

Corporate Social Responsibility (CSR) Amendments
dated 22 January 2021

CSR is all about ethical business conduct by businesses that deliver some social good beyond the financial benefits and that is required by law. CSR is to take care of Profit, Planet and People. We have witnessed during Covid-19 Pandemic that how inter connected we all are.

CSR gives indirect benefits to the company by having good public relations, loyalty from customers, more inclusiveness from employees, good returns to investors and shareholder, brand building and societal approval/ participation in growth of the company. India is the only country which has mandated CSR to companies through the Companies Act, 2013,

Initially, in the CA 2013, CSR was introduced as voluntary action reporting of SPEND or EXPLAIN THE REASON FOR NOT SPENDING. However, now with this recent amendments, CSR is made mandatory with more reporting requirements to bring transparency.

In time to come CSR may require a separate Code like Insolvency and Bankruptcy Code, 2016 (IBC) due to various facet of activities like governance, reporting and responsibilities towards various stakeholders who are not limited to only shareholders but the society at large.

A. On 22nd January 2021, three major amendments were notified by the Central Government, Ministry of Corporate Affairs (MCA) in the provisions for Corporate Social Responsibilities u/s 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014.

1. Section 21 of the Companies Amendment Act, 2019 (CAA 2019) which was not yet made effective since 31st July 2019 has been now made effective from 22nd January, 2021;
2. Section 27 of the Companies Amendment Act, 2020 (CAA 2020) which was not yet made effective since 28th September 2020 has been now made effective from 22nd January, 2021; and
3. The Companies (Corporate Social Responsibilities Policies) Amendment Rules, 2020 (CSR Amendment Rules, 2020) were notified altering the provisions made under the Companies (Corporate Social Responsibilities Policies) Rules, 2014 (the Original CSR Rules, 2014).

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B. 10 Major Changes and Reasons

1. New Definition of **CSR** which excludes certain activities. This is more like a clarification on various FAQs on what is CSR and what is not.
2. **Administrative Overhead** is defined. More clarification is required on what is included on designing, implementing, monitoring and evaluation expenses. This definition is also more like clarification.
3. New definition of **CSR Policy** and **On Going Project**. Very important to address social causes having large multi year projects.
4. **International Organization (IO)** is also defined, Now the company can engage IO for designing, monitoring and evaluation of CSR Projects. However, such International Organisation cannot do implementation of the CSR Projects. To avail the benefit of expertise of International Organisation this provision is added.
5. Detailed Rule on **CSR implementation** and **mandatory registration of implementing agency** (including company itself) with MCA & also Income Tax authorities u/s 12A and 80 G of IT Act, 1961. More responsibility is cast on the Board for CSR Implementation.
6. Responsibility cast on **CFO or person responsible for financial management to certify** that the funds are utilized as approved by the Board. This provision shall bring more accountability.
7. CSR Committee to formulate **Annual Action Plan**. This provision is to bring focus, involvement, discipline in CSR spent and not to consider it as any random one time activity .
8. Detailed Rule on **CSR Expenditure, surplus, carry forward and set off and transfer of Capital assets** to certain entities having CSR Registration number or to beneficiary or to public authority. This provisions encourage company to spend for Ongoing Project of multi year with commitment.
9. Reporting requirement increased to bring more transparency and accountability.
10. Impact Assessment by independent agency for certain large CSR Projects. This Report and analysis will certainly help the company, beneficiaries and Nation at large to increase Social Return on Investment (SRoI).

C. Changes in Section 135- Corporate Social Responsibility

1. **Section 135 (5)—for Companies which has not completed 3 FY**
CAA 2019 amended this lines in section 135 (5)

“or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years”

The Company which has not completed the period of 3 financial years since its incorporation, then such Company is required to spend 2% of average Net Profit of immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

Our Comments: Applicability of CSR was mandated for any Company, if its Turnover is =or> 1000 Cr, or Net worth is =or> 500 Cr or Net Profit is =or> 5 Cr and the Board of such Company is required to ensure that the Company spend, in every financial year at least 2% (two per cent) of the average net profits of the Company made during the 3 (three) immediately preceding financial years.

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The question was arising for certain companies which has not completed three years of its incorporation, however due to threshold as mentioned above, the provisions of CSR is applicable to it, then how the Board of such companies to ensure and spend 2% of average Net Profits of 3 (three) immediately preceding years.

