

Analysis of the changes introduced by the Companies (Corporate Social Responsibility Policy) Rules, 2021¹

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Introduction

The Ministry of Corporate Affairs (“MCA”) introduced the Company (Corporate Social Responsibility Policy) Rules, 2021 (“**CSR Rules, 2021**”) on January 22, 2021. These new rules have majorly been introduced in lieu of COVID-19 and ensuring that there is no obscurity within the law. Further, these rules also focus on promoting transparency. This article analysis the changes proposed and how these changes may have an impact on the business of the companies.

A. Amendment to Definitions

The CSR Rules, 2021 have introduced and amended various definitions, which were not there in the Company (Corporate Social Responsibility Policy) Rules, 2014 (“**CSR Rules, 2014**”) and the Company (Corporate Social Responsibility Policy) Rules, 2018 (“**CSR Rules, 2018**”).

(a) Administrative Overheads

The CSR Rules, 2021 have introduced this term which includes the expenses incurred by the company for all the general management and administration related work of corporate social responsibility but excludes the expenses for designing, implementing, monitoring and evaluation of a particular corporate social responsibility project or programme. As per the CSR Rules, 2021, the board has to ensure that the administrative overheads shall not be above five percent of the total CSR expenditure for one financial year.

(b) Corporate Social Responsibility (CSR)

The definition of CSR has been amended in CSR Rules, 2021. The earlier definition of CSR in both CSR Rules, 2014 and CSR Rules, 2018 included the projects or programs which should be in line with what is mentioned in Schedule VII of the Companies Act, 2013 (“**Act**”).

The CSR Rules, 2021 has introduced the amendment in lieu of COVID-19 and the current definition excludes any activities pertaining to:

- a. normal course of business of a company, however, any engagement relating to research and development of a new vaccine, drugs, and medical devices, in the normal course of business of the company, for Covid-19 for financial years 2020-21 , 2021-22 and 2022-23 subject to the following conditions: (i) such research and developmental activities shall be carried out in collaboration to such institutions or organisations mentioned in item (ix) of Schedule VII of the Act; and (ii) details of such activities shall be disclosed separately in the annual report on CSR in the Board’s Report;

¹ http://mca.gov.in/Ministry/pdf/CSRAmendmentRules_22012021.pdf

- b. any activity undertaken by the Company outside India, other than for training purposes for the personnel, representing India at international level;
- c. any direct or indirect contribution to a political party as per section 182 of the Act;
- d. activities, as defined under section 2(k) of the Code on Wages, 2019, to the employees of the company;
- e. sponsorship activities for deriving marketing benefits for the products and/ or services, supported by the company; and
- f. such activities carried out to fulfil any other statutory obligations under any law in force in India.

(c) CSR Policy

The recently introduced CSR Rules, 2021 has amended the definition of CSR Policy. The old definition defines the term as activities to be undertaken by the company as specified in Schedule VII of the Act and the expenditure thereon. However, the revised definition is more pellucid and states that the CSR Policy shall mean any statement that contains the approach and direction given by the board of a company, taking into account the recommendations of the CSR committee and comprehensively includes the principles for selection, implementation and monitoring the activities along with formulation of the annual action plan.

(d) International Organisation

The CSR Rules, 2021 introduced this definition as any organisation, as notified by the Central Government, as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of Schedule VII to the said Act shall apply. The purpose of introducing this term can be derived from the amendment to Rule 4 of CSR Rule, 2018 which refers to CSR Implementation. The abovementioned rule states that a company may engage any international organisation for designing, monitoring and evaluating its CSR projects.

(e) Ongoing Project

This added definition includes a multi-year project undertaken by the Company to fulfil its CSR obligations not exceeding three years excluding the financial year when such project was commenced.

(f) Public Authority

The CSR Rules, 2021 have added this definition and defined the term as any public authority in accordance with Clause 2(h) of the Right to Information Act, 2005.

- B.** As per Rule 3 of the CSR Rules, 2021, where a company is not covered under section 135 of the Act for three consecutive financial years it shall not be required to comply with the CSR committee and comply with section 135(6), which deals with unspent CSR account, along with to 135(2) to 135(5) of the Act.
- C. CSR activities to be undertaken by the company either through itself or through an entity registered with the Central Government**

Rule 4 of the CSR Rules, 2014 and CSR Rules, 2018 stands omitted and substituted by Rule 4 of the CSR Rules, 2021 which stipulates that the board shall undertake CSR activities either by itself or through the following:

- (a) A registered society, a public trust registered under section 12A and 80G of the Income Tax Act, 1961 or a company established under section 8 of the Act, established along with any other company or singly;
- (b) A registered trust or a registered society established by the Central or the State Government;
- (c) Any entity established under an Act of Parliament or a State Legislature; or
- (d) A registered society, a public trust registered under section 12A and 80G of the Income Tax Act, 1961 or a company established under section 8 of the Act, having an established track record of at least three years in undertaking similar activities.

