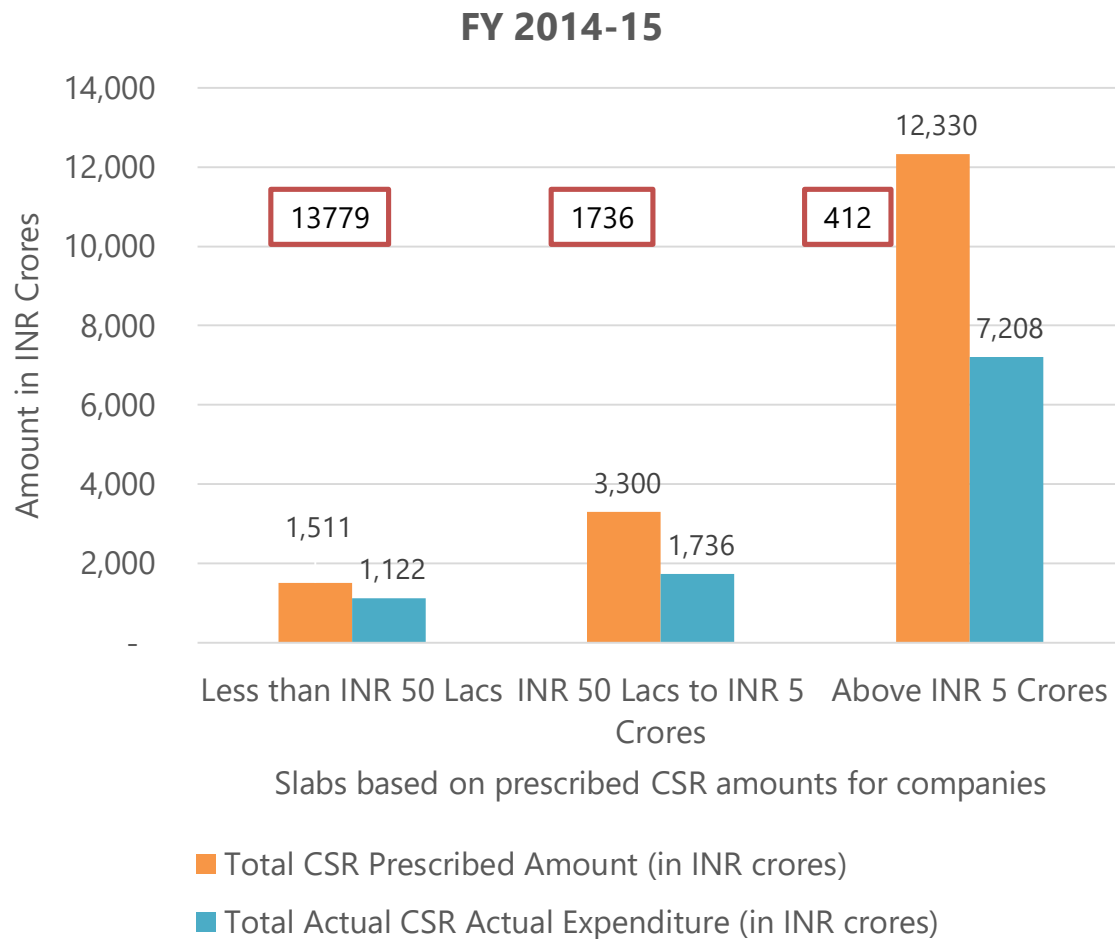
Source: Report of CSR HLC, 2018

CSR – India trends over the last years



Source: Report of CSR HLC, 2018

CSR – India trends over the years



Source: Report of CSR HLC, 2018

No. of companies

General Reasons given for not spending on CSR



Adoption of long-term CSR programs /projects

Difficulty in finding suitable implementing agency

Inability of NGOs in managing funds

Absence of clarity on what and where they need to focus on

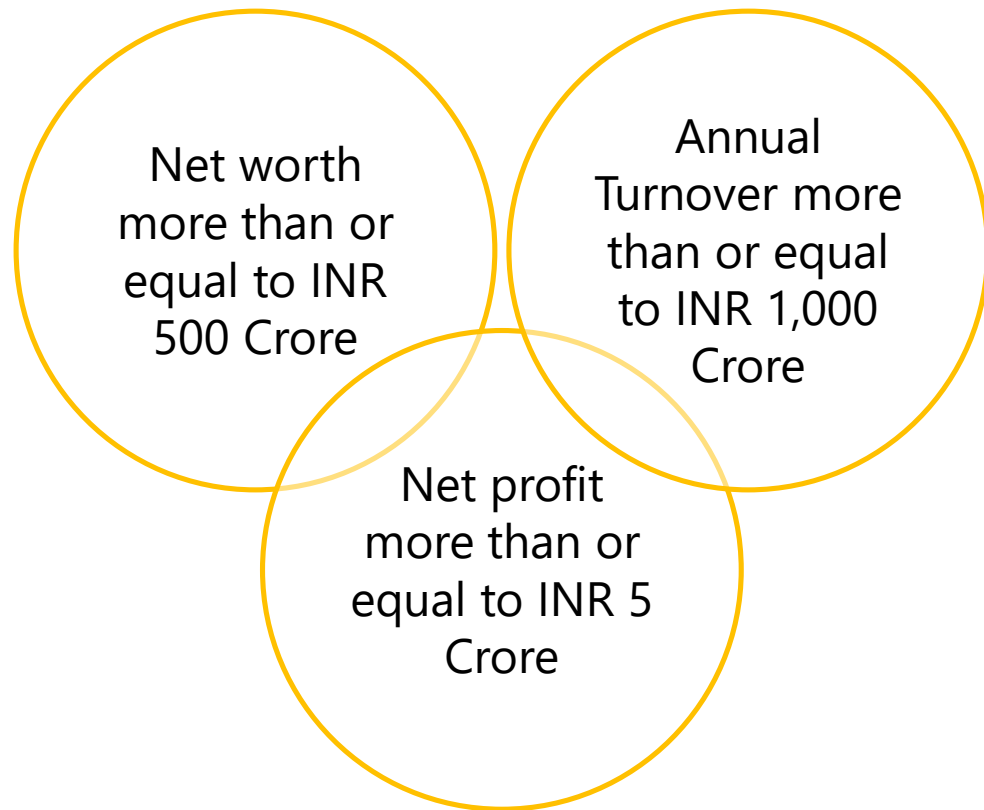
Inability to formulate well-conceived CSR policy

Burden of the previous year's unspent amount



APPLICABILITY & COMPLIANCE

Applicability under Section 135(1)



- Any one of three conditions to be satisfied **in the preceding financial year**
- Limits to be checked on standalone basis
- Once CSR provisions become applicable, company has to continue compliance with Section 135 until it ceases to fulfil the conditions for 3 consecutive financial years.
- Applicable to all companies including foreign companies which have branch office or project office in India

Computation Mechanism

Particulars	Amount
Net profit before tax as per financials prepared in accordance with the Companies Act, 2013 provisions	xx
Less: Any profit arising from any overseas branch whether operated as a separate company or otherwise	(xx)
Less: Any dividend received from other companies in India complying with CSR provisions	(xx)
Net profit before tax for the purpose of ascertaining the CSR criteria	xx

