

February 9th 2021

India – Corporate Social Responsibility – amendment

The Ministry of Corporate Affairs has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 (“**CSR Rules**”) vide the [Companies \(Corporate Social Responsibility Policy\) Amendment Rules, 2021](#) notified on 22 January 2021.

Below are the key features of the amendment:

➤ **Rule 2: definitions**

The definition of “Corporate Social Responsibility (CSR)” has been changed to include a list of negative activities. As such, CSR activities shall not include:

- (i) activities undertaken in pursuance of normal course of business of the company with the exception of companies engaged in 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 certain conditions.
- (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;
- (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;

➤ **Rule 4: CSR Implementation**

- (i) **Eligible Entities**: CSR activities must be undertaken by the company itself or through a company established under section 8 of the Act (“**Sec 8 Co**”), a public trust or a society registered under section 12A and 80 G of the Income Tax Act, 1961 (“**PT&S**”), an entity established under an Act of Parliament or a State legislature or Sec 8 Com and PT&S having an established track record of at least three years in undertaking similar activities (“**Eligible Entities**”).
- (ii) **Registration**: any Eligible Entity is required to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, w.e.f 1st April 2021.

- (iii) **CSR Number:** any Eligible Entity will be granted a unique CSR Registration Number on submission of Form CSR-1.
- (iv) **Monitoring:** international organisations may be engaged for designing, monitoring and evaluation of the CSR projects or programmes as well as for capacity building of their own personnel for CSR.
- (v) 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 7: expenditures**

- (i) The board shall ensure that the administrative overheads do not exceed 5% percent of total CSR expenditure of the company for the financial year.
- (ii) **Surplus:** Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be (i) ploughed back into the same project or (ii) transferred to the unspent CSR account (“**UCSRA**”) and spent in pursuance of CSR policy and annual action plan of the company or to a fund specified in Schedule VII (“**Fund**”), six months from the expiry of the financial year.
- (iii) **Set-off:** Any excess amount spent may be set off against future CSR obligations in the following 3 financial years, provided that the excess amount available for set off shall not include the surplus arising out of the CSR activities.
- (iv) **Capital asset:** the CSR amount may be spent by a company for creation or acquisition of a capital asset under certain conditions.

➤ **Rule 8: CSR Reporting**

- (i) **Annual report:** the Board's Report shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (ii) **Impact assessment:** company with average CSR obligation of INR 100 million or more in the three immediately preceding financial years, must undertake an impact assessment through an independent agency of their CSR projects of INR 10 million or more, and which have been completed not less than one year before undertaking the impact study. The impact assessment reports shall be annexed to the annual report on CSR.
- (iii) Expenditure incurred in connection with the impact assessment may be booked towards CSR for that financial year, to the limit of 5% of the total CSR expenditure for that financial year or INR 5 million, whichever is less.

➤ **Rule 9: Display of CSR activities on website**

A company must disclose the composition of the CSR Committee, CSR Policy and projects approved by the Board on its website for public access.

In addition, in pursuance of the [Companies \(Amendment\) Act, 2020](#), section 135 of the Act has been amended as follows:

(i) Penalty

a. company in default of its obligations under sub-sections (5) and (6) of section 135 of the Act shall be liable to a penalty of:

- twice the amount required to be transferred to the Fund or the UCSRA, or
- INR 10 million

whichever is less,

b. every officer of the company who is in default shall be liable to a penalty of:

- 1/10 of the amount required to be transferred to the Fund or the UCSRA, or
- INR 200,000

whichever is less.

(ii) CSR Committee

Where the amount to be spent on CSR does not exceed INR 5 million, the requirement for constitution of the CSR Committee shall not apply. In such a case, the functions of such Committee shall be discharged by the Board of Directors.

For any additional information, contact [Lisbeth Lanvers-Shah](#).

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