

Analysis of Amendments to CSR Rules, January 2021, Form CSR 2 for Corporates & Role of NGOs in CSR Compliance

Under The Companies Act, 2013 &
Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022

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CSR - Section 135, Companies Act 2013 - Qualifying Norms

*Companies incorporated in India and having either of the following in any of **the immediately preceding financial year***



Net worth of INR 500 Cr or more.



Turnover of INR 1000 Cr or more.



Net profit of INR 5 Cr or more.

CSR - Section 135, Companies Act 2013 – The Budget

*CSR Budget = Every financial year, at least 2% of the average net profits made during the **immediately 3 preceding financial years***

CSR Is a Board level function

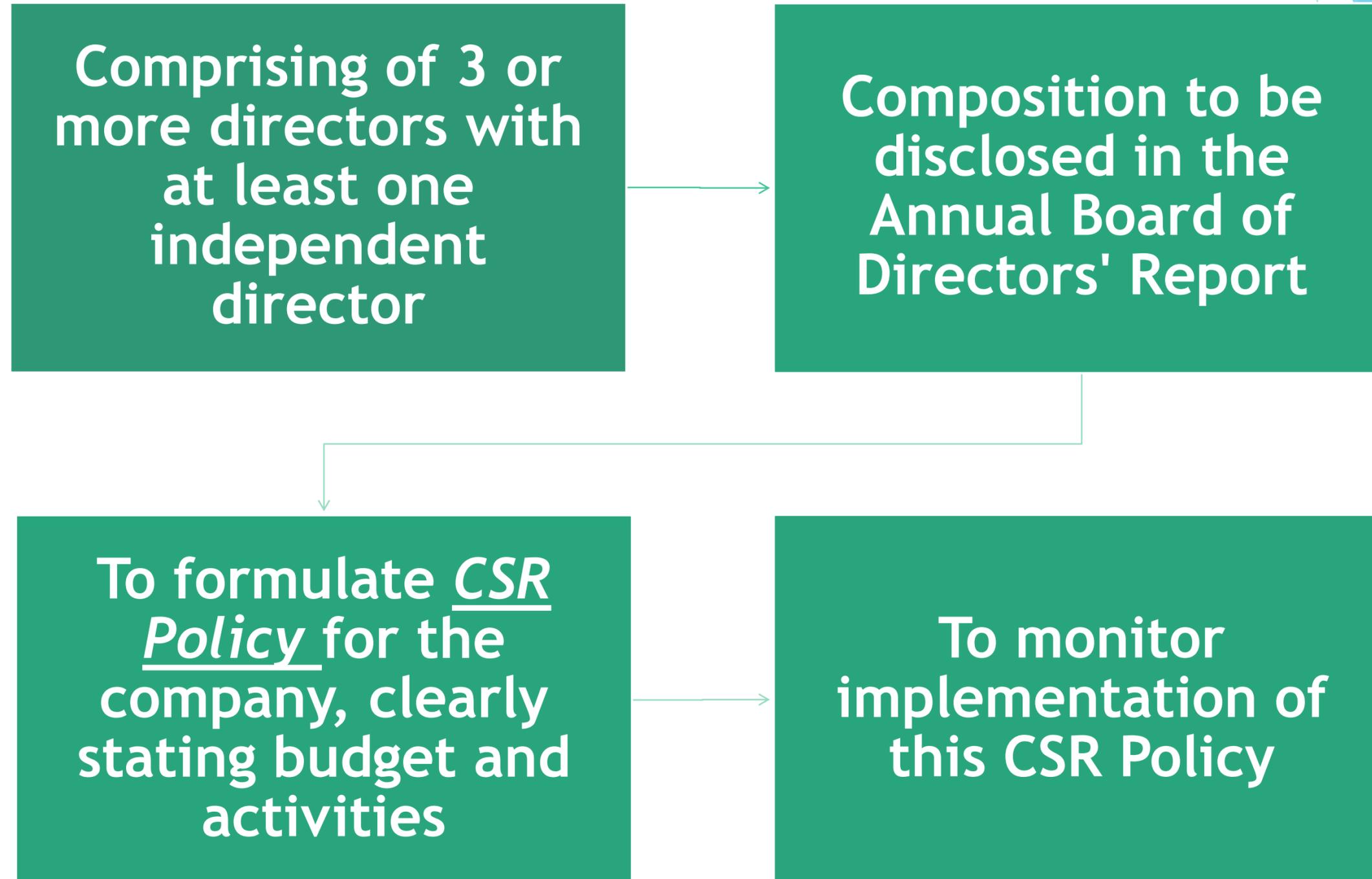
since 1st April 2014 –

The Board of each Qualifying Corporate must

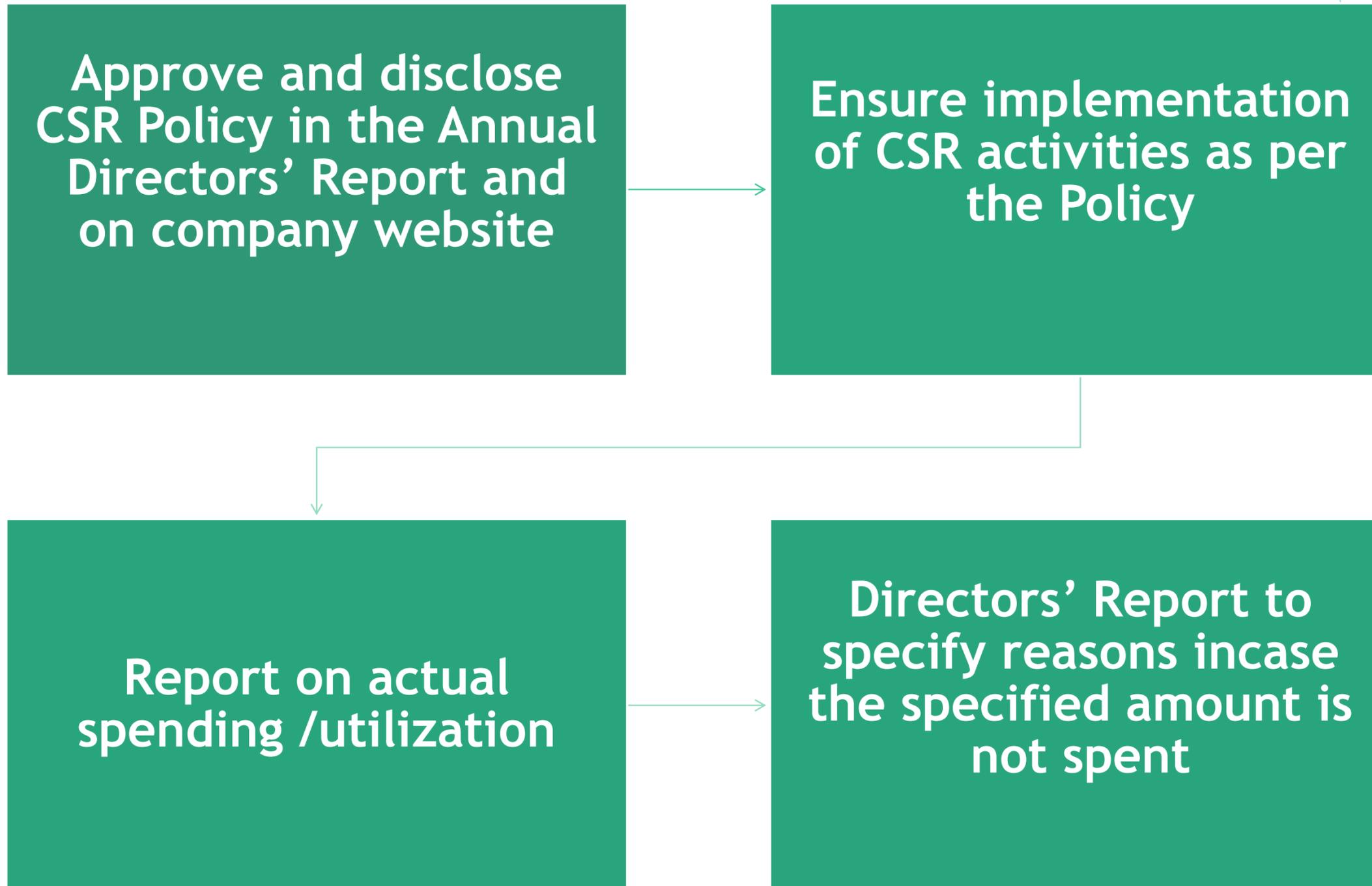
form a

CSR Committee of the Board

Board level CSR Committee - CSR IS A BOARD LEVEL FUNCTION!!



Responsibility of the Board



CSR can be undertaken in a number of ways

**1. Company Vehicle/NGO/
Foundations
(Can be new)**

**2. External Vehicle/NGO
(Min 3 years old)**

**3. Central/State Govt Vehicle
(Can be new)**

- Registered Trust