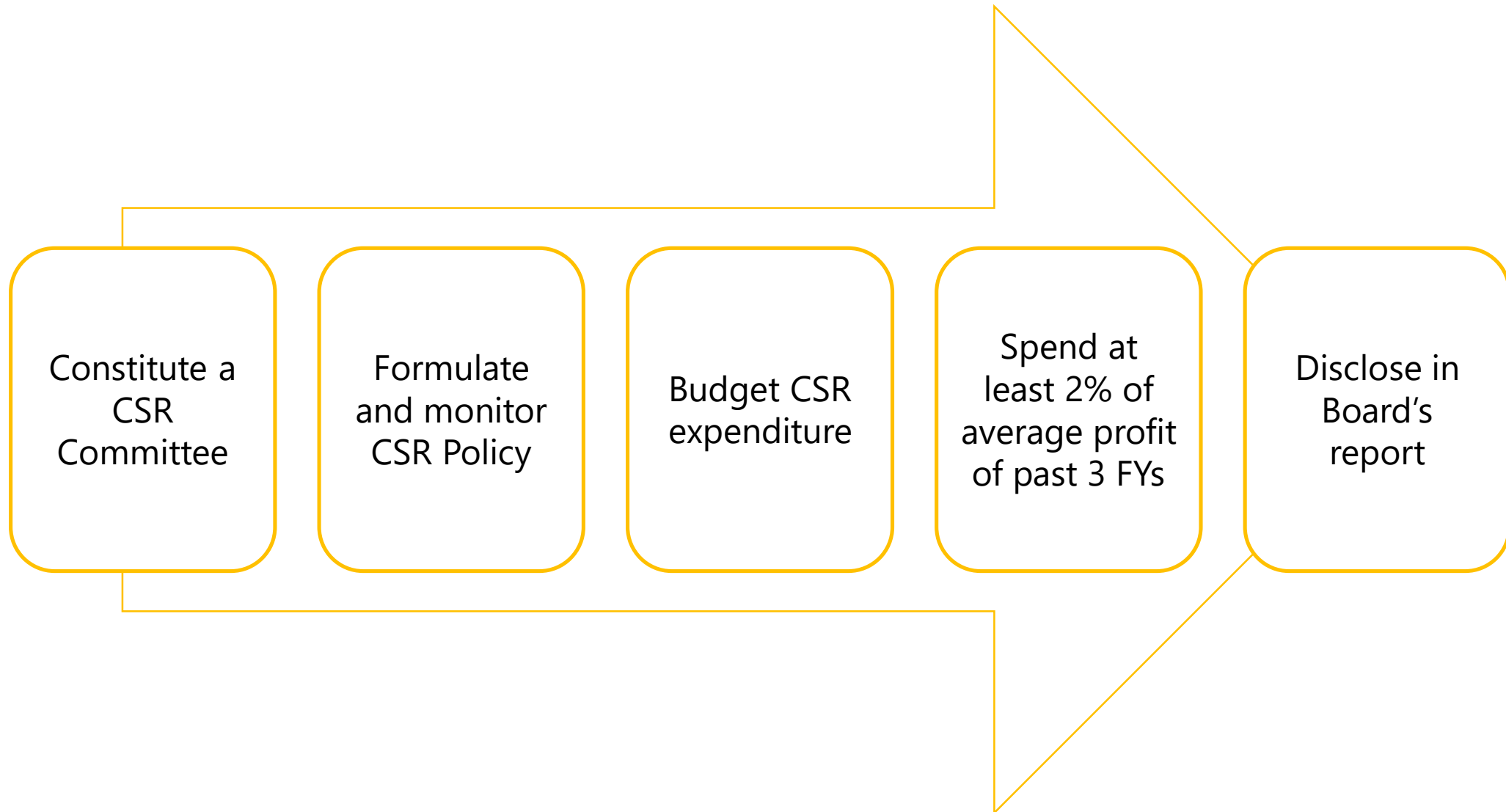


CSR spend to be: At least 2% of average net profit (before tax) for 3 preceding financial years as computed above.

Questions on Applicability



Existing Requirements under Section 135



CSR Committee

Composition

- 3 or more directors
- At least one director shall be an independent director (if any)
- Private Companies - having only 2 directors - Committee shall consist of 2 Directors
- Foreign Companies - Committee shall comprise of its Authorized Representative in India and a person nominated by the foreign company

Meetings of Committee during a FY

- Minimum no. of meetings not prescribed under the Companies Act, 2013

Can there be a centralized CSR committee for a company having several group companies?

- No, every company shall have to form its own CSR committee, if it hits the applicability of Section 135(1)

Role of Board of Directors

Approve CSR Policy as recommended by CSR Committee

Approval of CSR Budget

Ensure that a minimum spend of 2% of average profit of past 3 financial years is made on activities as per the CSR Policy

Disclosure of contents of CSR Policy in the Board's Report

Publish CSR Policy on the company's website, if any

Few Clarifications by MCA

Can a company carry forward and set off the excess CSR expenditure incurred over the prescribed limit in a particular year to the subsequent financial year? – **No**

Can the unspent amount out of the minimum required CSR expenditure be carried forward to the next year? – **The Board is free to decide**

Can CSR expenditure be claimed as business expenditure? – **No**

What Tax benefits can be availed under CSR? – **No specific tax exemptions, however, contribution to various funds enjoy exemptions under different sections of Income tax Act, 1961**



HOW AND WHERE TO SPEND?

How to discharge CSR obligation?



Direct activities by the Company by developing its own capacities




Collaboration with other companies for undertaking CSR activities



Contribution to non-profit organizations (NPOs) run by the State/ Central government



Contribution to NPOs set-up the company, singly or along with any other company



Contribution to third party NPOs (with at least 3 year track record)

Clarification on contribution to NPOs

When does contribution to a NPOs (Section 8 Company / Registered Trust / Registered Society) qualifies as bonafide CSR expenditure?