Now, after this amendment vide CAA 2019 it has been clarified that the Board of such company to ensure that the company spend 2% of average Net Profit of immediately preceding financial years, even if it is less than 3 years.

Action Points: As soon as the provisions of CSR is applicable to the Company (on crossing the threshold limits of Turnover/ Net Worth or Net Profit criteria mentioned above), the Company need to constitute CSR Committee of its Board, formulate CSR Policy, update on its website, if any and spend 2% of average *Net Profits of preceding years one or two or three as the case may be.

***Net Profit to be calculated as per definition given under the CSR Amendment Rules, 2020**

2. Provisos inserted under Section 135 (5)- Unspent or Excess Spent by the Company

CAA 2019 inserted new lines in the second proviso under Section 135 (5) that

“and unless the **unspent amount** relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year”.

CAA 2020 inserted third proviso after the second proviso under Section 135 (5) that

"Provided also that if the company **spends an amount in excess** of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.";

Our Comments: Section 135 (5) mentions duty of the Board, here it is added that the Board need to ensure and identify the CSR Project as “Ongoing Project” or not. Ongoing Project is defined in CSR Amendment Rules, 2020 as follows:

“Ongoing Project” 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.

(a) Unspent amount not relating to Ongoing Project: Where unspent amount doesn't relate to any Ongoing Project, then the Company and the Board to ensure to transfer such unspent amount to a Fund specified in Schedule VII, within 6 months of close of financial year, that is by **September 30, 2021**.

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(b) Excess Spent: Any company which has spent excess then obliged to spend, it may take set off of such excess spent for succeeding 3 (three) financial years and subject to condition prescribed in CSR Amendment Rules, 2020.

Action Points:

- (a) Accordingly, if the Company fails to spend CSR amount as per obligation mentioned u/s 135 (5) by March 31, 2021 for any project which is **not an Ongoing Project**, then the unspent amount to be transferred to a Fund specified in Schedule VII latest by **September 30, 2021 (in 6 months from end of FY 2020-21)**.
- (b) "Ongoing Project" has been defined in the CSR Amendment Rules, 2020, and it mentions that, if the Project is initially not approved as a multi-year project, it can still be considered as Ongoing Project if **duration of the Project has been extended beyond one year** by the Board based on **reasonable justification**.
- (c) Any amount spent in excess then obliged to spend, the company can take set off against the requirement of spent in succeeding three (3) FY.

3. Section 135(6) : Unspent amount on Ongoing Project

CAA 2019 inserted Section 135 (6) as follows:

*"Any amount remaining unspent under sub-section (5), pursuant to any **ongoing project**, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of **thirty** 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 scheduled bank to be called the **Unspent Corporate Social Responsibility Account**, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of **three** financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of **thirty** days from the date of completion of the third financial year."*

Our Comments:

Unspent amount relating to Ongoing Project: Where the unspent amount is relating to any Ongoing Project, then the Company and the Board to ensure to transfer it 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 **scheduled bank** to be called as the "**Unspent Corporate Social Responsibility Account**". Such amount then need to be spent within a period of **3 (Three)** financial year from the date of such transfer, failing which, the Company and the Board to ensure to transfer it to a Fund specified in Schedule VII, within a period of **30 days** from the date of completion of the third financial year.

Action Point:

- (a) For **Ongoing Project**, the unspent amount to be transferred to "**Unspent Corporate Social Responsibility Account**" in 30 days that is by **April 30, 2021**;
- (b) and to be utilized for the project **latest by end of FY 2023-24** ;
- (c) and after that also if it remain unspent, then to transfer such unspent amount to a Fund specified in Schedule VII latest by **April 30, 2024**.

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4. Section 135 (7): Penalty on default

CAA 2019 inserted Section 135 (7) and bringing provisions that *If a company contravenes the provisions of Spent and Transfer as mentioned u/s 135 (5) and 135 (6), the company shall be punishable with fine which shall not be less than Rs.50,000/- but which may extend to Rs.25 Lacs and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to 3 (three) years or with fine which shall not be less than Rs.50,000/- but which may extend to Rs.5 Lakh rupees, or with both.*

However CAA 2020 has substituted this provisions with the following as CAA 2020 is majorly in favour of decriminalization of corporate defaults:

Now Section 135 (7) reads that if a company is in default in complying with the provisions Spent and Transfer as mentioned u/s 135 (5) and 135 (6), the company shall be liable to a penalty of 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 Rs.1 crore , whichever is less and every officer of the company who is in default shall be liable to a penalty of 1/10th of the amount required to be transferred by the company to such Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.2 lakh , whichever is less.

