

N D A Update – Amendments in provisions relating to Corporate Social Responsibility

Vide a notification dated 22-01-2021 MCA has amended the Companies (Corporate Social Responsibility Policy) Rules. Besides, the amendments in Section 135 made by the Companies (Amendment) Act, 2020 have been made applicable with effect from 22-01-2021.

Some of the important changes are as under:

CSR Redefined	CSR defined as “the activities undertaken by a Company in pursuance of its statutory obligation under Section 135 of the Act and in accordance with the provisions of these Rules.
	Definition of CSR made exclusive, clearly providing the activities not considered as CSR. Following activities shall not be considered as CSR: <ul style="list-style-type: none">• Activities in normal course of business except Covid-19 related R&D up to FY 2022-23 subject to certain conditions• Activity undertaken outside India (except for training of certain categories of Indian sports personnel)• Contribution to any political party• Activities resulting in significant benefit to employees• Sponsorship which results in marketing benefits to its products or services• Activities carried out to fulfil statutory obligations
CSR Committee	CSR committee not required if amount to be spent does not exceed Rs. fifty lakhs. In such cases, Board shall discharge all functions of the Committee [Section 135(9)]
CSR Implementation	A Company may undertake CSR activities on its own or through implementing agency.
Implementing Agency to include	Company established under Section 8, Public Trust or Society registered under Section 12A and Section 80G of the Income Tax Act, Entities established by Central or State Government or entity established under an Act of Parliament or State Legislature
Registration of Implementing Agency	<ul style="list-style-type: none">• An agency who intends to undertake any CSR activity, shall register itself by filing the e-form CSR-1 electronically with the Registrar, with effect from 01-04-2021.

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	<ul style="list-style-type: none"> • A unique CSR Registration Number shall be generated
Engagement of International Organisation	<ul style="list-style-type: none"> • 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 • International Organisation means organization notified by the Central Government.
Responsibility in CSR Implementation	<ul style="list-style-type: none"> • The Board of a company shall satisfy itself that the funds disbursed for CSR activities have been utilised for the purposes and in the manner as approved by it. • CFO shall certify the above. • The Board shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and to make modification, if necessary.
Annual Action Plan	<ul style="list-style-type: none"> • Formulation of annual action plan pursuant to CSR policy by the CSR Committee and recommending the same to the Board which shall include the list of projects / programmes, manner of execution, modalities of utilisation of funds etc • Annual Action Plan may be altered by the Board on recommendation by the CSR Committee based on justification
Ongoing Project	<ul style="list-style-type: none"> • Defined as a multi-year project having time line not exceeding three year but excluding the financial year in which it was commenced. • It will also include project not initially approved as multi-year project but whose duration has been extended beyond one year by the Board based on reasonable justification. • From the above, it appears that CSR project can be of three plus the commencing year at the most.
Administrative Overhead	<ul style="list-style-type: none"> • Defined as expenses incurred for “general management and administration” of CSR activities • Not to include expenses directly incurred for the designing, implementation, monitoring and evaluation of any CSR project or programme

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Cap on administrative overhead	Administrative overheads shall not exceed five percent of total CSR expenditure for the year
Treatment of surplus arising out of CSR activities	<ul style="list-style-type: none"> • Surplus arising out of the CSR activities shall not form part of the business profit • Surplus as above shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account to be spent as per CSR policy or transfer to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year
Set off of amount excess spent	Excess amount spent may be set off against the amount to be spent in immediate succeeding three financial years subject to certain conditions
Acquisition of capital assets	<ul style="list-style-type: none"> • If amount is spent by a company for creation or acquisition of a capital asset, such asset shall be held by entities having CSR Registration number or by a public authority or by the beneficiaries in the form of self help group etc • For any capital asset created prior to these amendment Rules, the company shall comply with the abovementioned requirement with 180 days which may be further extended by 90 days.
CSR Reporting	<ul style="list-style-type: none"> • New Annexure II notified for reporting from financial year commencing on or after 01-04-2020. • Major modification in reporting format forming part of the Board's Report in line with various amendments. The report shall also include details of impact assessment of CSR projects, amount available for set-off, Unspent amount transferred to unspent CSR account, amount of administrative overhead, excess amount for set-off, details of creation of capital assets etc. Besides, the details of amount spent on ongoing projects and other than ongoing projects have been made more exhaustive.
Impact Assessment	<ul style="list-style-type: none"> • Made mandatory for the companies having an average CSR obligation of Rs 10 crores or more in the three immediately preceding financial years on certain projects • This Assessment to be carried out by an independent agency

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	<ul style="list-style-type: none"> • Impact assessment to be done in respect of projects having outlays of Rs one crore or more and which have completed at least one year before undertaking study. • The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR. • Expenditure on impact assessment may be booked as CSR expenditure subject to 5% of CSR expenditure for the year or Rs 50 lakhs, whichever is lower
Display of CSR activities on its website	Mandatory disclosure of the composition of the CSR Committee, CSR Policy and CSR Projects approved by the Board on their website.
Penalty	<p>For non transfer of unspent CSR amount in the manner specified under Section 135:</p> <ul style="list-style-type: none"> • The company is liable to pay penalty twice the amount required to be transferred or Rs. one crore whichever is less • Every office in default is liable to pay penalty @10% of the amount required to be transferred or Rs. two lakhs whichever is less • Offence has now been decriminalized by the amendment Act.

http://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_22012021.pdf