

CSR Changes

January 2021

*Implementation of Amendments
of Companies Amendment Act,
2019, Companies Amendment Act,
2020 and Companies (CSR Policy)
Amendment Rules, 2021.*

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Companies (Amendment) Act, 2019 & Companies (Amendment) Act, 2020

The Ministry of Corporate Affairs (MCA) notified 22 January, 2021 to enforce Section 21 of Companies (Amendment) Act, 2019 and Section 27 of Companies (Amendment) Act, 2020, related to Corporate Social Responsibility (CSR).

“In exercise of the powers conferred by sub-section (3) of section 1 of the Companies (Amendment) Act, 2019 (22 of 2019) and sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the **22nd day of January, 2021** as the date on which the provisions of section 21 of the said Act shall come into force,” the MCA said. Section 21 of the Companies (Amendment) Act, 2019 sought to amend the Section 135 of the Companies Act, 2013 which relates to CSR.

- ❖ If a company is in default in complying with the provisions of sub-section (5) or sub-section (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 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 Lakhs, whichever is less.

Decriminalization by substituting the word fine with penalty.

- ❖ Earlier, companies could cite their reasons for not complying with the said provisions of Section 135 in their board meetings and other than an adverse reputational Impact, there were no penal consequences.
- ❖ Company having a net worth of INR 500 crore or more, or turnover of INR 1,000 crore or more or a net profit of INR 5 crore or more are required **to shell out** at least 2% of their three-year annual net profit towards CSR activities in a F.Y. and allowed to set off such excess amount out of their obligation in the succeeding financial years after complying with the prescribed rules.
- ❖ New sub-section (9) has been inserted to provide that the requirement of constitution of CSR Committee shall not be applicable, in case the amount required to be spent on CSR does not exceed Rs. 50 lakhs and the functions of such committee would be performed by the board of directors of the company.

Companies (CSR Policy) Amendment Rules, 2021

After CSR, rules 2014 now MCA has announced new CSR rules which shall be known as Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021.

FEW IMPORTANT POINTS IN THESE RULES ARE AS UNDER:

Rule 2: Definitions

- ❖ **“Corporate Social Responsibility (CSR)”** definition has been revised and instead of activities mentioned in Schedule VII the activities are described in the definition itself. CSR is classified in the following table:

CSR INCLUDES:	CSR EXCLUDES (EXCEPTIONS TO CSR)
• 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 Companies (CSR Policy) Amendment Rules, 2021. • Activities undertaken in pursuance of normal course of business of the 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; • Any activity undertaken by the company outside India for training of Indian sports personnel representing any State or Union territory at national level or India at international level;	• Activities undertaken in pursuance of normal course of business of the company. • Any activity undertaken by the company outside India. • Contribution of any amount directly or indirectly to any political party under section 182 of the Act; • Activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019); • Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services; • Activities carried out for fulfillment of any other statutory obligations under any law in force in India;

Observation:

In house activity of R&D in relation to Covid-19 medicine may be included in the CSR Activities: Companies may undertake research and development activities in relation to the new vaccine, drugs and medical devices in their normal course of business related to COVID - 19 for financial years

2020 - 21, 2021 - 22, 2022 - 23 subject to the conditions that such research and development activities shall be carried out in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act and details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report.

- ❖ **“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.

Observation:

In the above definition general management and administration expenditure excludes direct expenses towards particular CSR Project or Programme.

- ❖ **“International Organization”** means an organization notified by the Central Government as an international organization 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.

Observation:

The Government has allowed the International Organization for designing, monitoring and evaluation of the CSR Project or Programme.

- ❖ **“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.

Observation:

As per definition, Ongoing project = Project already commenced + multi-year project whose duration is not less than one year but not exceeding 3 years

- ❖ **“Public Authority”** means ‘Public Authority’ as defined in clause (h) of section 2 of the Right to Information Act, 2005

- ❖ **“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.

Observation:

In the above definition, a statement shall contain the approach and direction with relation to selection, implementation and monitoring of CSR Project or Programme.