Our Comments:

Penalty for any non- compliance with respect to failure to **undertake expenditure or failure to transfer amount** to specified or unspent account was a criminal offence as per CAA 2019, however CAA 2020 had decriminalised this non-compliances. Now the Penalty on the company, shall be **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 **Rs.1 Crore**, whichever is less, and the penalty on every officer of the company who is in default shall be **1/10th of the amount** required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, **or Rs. 2 lakh**, whichever is less.

The Board , KMPs and Officers in Default, are required to ensure compliance of CSR SPENT as per section 135 (5) and UNSPENT CSR to TRANSFER as per section 135 (6) , which are the major obligations under CSR.

Prior to insertion of this Section 135 (7), there was no specific penalty for non -compliance of CSR and general provisions u/s 450 was applicable. However now with insertion of Section 135 (7), specific penalty is prescribed under the CA 2013 for non-compliance of CSR , particularly Section 135 (5) and 135(6).

5. Section 135 (8)- Power of CG

CAA 2019 inserted Section 135 (8) as follows:

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.

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Our Comments:

Central Government has retained such power of issuing directions to any company for societal benefits.

6. Section 135 (9)- No CSR Committee, if CSR is less than Rs. 50 lakh in a year

CAA 2020 inserted Section 135 (9) as follows:

Where the amount to be spent by a company under sub-section (5) does not exceed Rs.50 lakh, the requirement under sub-section (1) for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

Our Comments:

Company to which the provisions of CSR is applicable as per threshold limits of Turnover/ Net Worth or Net Profit, mandatorily require to spend 2% of average Net profits of three immediately preceding financial years or in case of company having less than 3 years since its incorporation, average Net Profit of immediately preceding years to be spent.

Relaxation is given to such companies, if CSR spent is **less than Rs.50 Lakhs in any year, then the company does not require to have CSR Committee** and the Board can discharge the function of CSR Committee.

Practically, if the Company has CSR Committee and in a year if the CSR spent is reduced below Rs.50 Lakhs, the Company has choice of continuing CSR Committee or dissolve it till the spent is again more than Rs.50 Lakhs. This provision is introduced vide CAA 2020 to give relief in compliances for having separate CSR Committee and its meeting and the Board can discharge the functions of CSR as the amount is not large.

D. Changes in the Companies (Corporate Social Responsibility Policy), Amendments Rules, 2020

With the fixing of appointed date as 22nd January, 2021 for amendments under CAA 2019 and CAA 2020, the CG has also amended the Original Rules that is the Companies (Corporate Social responsibility Policy) Rules, 2014 , bringing few new concepts, clarification on What is excluded from CSR, defining On-Going Project, CSR Policy and substituted with specific Rules on CSR Implementation, CSR Expenditure and CSR Reporting etc.

1. Rules 2 amended with new Rule 2 on Definition- major changes in definitions

- (a) **“Administrative overheads”** 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;

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- (b) **"Corporate Social Responsibility" (CSR)** means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act 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:
Provided that 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 Act;
 - (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 Act;
 - (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;
- (c) **"CSR Policy"** 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;
- (d) **"International Organisation"** means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;
- (e) **"Net profit"** means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -
- (i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
 - (ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

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Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

- (f) **“Ongoing Project”** 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;
- (g) **“Public Authority”** means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);

2. Rule 4 is substituted with following Rules- It was CSR Activities which is now CSR Implementation

“4. CSR Implementation. –

- (1) 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 Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
 - (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
 - (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.
- (2)
 - (a) Every entity, covered under sub-rule (1), who 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: Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021.
 - (b) 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.
 - (c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

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(3) 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.

(4) 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) 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.

(6) 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. ”

3. Rule 5(2) Role of CSR Committee is substituted as follows:

5(2) 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:-

- (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;
- (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;
- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company:
Provided that 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.

Our Comments: More responsibility is cast on CSR Committee and all Directors of CSR Committee including Independent Director, if any, will be required to formulate and recommend the Board an Annual Action Plan, ensure proper accounting and robust internal audit process, build CSR framework, list out CSR project in compliance with mandatory requirements etc.