- An 1860 Society
- A Section 8 Company

**4. Parliament/State Legislature
established Entity
(Can be new)**

- 5. PM-CARES**
- PM National Relief Fund
 - Any Central Govt Fund for SC, ST, BCs
 - Swachh Bharat Kosh
 - Clean Ganga Fund

CSR 2.0

5 GAME CHANGING Mega trends in CSR Compliance that all **MUST KNOW**

1. CSR spending is now **MANDATORY**
2. Spending timeframes are now **FINITE TIME PERIODS**
3. NGOs are partners in implementation & **COMPLIANCE**
4. Government / Ministry of Corporate Affairs (MCA) is **CLOSELY MONITORING CSR SPENDING & COMPLIANCE** through detailed **REPORTING FORMAT** introduced in January 2021
5. Government is actively utilizing CSR for **NATION-BUILDING** and **DISASTER MANAGEMENT**

Deeper Dive into Macro trends in CSR Compliance For Corporates

1. CSR High Level Committee (HLC) Recommendations getting implemented
2. Comply or Explain is NOW Comply & Spend. Thus, CSR spending is now mandatory
3. Higher Board Level Accountability – Transparency, Monitoring, Approvals, Reporting
4. Spending = Allocation + transfer + utilization with CA Certificate
5. Ongoing Projects defined to give elbow room to spend over a 1+3 year period
6. Annual Action Plan (AAP) made mandatory – to sync Grant Cycle to FY Cycle