Rule 4: CSR Implementation

- ❖ The Board shall ensure that the CSR activities are undertaken by the company itself or through –
 - ✦ Section 8 Company;
 - ✦ Registered Public Trust;
 - ✦ Registered Society registered u/s 12A & 80G of Income Tax Act, 1961; or
 - ✦ Company with established track record of at least 3 years.
- ❖ **Mandatory Registration of CSR Entity(CSR-1):**
 - ✦ Every entity specified therein which intends to undertake any CSR activity **or** the eligible intermediaries, through which the company shall undertake the CSR Project or Programme, will require registering itself with the Central Government by filing the form CSR - 1 electronically with the Registrar, with effect from the 01st day of April 2021.
 - ✦ For the new projects taken w.e.f. 1st 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. It shall not affect the CSR projects or programmes approved prior to it.
 - ✦ On the submission of the Form CSR - 1 on the portal, a unique CSR Registration Number shall be generated by the system automatically. This will help the Companies to identify the entities involved in the CSR activities on behalf of other companies and also enhance transparency.
- ❖ Further on filing the Form CSR-1 with the Central Government, a unique CSR Registration Number will be generated by the system automatically.
- ❖ **Engagement of International Organizations for CSR Designing:**

A company may engage international organizations as defined in Rule 2 of the Rule for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for the capacity building of their own personnel for CSR.
- ❖ **Certification by CFO of Finance head:**

It is the responsibility of the Board of the Company to monitor the implementation of ongoing projects and to satisfy itself that the funds of CSR have been utilized for the approved purposes and the Chief Financial Officer (CFO) or the person responsible for financial management shall **certify** to the effect.
- ❖ **A collaboration of other Companies for CSR Expenditure:**

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.
- ❖ The Board shall have a power to make modifications in such projects to ensure smooth implementation of the project within permissible time limit.

Rule 5: CSR Committees

- ❖ **CSR Committee shall formulate the Annual Action Plan:**

An **annual action plan** of CSR policy shall be formulated and recommended to the Board by the CSR Committee in pursuance of its CSR policy, which shall include the following, namely:

- ✦ the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- ✦ the manner of execution of such projects or programmes as specified in sub-rule (1) of Rule 4;
- ✦ the modalities of utilization of funds and implementation schedules for the projects or programmes;
- ✦ monitoring and reporting mechanism for the projects or programmes; and
- ✦ details of need and impact assessment, if any, for the projects undertaken by the company

Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee.

Rule 7: 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 ("F.Y").

- ❖ **Transfer of unspent CSR amount to Fund specified by the Govt.:**

In case any company failed to spend the full CSR outlay for any financial year or any amount remained to be spent during the year:

- ✦ the surplus arising out of 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 **6 months** of the expiry of the financial year.

- ❖ **Set off of Expenses Expenditure of CSR:**

Companies specified, can **set off** any surplus CSR expenditure against its CSR obligations provided under subsection (5) of section 135 for the immediate succeeding three financial years, which is the defined time frame for an **"ongoing project"**, 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 rule 7.
- ✦ the Board of the company shall pass a **resolution** to that effect.

- ❖ **CSR on Creation/acquisition of asset:**

The CSR amount may be spent by a company for creation or acquisition of a **capital asset**, which shall be held by:

- ✦ a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
- ✦ beneficiaries of the said CSR project, in the form of self - help groups, collectives, entities; or
- ✦ a public authority.

Capital Asset acquisition and its holding restricted to three bodies broadly.

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 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.

Rule 8: CSR Reporting

❖ CSR Impact Assessment:

- ✦ Companies with average CSR obligation of 10 Crore or more in the 3 immediately preceding F.Y., shall undertake **impact assessment** through an independent agency of their CSR projects having outlays of INR 1 crore or more, and 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.

Rule 9: Display of CSR activities on its website:

❖ Website Disclosure

The Board of Directors of the Company shall ensure mandatorily 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; and
- ✦ CSR policy.

Rule 10: Transfer of unspent CSR

- ❖ Until a fund is specified in Schedule VII for the purposes of sub-section (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.
- ❖ New format inserted for disclosure of 'Annual Report on CSR activities' to be included in the Board's Report.

Annexure I:

- ❖ In the heading of Annexure I, as so numbered, after the words "BOARD'S REPORT", the words and figures "FOR FINANCIAL YEAR COMMENCED PRIOR TO 1ST DAY OF APRIL, 2020" shall be inserted;

Annexure II:

- ❖ A new format for the annual report on CSR activities have been included in the board's report for F.Y. commencing on or after April 1, 2020.
- ❖ "ANNEXURE -II: FORMAT FOR THE ANNUAL REPORT ON CSR ACTIVITIES TO BE INCLUDED IN THE BOARD'S REPORT FOR FINANCIAL YEAR COMMENCING ON OR AFTER 1ST DAY OF APRIL, 2020.