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4. Rule 6 on CSR Policy is omitted as CSR Policy has been defined under Rule 2

~~6. CSR Policy~~

~~(1) The CSR Policy of the company shall, inter-alia, include the following namely :-~~

~~(a) a list of CSR projects or programs which a company plans to undertake areas or subjects specified in of the Schedule VII of the Act, specifying modalities of execution of such project or programs and implementation schedules for the same; and~~

~~(b) monitoring process of such projects or programs:~~

~~Provided that the CSR activities does not include the activities undertaken in pursuance of normal course of business of a company.~~

~~Provided further that the Board of Directors shall ensure that activities included by a company in its Corporate Social Responsibility Policy are related to the areas or subjects specified in Schedule VII of the Act.~~

~~(2) The CSR Policy of the company shall specify that the surplus arising out of the CSR projects or programs or activities shall not form part of the business profit of a company.~~

5. Rule 7 on CSR Expenditure is substituted with new Rule 7 as follows:

~~(7) CSR expenditure shall include all expenditure including contribution to corpus, or on projects or programs relating to CSR activities approved by the Board on the recommendation of its CSR Committee, but does not include any expenditure on an item not in conformity or not in line with activities which fall within the [±][areas or subjects, specified in] Schedule VII of the Act.~~

"7.CSR Expenditure.

(1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) 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.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135 , such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that – (i) the excess amount available for set off shall not include

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the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
(ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for 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, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the CSR Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 days with the approval of the Board based on reasonable justification.

Our Comments

The rationale of this provision of transfer of Capital Asset is that the ownership of Assets shall rest with the public and the company may act as a custodian only to operate it and make it self-sustaining.

6. Rule 8 on CSR Reporting is substituted with new Rule 8 as follows:

~~8. CSR Reporting~~

~~(1) The Board's Report of a company covered under these rules pertaining to a financial year commencing on or after the 1st day of April, 2014 shall include an annual report on CSR containing particulars specified in Annexure.~~

~~(2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.~~

"8. CSR Reporting .-

(1) The Board's Report of a company covered under CSR Amendment Rules, 2020 pertaining to any financial year shall include an Annual Report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(3) (a) 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

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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.

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

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed 5% of the total CSR expenditure for that financial year or Rs.50 Lakhs, whichever is less.

Our Comments

Impact Assessment must have clear objectives and parameters to monitor, responsibility to be assigned, frequency of such assessment to be decided and decision of what kind of methods to be used for Impact Assessment to be decided in advance with Independent Agency.

7. Rule 9 on Display of CSR activities on its website is substituted with new Rule 9 and 10 as follows:

~~9. Display of CSR Activities on its Website~~

~~The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, if any, as per the particulars specified in the Annexure~~

9. Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

10. 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 Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.”.

8. Heading of Annexure I is amended and new Annexure II is inserted.

E. Certain Clarification require from MCA for compliances

1. What are the expenses that can be covered and considered as spent for the **designing, implementing, monitoring and evaluation** of CSR Project as the same are excluded from the cap of 5% on Administrative Overheads?
2. If there are **surplus for Section 8 company** from its activities, which are CSR activities and Not For Profit activities. The provision says that any surplus shall not form part of the business profit and it shall be ploughed back into the same project or transfer to Unspent CSR account or transfer to Funds specified in Schedule VII - Clarification is required for **same project or similar project** and whether Section 8 company is also require to transfer the

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Unspent amount to Funds specified in Schedule VII even if such section 8 company has CSR Registration Number and its sole objective is not for profit.

3. How to **transfer Capital Asset** from one entity to which it has already been transferred, to other entity now which is having CSR Registration of Self Help group or public authority? There may be many challenges of accounting, stamp duty, registration and practical difficulties for such transfer of Capital Assets.
4. Beneficiary in the form of **self-help group, collectives and entities** need to be clarified further before any transfer of Capital Assets and whether **Right To Information Act (RTI)**, 2005 will be applicable to such self –help group, collectives and entities? If no, then there is opacity in the provision.
5. Can **Impact Assessment be done through International Agency**? if yes, then there could be chances of misuse of this provision, as the company is permitted to spend max 5% of total CSR Expenses for that FY or Rs.50 Lakhs, whichever is less, which is quite substantial.
6. Can **Grants given or Corpus given** to Section 8 company or other such entities having CSR Registration is considered as CSR Spent?
7. **What actions may be required by the Board after getting Impact Assessment Report**? Is it simply reporting requirement or any action to be taken for better Impact of its spent on Society with better Social Return on Investment (SRoI). Further the purpose of such Report is achieved if there is monitoring on-ground impact and recommendation based on such Report need to be implemented, otherwise it will just remain as one more Reporting requirement only.
8. If the **Board is cast with all the duties** of ensuring, monitoring and disclosing CSR Projects, is it not discouraging the corporate from taking any CSR Projects and **instead contribute to Fund** specified in Schedule VII. Is that the agenda of the Government to take mandatory contribution instead of genuine spent by the corporate for the Society.
9. Whether MCA will mandate any further **filing, reporting and compliances by entities who are required to take CSR Registration Number by filing Form CSR -1**, if yes, will it not increase the compliance burden on such entities due to dual reporting, one with the State authorities and with the Central authorities?
10. Expenses incurred by engaging International Organisation for **capacity building** of company's personnel for CSR is excluded from Administrative Overheads, how to control abuse of this provision from Money Laundering Activities?
11. The company due to Covid-19 lock down suffered heavy losses and liquidity is a big issue, it has failed to pay salary to staff still it has to transfer the unspent amount of CSR to Fund specified under Schedule VII.?