The NPO 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 Companies Act, 2013.

Additional conditions to be satisfied when contribution is made to a third party NPO

- Established track record of 3 years in undertaking similar programs or projects; and
- The company has specified to the trust / society the following:
 - projects or programs to be undertaken;
 - the modalities of utilization of funds;
 - the monitoring and reporting mechanism

Eligible Activities



Permitted Activities

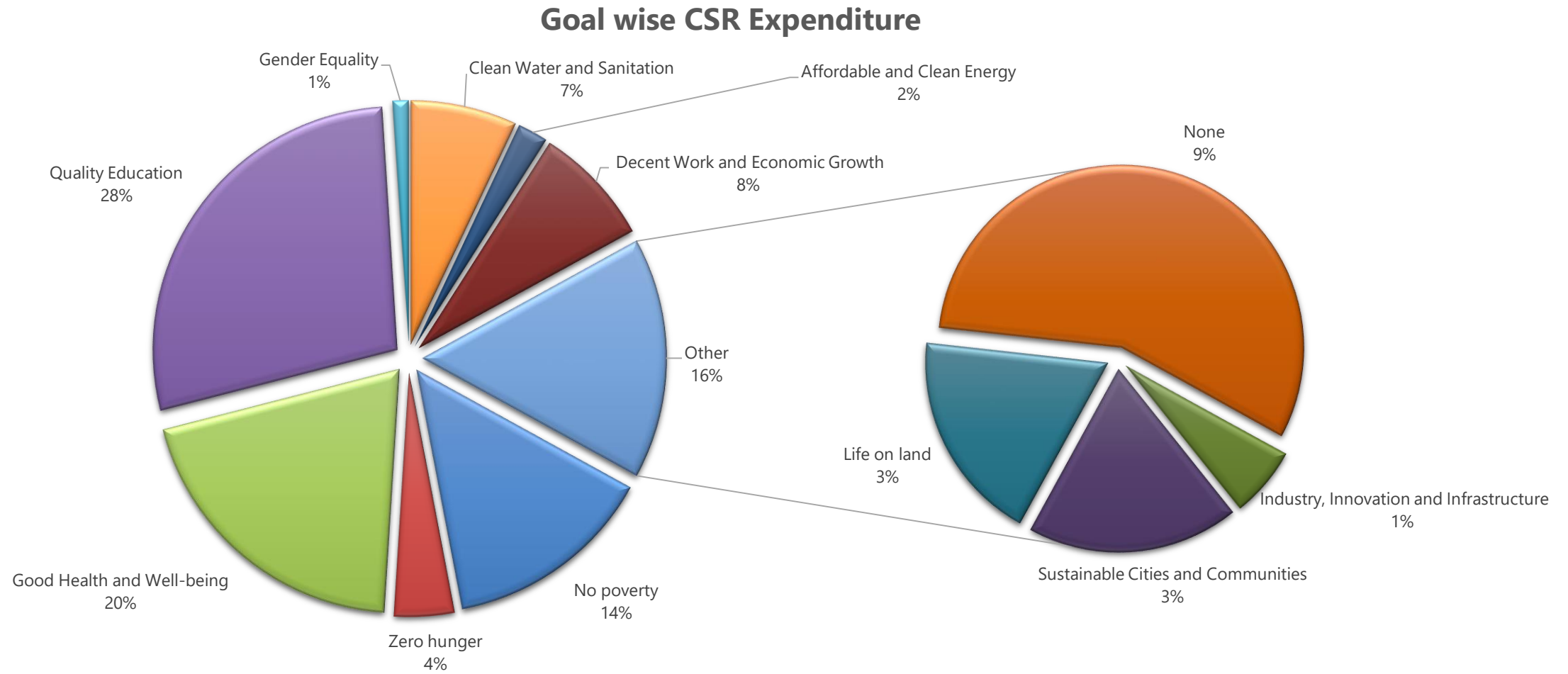
- Eradicating Hunger, Poverty, malnutrition
- Promoting healthcare/ education / gender equality/sports
- Environmental sustainability
- Contribution to Prime Minister's relief fund
- Rural / Slum Area Development projects
- Disaster management

Prohibited Activities

- Activities in normal course of business
- Activities undertaken outside India
- Activities that benefit only the employees and their families
- Contribution to any Political party
- One-off events–Marathons/Awards etc.
- Expenses incurred for the fulfillment of any Act/ Statute

As per MCA Circular dated 28th May 2018 preference should be given to local area and areas around which company operates (this provision should be followed in letter and spirit)

How is India spending?



