



Company Law Corner

A SNAPSHOT - CSR AMENDMENTS

Section 135 of Companies Act, 2013 requires companies to constitute a Corporate Social Responsibility Committee (CSR Committee) which is responsible for formulating a CSR policy for the company. This is mandatory for companies having net worth of ₹500 crore or more; turnover of ₹1000 crore or more or having net profit of ₹5 crore or more during the immediately preceding financial year.

It is the duty of Board to ensure that the company spends, in every financial year, at least 2% of average net profits made during three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Ministry of Corporate Affairs (MCA) on January 22, 2021 has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. With these Amendment Rules, significant changes have been made to the existing Companies (Corporate Social Responsibility Policy) Rules, 2014. Besides, amendments brought in by the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020 has also been enforced on this date.

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 majorly with respect to following facets:

Old Rule	Effect	New Rule
Rule 4 - CSR Activities	Fully Substituted	Rule 4-CSR Implementation
Rule 5(2) - CSR Committees	Sub-Rule 5 (2) Substituted	Rule 5(2)- CSR Committees
Rule 6 - CSR Policy	Omitted	-
Rule 7 - CSR Expenditure	Fully Substituted	Rule 7-CSR Expenditure
Rule 8 - CSR Reporting	Fully Substituted	Rule 8-CSR Reporting
Rule 9 - Display of CSR Activities	Fully Substituted	Rule 9-Display of CSR Activities
-	New Rule inserted	Rule 10- Transfer of unspent CSR Amount

Rule 2: Following amendments have been made w.r.t. definitions:

- The definition of “**Administrative overheads**” inserted which means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.
- **Corporate Social Responsibility** definition has been amended to include the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Companies Act, 2013 in accordance with the provisions contained in these rules, but shall not include the following, namely: -

- (i) Activities undertaken in pursuance of normal course of business of the company.

However, any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- (a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Companies Act, 2013;
- (b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board’s Report;

- (ii) Any activity undertaken by the company outside India (except for training of Indian sports personnel representing any State or Union territory at national level or India at international level);
 - (iii) Contribution of any amount directly or indirectly to any political party under section 182 of the Companies Act, 2013;
 - (iv) Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
 - (v) Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;
 - (vi) Activities carried out for fulfilment of any other statutory obligations under any law in force in India.
- The definition of “**CSR Policy**” has been amended which means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

- The definition of “**International Organisation**” has been inserted which means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply;
- The definition of “**Ongoing Project**” has been inserted which means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;
- “**Public Authority**” means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005.

Rule 4 : Following amendments have been made w.r.t. CSR Implementation.

So far, a section 8 company or any registered trust, or any registered society, established by the company, either singly or along with any other company or by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature having track record of three years in carrying out similar activity were qualified to be an implementing agency. Several amendments have been brought in the provisions relating to implementing agencies.

- Now, the Board shall ensure that the CSR activities are undertaken by the company itself or through –
 - (a) A company established under section 8 of the Companies Act, 2013 or a registered public trust (instead of any registered trust) or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (instead of any registered society), established by the company, either singly or along with any other company, or
 - (b) Section 8 company or a registered trust or a registered society established by the Central or State Government;
 - (c) any entity established under an Act of Parliament or a State legislature; or
 - (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.
- **Mandatory Registration of CSR Entity:** Every eligible company who intends to undertake any CSR activity, is required to 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**.

However, the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021**.

- Form CSR-1 shall be **signed and submitted** electronically by the entity and shall be verified digitally by **a Chartered Accountant in practice or a Company Secretary**

in practice or a Cost Accountant in practice. On the submission of the Form CSR-1 on the portal, a **unique CSR Registration Number** shall be generated by the system automatically.

- **International Organizations Engagement for CSR Designing:** A company may engage the international organizations for designing, monitoring and evaluation of the CSR projects or programs as per its CSR policy as well as for the capacity building of their own personnel for CSR. Only the Central Government notified organizations shall qualify as International Organization.
- **A collaboration of other Companies for CSR Expenditure:** A company may also collaborate with other companies for undertaking projects or CSR activities in such a way that the CSR committees of respective companies are in a position to separately report on these kinds of projects in accordance with these rules.
- **CFO Certification:** It is the responsibility of the Board of the Company to monitor the implementation of ongoing projects and to ensure that the funds are utilized for approved purpose and shall be certified by the Chief Financial Officer (CFO) or Person in charge of finance.
- **Ongoing Projects:** In case of 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.