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F. Immediate Action Points

1. 01 April, 2021 to file **Form CSR -1** for company itself or for implementing agency (Section 8 company or Regd Public Trust or Regd Society)- **CSR Amended Rules 2020**
2. Draft **new CSR Policy** as per new definition given in CSR Rules , giving statement containing approach and directions by the Board and guiding principles for CSR projects selection, implementation and monitoring activities and formulation of Annual Action Plan
3. Implementing agency or company to have **80G** to get benefit to donors- **CSR Amended Rules 2020**
4. **No need of CSR committee** if the spent on CSR by the company is less than 50 Lakhs—**CAA 2020**
5. CSR committee to be **updated with changes** and certain additional responsibilities on them like Annual Action Plan containing many details including details of need and impact assessment- **CAA 2020 and CSR Rules**
6. CSR committee to formulate and recommend **Annual Action Plan** as per Rules 5 of CSR Rules, 2020 - **CSR Amended Rules 2020**
7. CSR Committee to suggest to **have Standard Operating Process (SoP)** for better monitoring, implementing and evaluating – **General suggestion**
8. Amount of spent on CSR for FY 2020-21 remained **unspent and NOT FOR ON GOING Project** then —Need to transfer in 6 months by **30 Sept 2021** to Fund notified under Schedule VII.— **CAA 2019**
9. Amount of spent on CSR for FY 2020-21 remained **unspent for ON GOING PROJECT** then — Need to transfer in 30 days to separate Bank Account with Scheduled Bank to be called the Unspent Corporate Social Responsibility Account, company to spend it in 3 FY from date of transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.—**CAA 2019**
10. **Directors Report for FY 2020-21** will be reported in new annexure and with Impact Assessment by independent agency (if the spent is more than 10 Cr)- **CSR Amended Rules 2020**
11. Any **Capital Assets created** prior to CSR Rules, 2021 to be transferred as per these Rules in 180 days (90 days with approval of Board with justification) – **CSR Amended Rules 2020-- Many challenges here.**

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12. **CFO or person responsible** for financial management to certify that funds disbursed by the company have been utilized for the purpose and in the manner as approved by the Board- **CSR Amended Rules 2020**
13. Excess **CSR Expenditure to be c/f subject to Board Resolution** - **CSR Amended Rules 2020**
14. **Board** to ensure CSR implementation and satisfy itself that the funds disbursed are used for the purpose and in the manner as approved by it-- **CSR Amended Rules 2020**
15. Appoint **Independent agency for Impact Assessment** – by company, if the spent is >10 Cr in 3 years, for project where spent is > 1 cr and one year old
16. **Impact Assessment Expenses not to exceed 5% of total CSR Exp of that FY or 50 Lakhs** , whichever is less
17. Monitor **Administrative overheads** as per new definition which does not include expenses directly incurred for **designing, implementing , monitoring and evaluating** of a particular CSR projects- **CSR Amended Rules 2020- Many challenges and chances of misuse**
18. **Display on Website** (a) composition of CSR Committee (b) CSR Policy and (c) Project of CSR approved by the Board
19. **For reporting** on creation or acquisition of Capital Assets--- Date of creation, amount, whose name it is registered with address and location
20. Keeping **track of CSR amount Spent, Set Off or Carried Forward**
21. Approve specifically any **project as Multi Year Project.**