Source: Report of CSRBOX – Feb 2020

Top 10 companies with prescribed CSR

Company Name	Estimated Prescribed CSR Amount for FY 2019-20 (in INR Crores)	% Change from Previous FY
Reliance Industries Limited	892.46	9%
Tata Consultancy Services Limited	684.68	12%
ONGC Limited	627.08	21%
Indian Oil Corporation Limited	560.08	11%
HDFC Bank Limited	540.24	20%
Infosys Limited	391.82	4%
ITC Limited	338.65	9%
Housing Development Finance Corporation Limited	260.72	8%
NTPC Limited	247.09	6%
Coal India Limited	229.25	-15%

Source: Report of CSRBOX – Feb 2020

Few CSR Initiatives by India Inc.

- **Reliance Industries Limited**

- Activities for visually impaired
- Digital education initiatives
- Digital health and health outreach program
- Disaster relief



- **Tata Consultancy Services Limited**

- Child line software support to track missing children
- Restoration of Heritage building
- Education and Skill building Disaster relief



- **Infosys Limited**

- Biomass Cookstove project
- Aiding flood relief efforts
- Constructing Zoo protection wall



CSR Initiatives during COVID-19

- **Tata Power Limited** manufactured and supplied over 1.20 lac masks to the states of Maharashtra and Jharkhand to contain the spread of coronavirus under its Dhaaga initiative
- **Infosys Limited** through its CSR arm Infosys Foundation has partnered with Narayana Health City to open 100-bed quarantine facility for COVID-19 patients
- **Hyundai Motor India Limited** through its CSR arm Hyundai Motor India Foundation, ordered COVID-19 advanced diagnostic testing kits from South Korea
- **Cadila Pharmaceuticals Limited** distributed essential kits among underprivileged families dwelling in surrounding region of Cadila Corporate Campus and its plants through its charitable arm KakaBa Charitable Trust
- **Jindal Steel & Power Limited** distributed personal hygiene products to people and has been feeding the hungry across all its operational locations through its CSR Arm JSPL Foundation

CSR spend during COVID-19

Circular dated 23rd March '20

Expenditure on COVID-19 related activities would qualify as CSR expenditure as per items prescribed under Schedule VII of the Companies Act, 2013



Office memorandum dated 28th March '20

Contribution to PM-CARES Fund is an eligible CSR activity under item no. (viii) of the Schedule VII of the Companies Act, 2013



Circular dated 10th April '20 – FAQs on CSR

FAQs relating to CSR expenditure on COVID-19

FAQs on CSR spend towards COVID-19

Expenditure	Whether eligible under Schedule VII?
Spending for COVID-19 related relief activities	Yes
Contribution to PM-CARES Fund	Yes
Chief Minister's Relief Funds or State Relief Fund for COVID-19	No
State Disaster Management Authority	Yes
Payment of salary/wages to employees/workers or contract labour during lockdown	No
Payment of ex-gratia payment to temporary/casual/daily wage workers	Yes

Ambiguities in the circular and FAQs

The FAQs cover ex-gratia payment made to temporary /casual employees and not to regular employees/workers

Meaning of “Specifically for the purpose of fighting COVID-19” is not clear

Boards’ declaration “to that effect” and Auditors’ certificate- no clarity as to what is to be declared/certified

Points for deliberation

Whether following expenditures qualify as CSR expenditure?



