

FAQ: Corporate Social Responsibility in India



The Indian Companies Act 2013 makes Corporate Social Responsibility (CSR) compliance mandatory for any company, whether private, public, foreign, or even a nonprofit company registered under Section 8, if the company has particular profit, turnover, or net-worth. The Companies Act is regulated by the Ministry of Corporate Affairs and requires companies to formulate a clear policy on CSR and report annually on its CSR-related activities.

1 IS CSR MANDATORY UNDER THE LAW IN INDIA?

Companies registered under the Indian Companies Act 2013 must comply with certain CSR obligations under Section 135 of the act, including spending funds on CSR activities.

2 IS CSR MANDATORY FOR EVERY COMPANY IN INDIA?

Section 135 applies to every company registered under the Indian Companies Act that (1) is a private or public company or a subsidiary of a foreign company and (2) has a net worth of 5 billion Indian rupees (approximately \$69,887,550) or more, a turnover of 10 billion rupees (approximately \$139,775,100) or more, or a net profit of 50 million rupees (approximately \$698,850) or more during the preceding financial year.

3 WHAT IS A COMPANY THAT FALLS WITHIN THE MANDATE OF SECTION 135 REQUIRED TO DO?

The company must:

(1) Create a CSR committee of its board members consisting of three or more directors, at least one of whom is independent. The CSR committee of a private company may be made up of two directors, neither of whom need be independent.

(2) After taking into account the recommendations of the CSR committee, the company must approve a CSR policy, include the contents of the policy in its annual performance and financial reports, publish the policy on its website, and ensure that activities specified in the policy are actually undertaken.

(3) The company must ensure that in every fiscal year it spends at least 2 percent of its average net profits from the three preceding fiscal years in pursuit of its CSR policy.



Indian law makes Corporate Social Responsibility compliance mandatory for any company ... even a nonprofit company registered under Section 8. India is reportedly the only country in the world that mandates CSR.

Photo: Bhavishya Goel

4

WHAT IF A COMPANY FAILS TO SPEND ADEQUATELY ON CSR?

According to Section 135, if a company fails to spend the required amount on CSR, the board must specify the reasons for not doing so in the company's annual performance and financial reports.

Article 21 of the new Companies (Amendment) Act 2019 has not yet come into force, but lays out additional requirements for companies that fail to spend the required amount on CSR. If the company has ongoing CSR projects, it must transfer the unspent funds to a special account specified in the Second Schedule of the Reserve Bank of India Act (2934) within 30 days of the end of the fiscal year, and spend the funds on CSR-related activities within 3 years of the transfer date. If the company does not have an ongoing CSR project, it must transfer the unspent funds to a fund specified in Schedule VII of the Indian Companies Act 2013 within 6 months of the end of the fiscal year. Funds in Schedule VII include those set up by the central government for the socio-economic development, relief, and welfare of marginalized groups, among others.

5

ARE CSR ACTIVITIES SET FORTH IN THE LAW?

Schedule VII of the Indian Companies Act 2013 provides an illustrative list of CSR activities, which opens a wide range of possible activities. The Ministry of Corporate Affairs has clarified that this is "an illustrative list and must be interpreted liberally." The list includes:

- (1) Eradicating hunger, poverty, and malnutrition; promoting healthcare, including preventive health care and sanitation (e.g., contributing to the Swach Bharat Kosh or Clean India Initiative set up by the central government to promote sanitation); and making safe drinking water available.
- (2) Promoting education, including special education and employment-enhancing vocational skills, especially among children, women, the elderly, and differently abled, as well as livelihood enhancement projects.
- (3) Promoting gender equality; empowering women; setting up homes and hostels for women and orphans; setting up old-age homes, day care centers, and other facilities for senior citizens; and establishing measures for reducing inequalities faced by socially and economically marginalized groups.
- (4) Ensuring environmental sustainability, ecological balance, the protection of flora and fauna, animal welfare, agro-forestry, the conservation of natural resources; and maintaining the quality of soil, air, and water, including contribution to the Clean Ganga Fund set up by the central government to rejuvenate the Ganga River.
- (5) Protecting India's national heritage, art, and culture, including the restoration of buildings and sites of historical importance and works of art; setting up public libraries; and contributing to the promotion and development of traditional arts and handicrafts.
- (6) Setting forth measures for the benefit of veterans, war widows, and their dependents.
- (7) Training to promote rural sports, nationally recognized sports, Paralympic sports, and Olympic sports.