G. Certain recommendation of High Level Committee Report on CSR of year 2018 not yet in the statute

1. Provisions of CSR need to be applicable across all business entities and there should be a level playing field. Businesses are carried out inter alia as **Partnerships, Limited Liability Partnerships (LLPs), Banks** and CSR provisions to be mandated for these entities also.
2. Obligation under Section 135 to arise once the Company has been in existence for three years. This is also in keeping with the thrust of Ease of Doing Business by **allowing adequate time for a newly incorporated company to stabilize** itself before mandatory spending obligations are imposed on it.
3. The unspent CSR amount for a particular year be transferred to a separate designated account created for the purpose and need to be spent within a period of **three to five years and not 3 years.**

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4. The emphasis on carrying out CSR activities in **local area is only directory and not mandatory** in nature however as per Section 135(5) the word used is “Shall” which is construed as mandatory and in the absence of any clarification advising companies to engage in CSR activities by balancing local area preference with national priorities, the message is not clear to Corporate.
5. CSR to be brought within the purview of **statutory financial audit**, by making details of CSR spending as part of the financial statement of a company and incorporated in Schedule III of the Act.
6. A **CSR Exchange Portal** be developed for creating an interactive platform for all stakeholders, including contributors, beneficiaries, IAs, etc. by leveraging the benefits of technology to maximize the potential and outcomes of CSR.
7. **‘Social Impact Companies’** be created as vehicles within the CSR framework, with the express object of pursuing social outcomes, while being permitted to achieve conditional profit which can be distributed. CSR contribution to social impact bonds raised by such Social Impact Companies or not-for-profit companies bringing upfront risk capital may be considered on a pilot basis.
8. The ambit of reporting on **Business Responsibility Report (BRR)** be expanded gradually and at this juncture, it be extended to top 1000 companies.
9. MCA & IICA established the National Foundation for Corporate Social Responsibility (NFCSR) on December 6, 2012 to provide a platform for corporates to collaborate with Government, Non-Governmental and Civil Society Organizations, and local communities on CSR projects. **NFCSR to be strengthened to function as the think-tank for CSR.** NFCSR undertake advocacy for Individual Social Responsibility.
10. **MCA shall partner with the Department of Public Enterprise** for comprehensive guidelines for Central Public Sector Undertakings (CPSUs).
11. CSR Survey may be prepared by the Ministry. The Board of a company may engage a CSR professional, if it so desires, and the Government may prescribe eligibility criteria for such professionals.

Conclusion: The amendment took effect immediately on the publication of the Notification, which we assume are published on 22nd January 2021. Director Report/ Annual Report for Fy 2020-21 shall require disclosure as per new provisions. The mandates on CSR implementation clarifies that the company should not spend money on an NGO run by the CEO’s spouse or other relatives etc. Many corporates having their own Foundation need to bring it in transparent entities like Section 8 company, Registered Public Trust or Registered Society.

In 2009, Corporate Voluntary Guidelines was released by MCA to encourage corporate to achieve high standard of corporate governance, however it was also not complied by many corporate. Similarly the option given u/s 135 of the CA 2013 to corporate either SPENT or CLARIFY was largely not complied with. Now, six years after the notification of the Companies Act, 2013, approx. 70 % companies still do not have any plan or strategy to implement CSR activities. For the Nation building, contribution is require from all and more from the businesses, as it exploit society resources for their own benefits or benefits for few and hence they must conduct profit making activities with responsibility and sharing with society at large.

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Hence, CSR which was started as Voluntary activities is now made mandatory with detailed guidance for CSR activities, Expenditure, Implementation and Reporting etc. The Government fortunately made the non-compliance of CSR provisions as not criminal liability (decriminalized) and instead heavy monetary penalty is prescribed.

With the current amendment in 2021, the companies are required to plan / strategies, design, implement, monitor and also display on its website CSR Project approved by the Board for public view. Additional responsibility is on the Board, Committee of CSR, Officers in Default, CFO of the Company and also on Implementing Agency. In next two months Feb and March 2021, serious process for its implementation will start with the corporate and NGOs.

There are lack of domain experts, data and projects for CSR spent by the corporate. At the same time the approach of financial and social inclusiveness was not achieved if idea of philanthropy is forced. Outside force won't have that impact, however, CSR mandated is a good move till the culture and governance with discipline is developed with corporate.

Disclaimer* *This brief article is not intended for solicitation or advertising, it is a general for knowledge sharing only. This is not to be construed as legal opinion and this is purely our views and understanding of current amendment on CSR.*

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