7. Clarity presented on some unclear areas like Admin Overheads, Surplus, Set-off etc.
8. Role of CFO now becomes particularly important. Key collaboration must now be between CFO, CSR Head, CA and CS.
9. Treatment / Reporting of Capital Assets defined
10. Business / for-profit activities must be clearly kept away from CSR activities.
11. Non-Compliance – Civil Offence with monetary penalty on all concerned

Deeper Dive into Macro trends in CSR Compliance Implementing Agencies (NGOs)

Implementing Partners / NGOs are NOW PARTNERS IN COMPLIANCE TOO

1. Key role for NGO Leaders to be pro-active
2. Must spend/utilize in timely manner within FY/1+ 3 years for Ongoing Projects
3. Registration u/s 12A, 80G of IT Act 1961 made mandatory
4. Form 10BD to be filed by 31st May 2022 for FY21-22 u/s 80G. Form 10BE must be obtained by the donor from NGO/donee to avail tax exemption.
5. Registration on CSR-1 Form will help bring donor and donee within the same umbrella of Ministry of Corporate Affairs. Later, I feel this is likely to lead to NGO reporting on CSR Utilizations against their allocated CSR Registration No. This could then be tallied against CSR spends as reported by Companies through MCA21.
6. **Lack of Compliance support to Corporates = Who moved my Cheese!!**