- Capital expenditure in its own capacity



- Recreational facilities provided by employer in employee quarters



- Distribution of free goods and services



- Expenditure on building a garden or other beautification project



- Developing in-house technology for production with low carbon emission

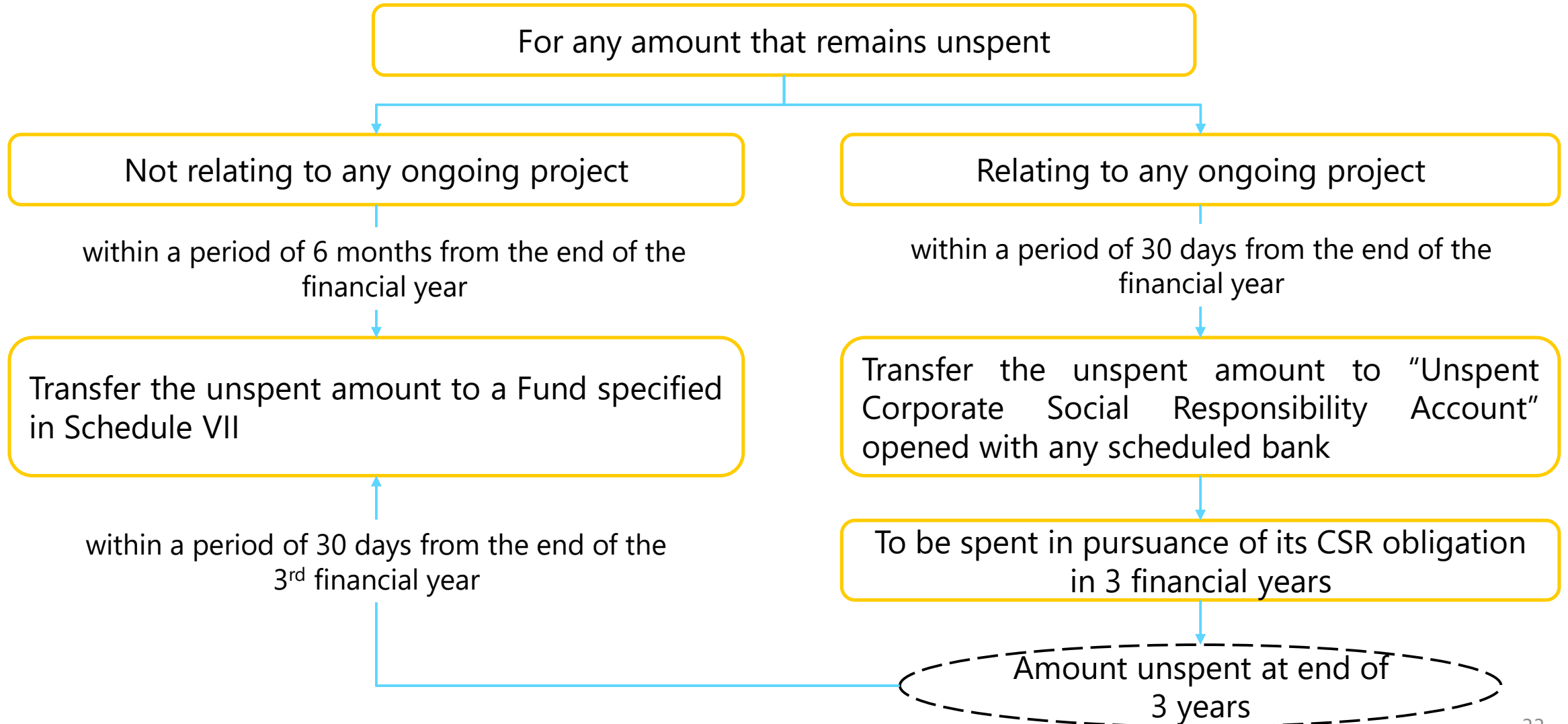


AMENDMENTS IN CSR

Sec135 -Amendments and Clarifications

Date	Circular/Notification	Date	Circular/Notification
01st April 2014	Section 135 and Companies (CSR Policy) Rules, 2014 and Schedule VII enforced	16th May 2016	Circular no. 05/2016- Clarification on CSR
31st March 2014	Amendment in Schedule VII	23rd May 2016	Companies (CSR policy) Amendment Rules, 2016
08th June 2014	Circular No. 21/2014 – Clarification on Section 135	28th May 2018	Circular No. 06/2018 dated 28.05.2018
06th August 2014	Amendment in Schedule VII	19th September 2018	Companies Amendment Act, 2017 and CSR Policy Rules 2018
12th September 2014	Companies (CSR policy) Amendment Rules, 2014	30th May 2019	Amendment to schedule VII
17th September 2014	Circular 36/2014– Clarifications on 135 and schedule VII	11th October 2019	Amendment to schedule VII
24th October 2014	Amendment in Schedule VII	19th November 2019	Amendment to schedule VII
19th January 2015	Companies (CSR policy) Amendment Rules, 2015	23rd March 2020	Circular No. 10/2020- Clarification on COVID-19 spend
12th January 2016	FAQs on CSR- Circular No. 1/2016 dated 12-01-2016	10th April 2020	Circular No. 15/2020- FAQs on COVID-19 spend

Amendment - 2019



Penal Consequences for non-compliance

Existing Provisions

- No penal consequences for not spending the prescribed amount if appropriate reason is provided
- For no disclosure in Board's Report:
 - On the Company – INR 0.50 lacs up to INR 25 lacs
 - Officer in default- INR 0.50 lacs up to INR 5 lacs or imprisonment up to 3 years; or both.

