

Presentation – CSR

Amendment Rules, 2021

Summary:

MCA has introduced “Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021.

*Most Important: CSR Spending
made mandatory from voluntary
w.e.f. financial year 2020-21.*

Basic Questions on CSR:

1.	If, CSR once applicable always applicable on a company? Is this statement, right?
2.	A company was falling under Section 135(1) in the year 19-20 (as per financials of year ended 31-03-2019). However as per financials of 31-03-2020, It is not crossing any threshold. Is it required to spend any amount during 2020-2021?
3.	CSR became applicable to a Company from this FY 2020-21 and the 2% of average profit is negative, so can we consider not constituting CSR Committee as per Sec 135(9) of Companies Act 2013.
4.	What should be the course of action for the total CSR unspent amount before this notification.
5.	If Company having losses as on 31.03.2019. Whether such companies are required to continue the compliances of CSR Activity?

Date of Effectiveness of these rules:

¹These rules came into effect on **22 January 2021**, as the same has been published in the official gazette on the same date. Therefore, these amended rules are applicable on the financial year 2020-21 (subject to specific date of some rules).

Table of Amended rules:

Old Rule No.	Old Rule Name	Effect	New Rule No.	New Rule Name
Rule 4	CSR Activities	Fully substituted	Rule 4	CSR Implementation
Rule 5(2)	CSR Committees	Sub rule 2 substituted	Rule 5(2)	CSR Committees
Rule 6	CSR Policy	Omitted		
Rule 7	CSR Expenditure	Fully substituted	Rule 7	CSR Expenditure
Rule 8	CSR Reporting	Fully substituted	Rule 8	CSR Reporting
Rule 9	Display of CSR Activities on website	Fully substituted	Rule 9	Display of CSR Activities on website
Rule 10	There was no rule 10	Newly inserted Rule	Rule 10	Transfer of unspent CSR Amount

¹ <http://egazette.nic.in/WriteReadData/2021/224640.pdf>

1. INTRODUCTION OF THE DEFINITION OF “CORPORATE SOCIAL RESPONSIBILITY”:

Earlier the **Inclusive** definition of CSR was given in the Act. Now that Inclusive definition has been amended as **Exclusive** definition and such Exclusive definition clearly specifies the activities which is not considered as CSR. CSR means the activity undertaken by the company u/s 135 read with these rules, but shall not include the following:

<i>1 LIST OF ACTIVITIES NOT INCLUDE IN CSR</i>	
<i>Normal Course of Business</i>	Activities undertaken in pursuance of the normal course of business of the company. However, in this point, MCA has exempted the Companies engaged in the research and development activity of the new vaccine, drugs and medical device related to the COVID 19 for the f.y. 2020-21, 2021-22, 2022-23 subject to the certain conditions.
<i>Outside India Activity</i>	Any activity undertaken by the company outside the India (except for the training of the Indian sports personnel representing any State or Union territory at the national level or India at International level);
<i>Political contribution</i>	Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
<i>Benefit of Employee</i>	Activities that significantly benefit the employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

<i>Benefit to its product</i>	Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
<i>Other obligation in Law</i>	Activities carried out for the fulfillment of any other statutory obligations under any law in force in India

2. UNIQUE CSR REGISTRATION NO:

Every entity who is covered under these rules, who intends to undertake any CSR activity, shall register itself with the CG by filing the e-form **CSR-1** with the ROC w.e.f. 01 April 2021. On filing of CSR -1, one 'Unique CSR Registration Number' shall be generated by the system automatically.

From 1st April 2021, it is mandatory for every implementing agency to register itself with the ROC by filing the e-form CSR-1. If any implementing agency fails to file CSR-1, they shall not be eligible to continue as the Implementing agency.

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- I. Question: What is the due date of filing of CSR-1?**
- II. Question: In e-form CSR 1, entity have to enter either CIN or Registration number but How will MCA prefill the information via Registration number of Trust?**
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3. PROVISIONS ON CSR EXPENDITURE (RULE 7):

As Companies on which provisions of Section 135 is applicable needs to spend 2% of the average net profit of the previous three financial years on the CSR Activity.

➤ What if Company spent excess amount in any financial year?

As per the Amendment Rules, 2021, Rule 7 sub rule 3:

If a Company spent on CSR in excess of the requirement (i.e. 2%), such excess amount may be set-off against the requirement of the CSR Spending u/s 135(5) upto the immediate succeeding 3 financial year subject to the conditions that:

- 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 these rules.
 - The Board of Directors shall pass a resolution to that effect.
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Question: Can you set off excess amount of FY 19-20 in FY 20-21.

4. TREATMENT OF UNSPENT AMOUNT:

If the Company fails to spend 2% of the Average net profit, then the following shall be the treatment of the unspent amount.