Continues next page



ARE THERE SPECIFIC DOS AND DON'TS FOR CSR ACTIVITIES?

A company should observe certain rules in carrying out CSR activities.

- (1) The company should undertake CSR activities in project mode. Giving a donation to an NPO to "continue its good work" does not constitute CSR. The NPO must have a definite plan or project to address a social need within a given time frame, along with clear goals, objectives, inputs, outputs, and outcomes.
 - (2) One-off events, such as marathons, awards, charitable contributions, advertisements, and sponsorships of TV programs, do not qualify as CSR activities.
- (3) Only CSR projects, programs, or activities undertaken in India count towards the CSR requirement.
 - (4) CSR projects, programs, and activities that benefit only company employees and their families are not considered CSR activities.
 - (5) Direct or indirect contributions to any political party under Section 182 of the Act are not considered CSR activities.

(8) Contributing to the prime minister's National Relief Fund or any other fund set up by the central government for the socio-economic development, relief, and welfare of marginalized classes, minorities, and women.

(9) Contribution to publicly-funded business incubators and public bodies (such as publicly-funded universities and national laboratories) conducting research in science, technology, engineering, and medicine to promote the Sustainable Development Goals (SDGs).

(10) Working on rural development projects.

(11) Developing slum areas.

(12) Disaster management, including relief, rehabilitation, and reconstruction activities.



WHERE CAN I LEARN MORE ABOUT PHILANTHROPY LAW IN INDIA?

More information may be found in ICNL's India Philanthropy Law Report, which offers detailed information about national laws and regulations affecting philanthropy in India:

<https://www.icnl.org/post/report/india-philanthropy-law>

6

IN WHAT WAYS MAY A COMPANY IMPLEMENT ITS CSR PROGRAM?

A company may undertake CSR activities directly as a company, through its corporate foundation, or through implementing agencies. An implementing agency is an NPO registered as a trust, society, or a nonprofit company that has a track record of at least three years of activity.

7

ARE COMPANIES ALLOWED TO SPEND PART OF THEIR CSR BUDGETS ON ADMINISTRATIVE COSTS? IS THERE A CAP?

Companies may use their budgets to build up the CSR capacity of company personnel and staff at implementing agencies. However, such expenditures, including on administrative overhead, should not exceed five percent of the total amount spent on CSR in a given fiscal year.

8

IS THE AMOUNT THAT A COMPANY SPENDS ON CSR TAX DEDUCTIBLE?

CSR expenditure is not considered a "business expenditure" that can be deducted under Section 37 of the Income Tax Act. However, a CSR expenditure is tax deductible if it is considered a deduction under other sections of the Income Tax Act. For example, if a company partners with an NPO that has an 80G (tax deduction) certificate, a grant the company makes to the NPO to implement a CSR program or project would be 50 percent tax deductible.

Simply stated, the amount that a company spends on CSR activities is not a business write-off or deductible as a business expense. However, if a company partners with an NPO to which grants are tax deductible (that is, the NPO that has an 80G certificate), the company may claim a tax deduction.

9

DOES SECTION 135 OF THE INDIAN COMPANIES ACT 2013 OR THE CSR RULES TAKE INTO ACCOUNT EMPLOYEE VOLUNTEER TIME?

Unfortunately, neither Section 135 nor the CSR Rules recognizes employee volunteer time as CSR. All over the world, companies proudly report the number of hours contributed by their employees to community service and volunteering. However, these hours do not qualify towards a company's CSR requirement and are not included in CSR reporting as required under Section 135 of the Indian Companies Act 2013.