Companies (Amendment) Act, 2019

- Penal provisions introduced on contravention relating to unspent amount (*not yet notified*):
 - On the company – INR 0.25 lacs up to INR 25 lacs.
 - Officer in default - INR 0.25 lacs up to INR 5 lacs or imprisonment up to 3 years; or both.

Companies (Amendment) Bill, 2020

- Penal provisions modified
 - On the company - Twice the amount to be transferred to Unspent CSR account or INR 1 crore, whichever is less.
 - Officer in default- 1/10th of the amount to be transferred to Unspent CSR account or INR 2 Lacs, whichever is less or both.

Companies (Amendment) Bill, 2020

CSR Committee

Companies with a CSR liability of up to INR 50 lacs in a year exempt from setting up a CSR Committee

Excess Spend

Any amount spent in excess of CSR obligation can be set off against CSR obligation of subsequent years

Draft CSR Policy Rules, 2020

Activities having less than 25% employees as its beneficiary considered as CSR

Trusts and societies not eligible to act as implementing agencies

“Ongoing project” is a multi-year project of max 3 years excluding first year of commencement

CFO to certify that the funds disbursed have been utilized

Mandatory impact assessment for companies

Asset acquired / created for the purpose of CSR cannot be held in the name of the company

HLC Recommendations

Recommendations of High Level Committee on CSR on which no action has been taken or where amendments have not been made as per the recommendation:

Scope of CSR to be extended to LLPs

For newly incorporated companies the obligation for spending shall lie only after they have been in existence for 3 years. *[However, Companies (Amendment Act), 2019 provides otherwise]*

CSR to be brought within the purview of statutory financial audit, CSR spending details to be a part of the financial statements of a company

All activities listed under Schedule VII of the Companies Act, 2013 to enjoy uniform tax benefit

5% of CSR mandated companies be identified on a random basis for third-party assessments on a pilot basis



CHECKS AND BALANCES

How to ensure the amount is rightly spent?

