



GARV & AFFILIATES



RECENT CHANGES IN CSR PROVISIONS



BACKGROUND

As per Section 135 of Companies Act, 2013 (Act) prescribes Corporate Social Responsibility (CSR) as a statutory obligation for companies along with specifications and procedure to be followed by the companies while fulfilling their CSR obligations.

Every company shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director if-

- net worth of rupees five hundred crore or more, or
- turnover of rupees one thousand crore or more or
- a net profit of rupees five crore or more

during the immediately preceding financial year.

Non Applicability-

- Where the amount to be spent by a company does not exceed **fifty lakh rupees**, 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.

The Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years

Recently the MCA introduced certain changes in the CSR provisions as highlighted below.

HIGHLIGHTS

- Enlargement of scope in the definition of CSR
- CSR Implementation (Registration of implementing agencies)
- CSR Committees (Recommendation of annual action plan)
- CSR Expenditure (Board responsibilities for spending)
- Enhanced disclosures in the board report (Impact assessment)
- Display of CSR Expenditure on the website
- Transfer of unspent CSR amount
- Capital assets to be transferred

KEY CHANGES INTRODUCED BY WAY OF RECENT AMENDMENTS ARE AS FOLLOWS

1. Enlargement of scope in the definition of Corporate Social Responsibility (CSR) vide MCA notification dated 22nd January, 2021.

- The New rule specifies the following activities to be excluded from the definition of CSR activities:
 - i) Activities undertaken in pursuance of normal course of business of the company.

However, in view of the COVID pandemic, an exception to this was created by way of MCA notification dated 24th August 2020 allowing companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business to undertake such research and development in relation to COVID-19 as their CSR obligation for three financial years (from 2020 to 2023) subject to certain conditions as mentioned..

- ii) Activity undertaken by the company outside India shall not be considered as CSR 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 by a company
- iv) Activities benefitting employees of the company as defined in section 2(k) 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;

2. Changes in rule 4 - CSR Implementation

- The title of Rule 4 has been changed from CSR Activities to CSR Implementation.
Under the New Rules, a company is allowed to undertake its CSR implementation either by itself or through another company established under Section 8 of the Companies Act, a registered public trust or a registered society established (i) either by the company itself, or (ii) by the Central Government or State Government. In addition to the above, a company may also take help of (i) any entity established under an Act of Parliament or a State legislature, or (ii) a Section 8 company, registered public trust or registered society, not referred to above but having an established track record of minimum three years, for its CSR implementation.
- All implementing entities intending to undertake CSR activities are now required to register themselves with MCA by filing form **CSR-1** electronically for all CSR projects effective from 1st April, 2021. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

3. Changes in Rule 5 - CSR Committees

- The CSR Committee has been given the task of formulating and recommending to the Board an annual action plan in pursuance of its CSR policy. The aforesaid plan shall include the following:
 1. list of CSR projects to be undertaken under Schedule VII of the Companies Act;
 2. manner of execution of such projects;
 3. modalities of utilisation of funds and implementation schedules;
 4. monitoring and reporting mechanism for the projects; and
 5. details of need and impact assessment, if any, for the projects undertaken.
- The Board has also been given the power to alter the annual action plan in accordance with the CSR Committee's recommendation based on reasonable justification.

4. Changes in Rule 7 - CSR Expenditure

- The Board has been given the responsibility to ensure that administrative overheads in relation to CSR do not exceed 5% of total CSR expenditure of the company.
- Excess expenditure made in one year (>2%)
 - i. May be set off with spending requirements of succeeding years
 - set off shall not include surplus arising out of CSR Profits; and
 - The Board shall pass a resolution to that effect.