Focus of Companies (CSR Policy) Amendment Rules, 2021

1. Definitions – CSR, Ongoing Project, Administrative Overheads
2. Increased responsibilities of the Board & CSR Committee - Key synergy required now between: *CFO, HEAD CSR, CA and CS*
3. Introduction of Annual Action Plan
4. Implementing Partners
5. More focus on “Disclosure by both Companies and Implementing agencies” - Comprehensive Reporting Format / Annexure II introduced
6. Focus on Unspent Amount
7. Treatment of Capital assets
8. Impact of CSR projects as part of Compliance
9. Decriminalization of CSR
10. E-governance: Registration through e-forms – Form CSR1 introduced

Definitions - i.CSR; ii.Ongoing Project; iii.Administrative Overheads

Amendment defines “What is CSR and what is not CSR” & classifies what all disallowed in CSR:

- CSR means doing activities to fulfil statutory obligations under Section 135, Companies Act 2013 in accordance with CSR Rules 2014/2021
- What is disallowed:
 1. Normal course of business-related activities, except Covid related R&D for FY21 to FY23 with defined organisations; to be reported separately
 2. Outside India activities not allowed except sports training
 3. Contribution to Political Parties not permitted
 4. Employees covered under clause (k), section 2, Code on Wages, 2019 (29 of 2019) cannot benefit
 5. Sponsorship for marketing benefits on products & services disallowed
 6. Any activity to fulfil statutory obligation under any law in force cannot be CSR

Definitions - i.CSR; ii.Ongoing Project; iii.Administrative Overheads

“Ongoing project” means a multi-year project undertaken by a company in fulfillment of its CSR Obligation having timelines not exceeding 3 years excluding the FY in which it was commenced. To be read with Section 135(6)

Board to:

1. classify a project as ongoing based on reasonable justification
2. Monitor timelines and spends year on year
3. Modify suitably for smooth implementation within timelines

iii. Administrative Overheads

1. Only the expenses incurred by the company for general management and administration of corporate social responsibility functions classified as administrative overheads.
2. The expenses indirectly incurred for the Designing, Implementation, Monitoring and Evaluation of a particular Corporate Social Responsibility project or program specifically excluded.
3. The administrative overhead not to exceed 5% of total CSR expenditure of the company for the financial year.

Its all about SPENDING.....

CSR Spending Distribution Chart - Broad activities as per Companies (Corporate Social Responsibility) Amendment Rules 2021

| | 5% | 5% (if applicable, else part of Directly incurred Expenses) | 90% (Directly incurred Expenses) | | |
|----------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| | A | B | C | D | E |
| Budget Heads As per CSR Rules 2021 | 5% admin overheads - General management and adminstartation of CSR | 5% impact assesment, if applicable, upto max 50 lacs qualifying companies | Designing of CSR projects and programs | Implementation of CSR projects and programs Direct by Company, an 1860 Society, Trust or Section 8 Company or as per other entities under CSR Rule 4(1) (a) to (d) | Monitoring and Evalution (M&E) of CSR Projects |
| Activity sub-heads that may qualify under stated Budget Heads | Board leavel compliances like CSR Policy, Strategy, Annual Action Plan, CFO compliances, HQ employee costs, legal expenses, office supplies, stationary, admin releated travel etc - all as part of General management and adminstartation of CSR, Mandatory CSR Reporting etc | As required/Applicable | May include - Need assesment, RFP (Request For Proposal), Project design, Due deligence and Selection of NGOs, MoU, Budget plan, Theory of Change, Model of Intervention etc. | Actual implementation of CSR Projects and Programs by above entities - All of these must be registered under Form CSR-1 with effect from 1 April 2021, and non-governement ones amongst these must also be Registered u/s 12A and 80G of the Income Tax Act 1961. | M&E plugged into Project budget |

2. Increased responsibilities of the Board & CSR Committee: Key synergy required: CFO, HEAD CSR, CA and CS

Some key highlights:

1. The new CSR Rules have added new responsibilities to the Board of Directors and the CSR Committee, such as monitoring, evaluating, and reporting on CSR activities
2. The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.
3. In case of an ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.
4. Board may alter an Annual Action Plan during the FY on recommendation of CSR Committee, based on reasonable justification.
5. Boards Report to include an Annual Report on CSR as per Annexure I or II, as applicable

3. Introduction of Annual Action Plan

1. The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-
 2. (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
 3. (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
 4. (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
 5. (d) monitoring and reporting mechanism for the projects or programmes; and
 6. (e) details of need and impact assessment, if any, for the projects undertaken by the company:

4. Implementation and Monitoring Partner

1. Registration of Implementing Agency: (**MANDATORY REGISTRATION**) Every entity, covered under sub-rule (1), that intends to undertake any CSR activity, shall register itself with the Central Government by filing the form **CSR-1** electronically with the Registrar, with effect from the **01st day of April 2021**.
2. A company may engage **international organisations** for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
3. A company may also collaborate with other companies for undertaking projects or programmes 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 programmes in accordance with these rules.

5. Comprehensive Reporting Format – Annexure II

- 1.** The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- 2.** The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

6. Focus on Unspent Funds-1

Transfer of unspent CSR amount:

Unspent amount not relating to ongoing project (refer Proviso to Section 135(5)):

where amount doesn't relate to any ongoing project then in case of failure to spend the same will require carrying forward of the same to fund specified in Schedule VII within six months of close of financial year in addition to disclosure of reasons for not spending in Board report.

Unspent amount relating to ongoing project (refer Section 135(6)): to be transferred within a period of 30 days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any schedule bank to be called the **unspent corporate social responsibility account (UCSRA)**. So amount remaining unspent (ongoing project) for the financial year 20-2021 shall be transferred to UCSRA latest by April 30, 2021.

6. Focus on Unspent funds -2

Extended time for spending on ongoing project:

The amount from Unspent CSR Account shall be spent within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to the fund specified in schedule VII within a period of 30 days from the date of completion of the third financial year.

For example: The amount remaining unspent is transferred for financial year 2020-21 to UCSRA, has to be utilized for the project upto FY 2024-25, otherwise shall be transferred to a fund specified in Schedule VII.

7. Treatment of Capital Assets

1. The CSR amount may be spent by a company for the creation or acquisition of a capital asset, which shall be held by -
 - (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, or (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or (c) a public authority
2. All such Capital Assets including any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

8. Impact of CSR projects as part of Compliance.

Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less. ”.

9. Decriminalized

- Only civil penalty - no criminal proceedings
- Penalty to kick in only in case of non-compliance to Sections 135(5) and 135(6) - Failure to transfer unspent amount in specified funds within time limits (explained above)
- Officials along with company made personally liable for penalty.

FORM CSR-2

Contextual Background

Amendment under the Companies (Accounts) Rules, 2014

Under the Companies (Accounts) Amendment Rules, 2022 it is mandated that every company covered under the provisions of section 135 (1) of the Companies Act, 2013 shall be required to furnish a report on CSR in form CSR-2 to the Registrar commencing from the preceding financial year (2020-21) as an addendum to form AOC- 4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS) as may be applicable.

AOC-4 Forms are for filing the company's financial statement for every financial year with the Registrar of Companies.

Deadline for filing the AOC- 4 and other similar forms is:

- a) Within 30 days of AGM of the preceding FY (example: If AGM is conducted on 1st August 2022, the AOC-4 forms have to be filed by 31st August 2022)
- b) Deadline for filing AOC -4 and other forms for FY 2020-21 has been extended to May 31st, 2022

Purpose of Introducing Form CSR 2

Enhanced transparency and disclosures: For CSR activities to provide better oversight.

Currently, the government is aware of the amount that is being spent on CSR, but it will now be able to track where this amount is being spent, utilised, and how in a deeper manner.