Further, all the entities, as mentioned above, which intends to undertake the CSR activity shall register themselves with the Central Government by e-filing **Form CSR-1**, with the Registrar. It is further clarified that such provisions shall not in any manner have an effect on the CSR projects approved prior to April 1, 2021. The revised rule has been extrapolated from the old Rule 4 of both the CSR Rules, 2014 and CSR Rules, 2018 as the older rule only includes a registered society, a public trust registered under section 12A and 80G of the Income Tax Act, 1961 or a company established under section 8 of the Act.

Procedure post filing of Form CSR-1

- (a) The form shall be signed and submitted electronically which shall be verified by a chartered accountant in practice or a company secretary in practice or a cost accountant in practice. Once, the form is submitted, a CSR registration number shall be generated automatically.
- (b) Moreover, the board of the company shall ensure that the funds disbursed by the company have been solely and effectively used for CSR projects and the chief financial officer or the responsible person shall certify to that effect.

We further note that the rule has been amended and made more comprehensive than it was earlier. The filing of the form will promote transparency and will ensure that adequate disclosures are made to the stakeholders of the company.

D. Formulation, roles and responsibilities of a CSR Committee

Rule 5 of the CSR Rules, 2018 has been elaborated by substitution clause (2) of Rule 5. The comprehensive reading of Rule 5 now stands as: (a) where a company is not required to appoint an independent director as per section 149 (4) of the Act, it shall have its CSR committee without such director; (b) a private company having only two directors shall have both as a part of CSR committee; and (c) for a foreign company any CSR committee shall comprise of at least one person as specified under section 130 (8) and one nominated by the foreign company.

Further, the CSR committee shall formulate an annual action plan in pursuance to CSR Policy and recommend the same to the board of the company. The annual action plan shall constitute the following:

- (a) List of approved CSR projects;
- (b) Manner of execution of such projects;
- (c) Modalities of utilization of funds and implementation schedules;
- (d) Monitoring and reporting mechanism for the projects; and
- (e) Details of need and impact assessment if any.

However, such plan may be modified by the board pursuant to any reasonable justification. The intent of this rule is to ensure transparency and efficiency at each step for ongoing or proposed CSR projects.

E. Rule 6 of the CSR Rules, 2018, which stipulated an elaborative definition of CSR Policy, now stands omitted. This rule has been deleted since the new CSR Rules, 2021 captures the definition of CSR Policy in the definition clause.

F. Approval of the CSR Expenditure

Rule 7 of the CSR Rules, 2014 captures about CSR expenditure which shall include all the expenditure incurred by the company for the CSR projects, which shall be approved by the board. However, the amended clause relating to CSR expenditure is more comprehensive and more rigid. The revised rule makes the board liable to ensure that the administrative overheads shall not exceed five percent of the total CSR expenditure for a financial year. Additionally, any surplus arising out of the CSR activities shall either be ploughed back in the same project or be transferred to unspent CSR account or transfer the same to a fund as specified in Schedule VII of the Act, within six months from the expiry of the financial year but shall not form the part of business profits of the company.

In the event, where the company spends more amount than the estimated amount as provided in section 135(5) of the Act, such excess amount may be set off against the requirement to spend under section 135(5) up to immediate succeeding three financial years. However, for the above-mentioned condition to be effective, it is mandatory to pass a board resolution.

Furthermore, the revised Rule 7 also provides for an option that the CSR amount may be spent by the company for creation or acquisition of a capital asset, which shall only be held by (a) a registered society, a public trust registered under section 12A and 80G of the Income Tax Act, 1961 having charitable objects and CSR registration number or a company established under section 8 of the Act; or (b) a public authority; and (c) beneficiaries of the said CSR project in the form of self-help groups, collectives or entities. Provided that any capital asset provided by the company prior to commencement of these rules shall within a period of one hundred and eighty days comply with these rules.

G. CSR reporting through an independent agency

The CSR Rules, 2021 through its Rule 8 has elaborated the earlier rule by addition of sub-clause 3 to Rule 8 of CSR Rules, 2018, which mentions that each company having average CSR obligations of ten crore rupees or more, in the three immediately preceding financial years, in pursuance to section 135(5) of the Act, need to undertake an impact assessment, through an independent agency of their CSR projects having outlays of one crore rupees or more, which have been completed in not less than one year before undertaking the impact study. Further, such impact assessment shall be presented before the board and shall be annexed to the annual report on CSR.

H. Display of CSR activities on the website

Rule 9 of the CSR Rules, 2021 like the older one makes it mandatory for the board to disclose the composition of CSR committee, CSR Policy and approved projects on the website for public access. Separately, there has been an addition to the abovementioned rule which, already has been captured in Rule 7. The added sub clause mentions that the unspent CSR amount, for the purposes of section 135(5) and 135(6), shall be transferred by the company to any fund included in Schedule VII of the Act.

I. Annexures

The amended rules have also provided an additional annexure which lays down the format for the annual report on CSR activities which needs to be included in the board's report for financial year commencing on and after April 1, 2020. The same also provides for the Form CSR-1.