Furthermore it has been clarified in the circular dated 20th May, 2021 that where a company has contributed any amount to 'PM Cares Fund' on 31.03.2020, which is over and above the minimum amount as prescribed in the Act for FY 2019-20, and such excess amount or part thereof is offset against the requirement to spend under section 135(5) for FY 2020-21 in terms of the aforementioned appeal, then the same shall not be viewed as a violation subject to the conditions that:

- the amount offset as such shall have factored the unspent CSR amount for previous financial years, if any;
- the Chief Financial Officer shall certify that the contribution to "PMCARES Fund" was indeed made on 31st March 2020 in pursuance of the appeal and the same shall also be so certified by the statutory auditor of the company; and
- the details of such contribution shall be disclosed separately in the Annual Report on CSR as well as in the Board's Report for FY 2020-21 in terms of section 134 (3) (o) of the Act.
- Companies are further allowed to spend the CSR amount for creation or acquisition of a capital asset held by:
 - (a) company established under section 8 of the Act, a registered public trust or a registered society, having charitable objects and CSR Registration Number;
 - (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities;
 - or (c) a public authority.

5. Changes in Rule 8- CSR Reporting

- **Rule 8(3):** Companies having average CSR obligation of ten crore rupees or more in three immediately preceding financial years are required to undertake impact assessment through an independent agency of their CSR projects. The impact assessment reports are required to be placed before the Board and annexed to the annual report on CSR.
A Company undertaking impact assessment is allowed to book the expenditure towards Corporate Social Responsibility for that financial year not exceeding five percent of the total CSR expenditure or fifty lakh rupees, whichever is less.
- The Board's Report of company shall include an annual report on CSR encompassing following particulars:
 - ✓ Brief outline on CSR Policy
 - ✓ Composition of CSR committee along with the attendance of directors in the meetings of the Committee
 - ✓ Report on impact assessment of CSR projects
 - ✓ Average net profit of last three financial years & specified CSR expenditure
 - ✓ Surplus, if any, resulting from CSR projects of the previous financial years
 - ✓ Amount spent in administrative overheads and impact assessment
 - ✓ Details of total CSR amount spent or unspent in comprehensive manner
 - ✓ Reason if the company has failed to spend 2% of the average net profit

6. Changes in Rule 9 - Display of CSR Activities on website

- *Enhanced Website Disclosures:* The Board of Directors shall mandatorily disclose
 - a) the composition of the CSR Committee,
 - b) CSR Policy and
 - c) Projects approved by the Board on their website for public access.

7. Introduction of Rule 10 - Transfer of unspent CSR Amount

- *Rule 10:* Companies are required to transfer the unspent CSR amount to any fund already mentioned under Schedule VII till "the Fund" referred to in Section 135(5) and 135(6) of Companies Act, 2013 is created or specified.
- *If the company fails to spend the CSR target*
 - i. *The board shall still explain the reasons for the same*
 - ii. *Analyse the "unspent" amount:*
 - *If and to the extent it pertains to "ongoing project" –retain the money in a separate bank account [unspent CSR account] –within 30 days of the end of FY*
 - *Or else, transfer unspent money or money not retained for ongoing project to National Unspent Fund, within 6 months of the end of the financial year*

Note: "Ongoing Project" is defined in CSR Policy Rules [Rule 2 (1) (i)]

- *Multi-year project extended beyond one financial year.*
- *However, not exceeding three years excluding the financial year in which it was commenced.*
- *Should have commenced within the financial year to call it "ongoing"*

Idea is to include a project which has an identifiable commencement and completion; recurring expenses which are segregatable by nature should not be included.

8. Clarification on spending of CSR funds for setting up makeshift hospitals and temporary covid care facilities vide circular dated 22nd April, 2021.

It has been clarified that spending of CSR funds for COVID-19 is an eligible CSR Activity. It is further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID care facilities' is an eligible CSR Activity under items of schedule VII relating to health care, including preventive healthcare and disaster management respectively.

9. Clarification on spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants' etc vide circular dated 5th May, 2021.

It has been further clarified that spending of CSR funds for 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants' etc' is an eligible CSR Activity under items of schedule VII relating to health care, including preventive healthcare and disaster management respectively.

Penalties:

- **On Company**
Lower of:
 - ✓ 2x the amount required to be transferred to fund specified in Schedule VII or Unspent CSR A/c, OR
 - ✓ Rs. 1 crore
- **On officer in default**
Lower of:
 - ✓ 1/10 of amount required to be transferred to fund specified in Schedule VII or Unspent CSR A/c, OR
 - ✓ Rs. 2 lakhs



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