Rule 5(2) : Following amendments have been made w.r.t. CSR Committees

- **Mapping of Annual Action for CSR:** The Company's CSR Committee will formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include following:
 - ✓ CSR projects or programme lists that are approved to be undertaken in areas mentioned in Schedule VII of the Companies Act, 2013;
 - ✓ The manner of execution of such projects or programs;
 - ✓ The modalities of funds utilisation and implementation schedules for the projects
 - ✓ Monitoring and reporting mechanism for the projects or programs;
 - ✓ Details of need and effect assessment, if any, for the projects undertaken by the company

However, the Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

The Companies (Amendment) Act, 2020, has inserted the provision under Section 135(9) of the Companies Act, 2013 that where the CSR expenditure does not exceed ₹ 50 Lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee shall be discharged by the Board of Directors of such company.

Spending mandate and consequences of not spending (Change in CSR regime from Voluntary to Mandatory)

Second proviso to sec. 135 (5), read with section 135 (6), elaborates the mandatory spending requirement

- If the company fails to spend the CSR target, the Board in its report shall specify the reasons for not spending the amount.
- Analyse the “unspent” amount:
 - ✓ Unspent amount relating to an ongoing project to be transferred to Unspent CSR Account within a period of 30 days from the end of the financial year and used within a period of 3 Financial Years from the date of such transfer in pursuance to CSR policy.
 - ✓ failing which, the company shall transfer the same to a Fund specified in Schedule VII of the Companies Act, 2013, within a period of thirty days from the date of completion of the third financial year Or else,
- Unspent amount not relating to ongoing projects to be transferred to Funds notified in Schedule VII of the Companies Act, 2013 within a period of 6 months of the end of the financial year.

Rule 7: Following amendments have been made w.r.t. CSR Expenditure

New norms introduced for carry forward and set off excess CSR expenditure

- The board shall ensure that the administrative overheads shall not exceed **5% of total CSR expenditure** of the company for the financial year.
- Further, any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

If a Company spent on CSR in excess of the requirement (i.e. 2%), such excess amount may be set-off against the requirement of the CSR Spending u/s 135(5) upto the immediate succeeding 3 financial year subject to the conditions that:

- ✓ The excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule;
- ✓ The Board of the company shall pass a resolution to that effect.

Acquisition of Capital Assets

- The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –
 - ✓ Section 8 Company, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number
 - ✓ beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities;

- ✓ a public authority
- However, 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.

Rule 8: Following amendments have been made w.r.t. CSR Reporting

- **Directors Report:**

The Company shall annex with its Board Report an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced Prior To 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

- **In case of a Foreign Company:**

The Balance sheet filed u/s 381(1) (b) of the Companies Act, 2013 shall contain 'an annual report on CSR containing particulars specified in Annexure I (for F.Y. Commenced prior to 1st day of April, 2020) or Annexure II (w.e.f. F.Y. Commencing on or after 1st day of April, 2020), as applicable.

Impact Assessment for big CSR projects

- Companies with average CSR obligation of **10 Crore or more in the three immediately preceding financial years** shall undertake impact assessment through an independent agency for projects of **Rs.1 crore** or more which have been completed not less than 1 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 ₹ 50 Lakh, whichever is less.

Rule 9 : Following amendments have been made w.r.t. Website Disclosure

- The Board of Directors of the Company shall ensure essentially disclosure of the following on the website of the Company, if any:
 - ✓ The composition of the CSR Committee
 - ✓ CSR Policy and Projects approved by the Board

Rule 10: Following amendments have been made w.r.t. Transfer of unspent CSR amount

- Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Companies Act, 2013 the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Companies Act, 2013.

- **Revamped reporting format:** New format inserted for disclosure of 'Annual Report on CSR activities' to be included in the Board's Report.

Penal Provision (Amended by Companies (Amendment) Act, 2020)

If a company is in default in complying with the provisions of Section 135(5) or 135(6) of the Companies Act, 2013

Penalty on the Company:

- ✓ Upto twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or
- ✓ ₹1 Crore, whichever is less,

Penalty on every officer of the company who is in default

- ✓ 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII of the Companies Act, 2013, or the Unspent Corporate Social Responsibility Account, as the case may be, or
- ✓ ₹2 Lakhs, whichever is less.

Conclusion

The Companies (CSR Policy) Amendment Rules 2021 have overhauled India's CSR regime. Besides giving effect to changes introduced in Section 135 of Companies Act, 2013 as a result of Companies (Amendment) Act, 2019 and Companies (Amendment) Act, 2020, the new rules have introduced new requirements like impact assessment of CSR contributions, engagement of International Organisations for CSR Projects in limited capacity etc.
