

## CORPORATE SOCIAL RESPONSIBILITY : A REVIEW IN LIGHT OF RECENT AMENDMENTS

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The Concept of Corporate Social Responsibility (CSR) was introduced vide Section 135 of the Companies Act, 2013 ("the Act") and it became effective from 01.04.2014. India was the first Country in the world to introduce this concept and being a new concept, it went through lot of changes and clarifications.

Every Company having 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 in its immediate preceding financial year is required to spend at least two per cent of the average net profit of its last three preceding financial years towards CSR. A Company not completed three years of its incorporation and falling under CSR criteria, will also be required to contribute two per cent of the average net profit of its preceding financial years since its inception. Further, to a Company if CSR becomes applicable once, the Company will have to continue with it for next three financial years. However, the Company will no longer be required to comply with the provisions, if the stipulated criterias are not attracted for next three financial years. Furthermore, it is applicable to all Companies, including Foreign Companies having offices in India and registered with Ministry of Corporate Affairs (MCA) and fulfilling the desired criteria.

Amount spent by the Company towards any of the activities as illustrated in Schedule VII to the Act will be treated as CSR activities. However, following activities will not be covered under CSR :

- a. Contribution to political parties;
- b. CSR only for employees of the Company;
- c. Activities supported by the Companies on sponsorship basis for deriving marketing benefits for its products or services;
- d. Activities undertaken in normal course of business;
- e. Activities carried to fulfil any other statutory liability;
- f. Activities undertaken outside India except for training of Indian sports personnel representing State or UT at National or International level.

CSR activities may be carried out by the Company : (a) directly by itself or through any registered Public Trust / Society / Section 8 Company (duly registered under Section 12A & 80G of the Income Tax Act, 1961) either promoted by the Company or any independent entity having track record of three years; or (b) through any registered Trust / Society / Section 8 Company established by the Central Government or State Government; or (c) any entity established under an act of Parliament or a State legislature. However, on or after 01.04.2021 new CSR activities eligible under Section 135 of the Act read with rules related thereto can be carried out by these entities only if they are registered with MCA and is having a Unique CSR Registration Number. Further, 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.



Recently, in the year 2021, CSR provisions have gone through various dynamic changes. There were certain amendments in Section 135 of the Act pertaining to CSR vide the Companies (Amendment) Act, 2019 and the same have been notified w.e.f. **22.01.2021**. Further, another set of amendments as proposed vide Companies (Amendment) Act, 2020 and The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 have also been notified by MCA on **22.01.2021** itself. Certain salient features of all these amendments, taken together and as became effective from a single date, i.e., **22.01.2021** only are as follows :

Srl. No.	Particulars	Amendment & its impact
1	Administrative Overhead	<ul style="list-style-type: none"> <li>➤ Administrative Overhead towards CSR process should not exceed 5% of total CSR expenditure of the Company for the financial year.</li> <li>➤ "Administrative Overhead" has been defined now and it means the expenses incurred by the Company for 'general management and administration' of CSR functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme.</li> </ul>
2	Entity Registration	<ul style="list-style-type: none"> <li>➤ Now, the CSR activities can be carried out by the Company directly or through any other eligible entity, <i>only if</i>, such entity is also registered with Central Government for such purpose.</li> <li>➤ For this, every entity need to file on-line form CSR-1 with MCA w.e.f. 01.04.2021.</li> <li>➤ Applicant entity will be provided a unique CSR Registration Number for carrying out such activities.</li> <li>➤ On or after 01.04.2021 new CSR activities eligible u/s 135 of the Act read with rules related thereto can be carried out by such registered entities only.</li> <li>➤ However, eligible CSR projects or programmes approved prior to 01.04.2021 will continue to fall under the ambit of eligible CS expenses.</li> </ul>



3	Eligibility	<p>➤ Now, the Companies not completed three years of its incorporation will also be required to contribute two percent of its average net profit of preceding financial years since its inception towards CSR, if the Company fulfill any of the criteria mentioned in Section 135(1) of the Act.</p>
4	Treatment of	<p>➤ 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.</p> <p>➤ The amount need to be 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.</p>
5	Treatment of excess CSR spending	<p>➤ Where a Company spends an amount in excess of requirement provided under Section 135(5), 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 –</p> <p>(i) 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.</p> <p>(ii) the Board of the Company shall pass a resolution to that effect.</p>
6	Treatment of Unspent Amount	<p>➤ Now, the Rule has also defined “Ongoing Project” as 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.</p>



		<ul style="list-style-type: none"> <li>➤ In case of remaining unspent CSR amount pursuant to any ongoing project undertaken by a company in pursuance of its CSR Policy, the same 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 CSR Account.</li> <li>➤ Such amount shall be spent by the company in pursuance of its obligation towards the CSR 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.</li> <li>➤ Now, every Company having average CSR obligation of Ten Crore Rupees or more in pursuance of Sub-Section (5) of Section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their 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.</li> </ul>
7	Impact Assessment	<ul style="list-style-type: none"> <li>➤ However, the cost of impact assessment may be booked as expenditure within the stipulated limit of Administrative Overhead. The impact assessment report need to be placed before the Board and shall also be annexed with the Annual Report on CSR.</li> </ul>
8	CSR Committee	<ul style="list-style-type: none"> <li>➤ No requirement for constitution of CSR Committee, if the CSR required amount does not exceed Rs. 50Lakh</li> </ul> <p style="text-align: center;">&amp;</p> <ul style="list-style-type: none"> <li>➤ CSR Committee's function to be discharged by the BOD of the Company in all such cases.</li> <li>➤ Now, CSR Committee will also formulate and recommend to the Board, an annual action plan in pursuance of its CSR Policy.</li> </ul>



9	Miscellaneous	<ul style="list-style-type: none"> <li>➤ Contribution of any amount directly or indirectly to any political party under Section 182 of the Act will not be eligible for CSR.</li> <li>➤ Activities supported by the Companies on sponsorship basis for deriving marketing benefits for its products or services will not be eligible for CSR.</li> <li>➤ Now, 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.</li> </ul>
10	Reporting	<ul style="list-style-type: none"> <li>➤ The Board of the Company shall satisfy itself that the funds so disbursed have been utilised for the purposes and un the manner as approved by it and the CFO or the person responsible for financial management shall certify to the effect.</li> <li>➤ A new Format for the Annual Report on CSR Activities has been prescribed and the same need to be included in the Board's Report from the financial year commencing on or after 01.04.2021</li> </ul>
11	Penalty	<ul style="list-style-type: none"> <li>➤ For contravention of the provisions of Sections 135(5) and 135(6) related to spending of CSR amount including unspent amount, if any :             <ul style="list-style-type: none"> <li>(a) Company : Twice of unspent amount OR Rs. 1 Crore (whichever is less)</li> <li>&amp;</li> <li>(b) Officers-in-default : 1/10<sup>th</sup> of unspent amount OR Rs. 2 Lakh (whichever is less)</li> </ul> </li> </ul>

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