1 Internal audit of CSR compliances by an independent party

2 CSR checklist as a tool for reflecting commitment towards stakeholders

3 Due diligence of implementing agency

4 Continuous monitoring of activity

5 Compliance with Global Standards of Social Responsibility

Monitoring the progress of the project

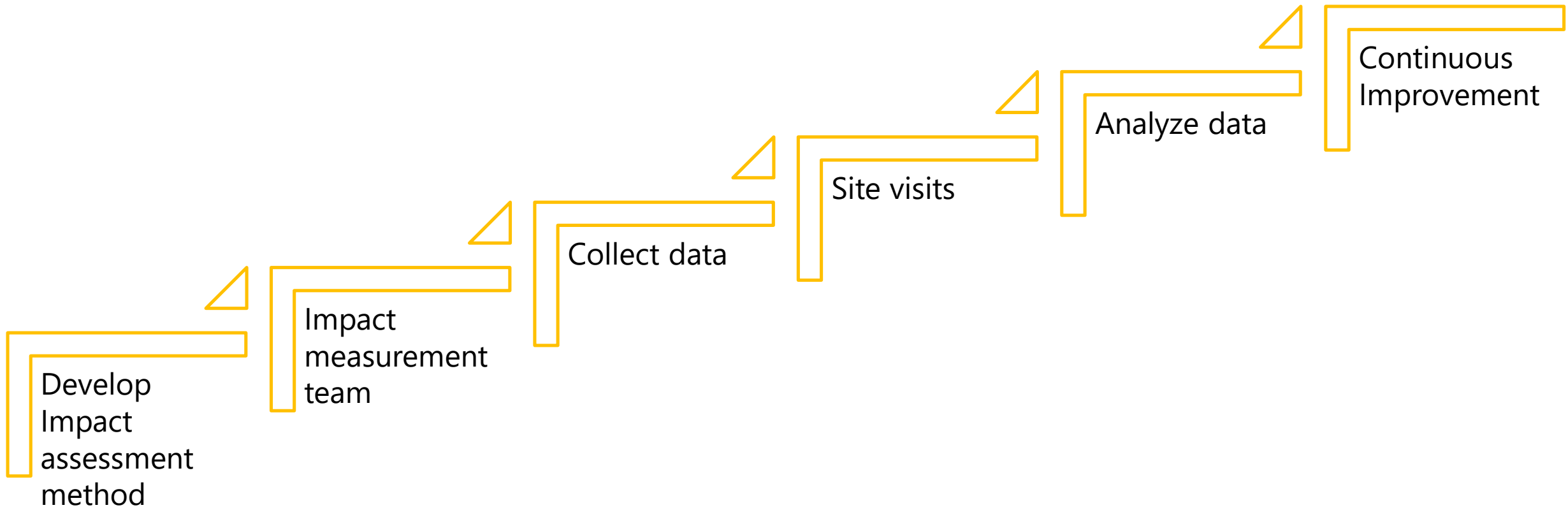
Purpose

- Highlights any slippages and helps to determine a corrective action
- Provides an excellent opportunity for learning – what worked and what didn't
- An essential part of the directors' report

Activities

- Determining the monitoring schedule for each project
- Obtaining all relevant progress reports, studying them and noting the gaps
- Holding discussions with the implementation team on reasons for slippages (if any) and agreeing on a corrective action
- Discussions regarding lessons emerging and how they can be applied in the project

Impact measurement





CSR REPORTING

CSR Reporting and Compliance

01

CSR policy in public domain

Guidance provided in rules on what constitutes policy:

1. Exclude normal business activities
2. A list of CSR projects and programmes which company plans to undertake

02

Annual report should specify

1. Brief outline of policy and overview of activities to be undertaken
2. Full description of projects / activities undertaken or proposed with a web link
3. Composition of CSR Committee
4. Reasons for not spending, in case minimum CSR expenditure not made

CSR Reporting and Compliance

02

**Annual
should
(continued)** **report
specify**

5. Average profit of last 3 years

6. Prescribed CSR expenditure (2% of average profit of last 3 years)

7. Details of CSR spend during the year:

a. Amount to be spent

b. Amount unspent (if any)

c. Manner in which amount is spent in FY (incl. modes)

8. Responsibility statement of CSR committee for implementing and monitoring the policy

03

**Disclosure
Board's
under
134** **in
report
Section**

The details about the policy developed and implemented by the company on CSR initiatives taken during the year

CSR Reporting and compliance

04

Reporting as per Schedule III of Companies Act, 2013 (Guidance Note issued by ICAI)

Separate line item as 'CSR Expenditure' in Profit and Loss Account

Contractual liability for which provision is created in Balance Sheet should be presented as per Schedule III of Companies Act, 2013. (*Movements to be shown separately.*)

Disclosure in notes to accounts:

- a. Gross amount required to be spent
- b. Amount spent during the year on:
 - (i) on construction/ acquisition of asset or otherwise
 - (ii) amount paid in cash/ yet to be paid

Disclosure by way of notes to cash flow statement (*wherever applicable*)

Details of related party transactions (e.g. in case of contribution to a trust controlled by the company in relation to CSR expenditure as per AS 18)

Illustrative format of CSR reporting - Annual report

(1) SI. No	(2) CSR project or activity Identified.	(3) Sector in which the Project is covered	(4) Projects or programs (1) Local area or other (2) Specify the State and district where projects or programs was undertaken	(5) Amount outlay (budget) project or programs wise	(6) Amount spent on the projects or programs Sub-heads: (1) Direct expenditure on projects or programs (2) Overheads:	(7) Cumulative expenditure upto to the reporting period	(8) Amount spent: Direct or through implementing agency *
1							
2							
	TOTAL						

*Give details of implementing agency:



CSR ACCOUNTING

Questions on CSR Accounting

Accounting treatment for unspent amount

Accounting for excess amount spent

Grant received

Functional classification of CSR expenditure

Supply of company's goods or service for CSR

Role of Chartered Accountant in CSR

ICAI is nominated by
Hon'ble Prime Minister
for Swachh Bharat
Abhiyaan

CAs are entrusted to
monitor compliance –
hence a stringent
check should be kept

CAs should refrain
from engaging/
advising to engage in
unethical practices

Assist client in
complying with the
requirements under
law

Way Forward

More incentives for undertaking CSR

Mechanism for monitoring fund utilisation

Should there be progressive % limit to be spent on CSR?

Possibility of setoff of losses of group companies by calculating CSR on consolidated basis

Emerging possibilities for mandatory CSR audit

Q & A Session



Thank you

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