Enhanced accountability: It is to ensure the CSR sum is spent in an appropriate and accountable manner and the money unspent is not ploughed back into the company or to its promoter.

Database consolidation: With the MCA introducing an extensive format for reporting CSR as addendum to Form AOC-4, while there is increase in compliance, the exercise will enable government to generate an extensive database of CSR spending in the country.

Further, this additional information can be used by the MCA in drafting effective policies for CSR and other development work for nation building.

[Instruction Kit for eForm CSR-2 – MCA -](#) This gives the whole document as well as how to fill the form in detail.

Overview of Form CSR 2

CSR Form 2: How it compares to Annexure II Reporting Form under Companies (CSR Policy) Amendment Rules 2021

- There is repeat of required information that is part of CSR Reporting in Annexure II
- New information is required that was not getting captured anywhere in CSR Reporting in Annexure II
- Rules that were part of CSR Rules Amendments of 2021 but not captured in the CSR Reporting in Annexure II, have been included

Form CSR 2 – Key highlights

- Reporting is now more comprehensive. Annexure II was not capturing all the compliances as per Section 135 along with the Amended Rules 2021
- Extra information has been asked that was part of compliance but now added to mandatory reporting.
- Requires companies to report deeper on constitution and functioning of its CSR Committee.
- Details of CSR Committee Members including their DIN number sought thereby increasing accountability of Directors
- Impact Assessment: Whether same has been disclosed in Board Report has been asked

Form CSR 2 – Key highlights

- Detailed information about the company has to be provided including financial criteria for eligibility under CSR
- MCA wants deeper clarity on CSR obligation calculation, transparency in calculation and increased accountability in spending.
- More explanations being asked for non spending.
- Details about spending in current FY against Unspent amounts from previous years: FY 14-15 (Start of CSR Rules) to FY 19-20 (CSR Rules Amendment in 2021).
- If any capital assets have been created or acquired through CSR spending, companies will have to provide details of Form CSR 1 of Implementing Partners/ NGOs. This will include Corporate Foundations to disclose capital assets acquired by them

Form CSR 2 – Key highlights

- Details have been sought for type of projects on which CSR funds have been spent during the FY (Ongoing, Other than ongoing, Both (ongoing and other than ongoing)).
- In Form CSR 2, project ID for each ongoing project shall be generated and the same unique ID is to be mentioned till such ongoing project is continued
- Provision for uploading attachments provided – this can facilitate better disclosure
- Board Resolution with No. and Date included authorizing a Director to digitally sign Form CSR 2

“Deficiency” in Unspent Funds

REPORTING “DEFICIENCY”- Unutilised Funds

- In section 8, the Form CSR-2 has the provision to **report the difference as “deficiency” between the amount to be transferred to the Unspent CSR account and the amount transferred to the Unspent CSR account.** This difference can arise if the company has disbursed certain CSR funds to the implementing partner which remain unutilized.
- Since such unutilised funds remain with the implementing partner and are not transferred to the Unspent CSR account, they will reflect in the “deficiency” column of section 8.
- The company must also give reasons for the “deficiency” amount remaining unspent in Section 9. Annexure 2, on the other hand, has no provision to report such a case situation

Next Steps for Corporates & NGOs



- Corporates must immediately start collating and consolidating the details of CSR projects and spends of FY 2020-21 and the preceding FYs, as per the requirements mentioned on Form CSR-2.
- As soon as MCA releases the web form, the details can be filled and submitted within the extended deadline of 31st May 2022.
- Please note that this deadline of 31st May 2022 is for the FY April 2020 to March 2021 only.
- Form CSR-2 for FY20-21 is to be filed separately after filing of the AOC-4 forms.
- However, for FY April 2021 – March 2022, the deadline for Form CSR- 2 will be 30 days post the AGM and it has to be filed as an addendum to the AOC-4 forms.
- Implementing Agencies / NGOs must fully **ENGAGE IN COMPLIANCE PARTNERSHIP**

Thank You

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