<p><i>If unspent amount not relating to an ongoing project</i></p>	<p>the Board shall, in its report, shall specify the reasons for not spending the amount; and' unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year</p>	<p><u>Impact:</u> Amount remaining unspent for the f.y. 2020-21 shall be transferred to Schedule VII fund latest by September 30, 2021.</p>
<p><i>If unspent amount relating to an ongoing project</i></p>	<p>The amount be transferred 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 Corporate Social Responsibility Account (UCSRA).</p>	<p><u>IMPACT:</u> The amount remaining unspent (on ongoing project) for the FY 2020-21 shall be transferred to UCSRA latest by April 30, 2021 The amount remaining unspent transferred for f.y. 2020-21 to UCSRA, has to be utilized for the project upto FY 2023-24,</p>
<p><i>If fails to spend on the</i></p>	<p>If Company Fails to spend in 3 years, the company shall transfer the same to a Fund specified in Schedule VII, within a period</p>	<p><u>Impact:</u> The unspent amount shall be transferred to a fund</p>

<i>ongoing project</i>	of thirty days from the date of completion of the third financial year	specified in Schedule VII.
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I. Question: What is the time limit to transfer the unspent CSR amount for FY 2020-21?

II. Question: What fund in Schedule VII are they referring for transfer unspent CSR amount??

- Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga
 - prime minister's national relief fund
 - Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)
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III. Suppose a company's net profit is more than 5 crores for f.y. ending 19-20, then with in how much time period a company has to spend on CSR?

IV. Suppose a company has not spent the CSR amount in 2020-21, can it spend in FY 2021-22?

5. REPORTING OF CSR DISCLOSURE:

Directors Report:

The Company shall annex with its Board Report an annual report on CSR in format of Annexure-I (for f.y. 2019-20) or in Annexure II (w.e.f. fy 2020-21).

In case of a Foreign Company:

The Balance sheet filed u/s 381 shall contain 'an annual report on CSR in the format of Annexure I (for f.y. 2020-21) or in Annexure-II (w.e.f. fy 2021-22).

Website Disclosure: (Rule 9): The Board of Directors of the Company shall mandatorily disclose the followings on its website (if any):

- Composition of CSR Committee
- CSR Policy

Projects approved by the Board on their website.

6. Administration Over Head:

The administration over head shall not exceed 5% of the total CSR Expenditure of the Company for the financial year.

Definition of administration over head added Rule 2(b): Means the expenses incurred by the Company for 'general management and administration' of CSR functions in the Company. It does not include:

- The expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or program.
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Question: Can 5% limit for administrative expense will apply to only entity making CSR or to the CSR trust created for the CSR activities of Group too ?

7. **Treatment of Surplus arising out of CSR amount: (Rule 7(2)):** Any Surplus arising out of the CSR activity shall not be a part of the business profit. Such surplus shall be used on the following within a period of 6 months of the expiry of the financial year.
- Ploughed back into the same project.
 - Transferred to the Unspent CSR Account; and
 - Spent in pursuance of the CSR policy and the annual action plan of policy.
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8. IMPLEMENTATION OF CSR SPENDING:

The CSR activities can be undertaken by the Company itself or through the followings implementing agencies:

- ✚ A company established under Section 8 of the Act; or
- ✚ A Registered Public Trust; or (amended as only registered public trust)
- ✚ A Registered society
 - ❖ Either singly or along with the other Company; or
 - ❖ Above entity established by the Central Government or State Government; or
 - ❖ Any of the above entity having a track record of at least 3 years in undertaking similar activities; or
 - ❖ Any of the above entity established under an Act of parliament or a State Legislature.

Note:

- Registration under Section 12A and 80G of the Income Tax Act, 1961 become mandatory.
- Registration of such entity shall be mandatory by filing form CSR 1.

Collaboration:

A Company may also collaborate with other companies for undertaking the projects or programs or CSR activities subject to the conditions.

Engage International Organization:

A company may engage the international organizations for designing, monitoring and evaluation of the CSR projects or programs as per its CSR policy as well as for the capacity building of their own personnel for CSR. Only the Central Government notified organizations shall qualify as International **Organization**

Impact Assessment: It is a new concept introduced through these rules.

A company having the obligation of spending the average CSR amount of Rs 10 Crore or more in the three immediately preceding financial years in pursuance of Section 135(5) of the Act, shall undertake impact assessment.

Impact assessment to be done by an independent agency. Impact assessment to be done in respect of 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.

The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR. Impact assessment expenditure for a financial year shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

Spending on Capital Assets:

The CSR amount may be spent by a Company for the creation or acquisition of a capital asset, which shall be held by:-

- The CSR Assets to be held by a Section 8 Company, or a Registered Public Trust, or registered society with the charitable objects, having CSR registration number or
- Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities or
- A public authority.

Note: Any CSR asset created prior to these Rules, required to comply within a period of 180 days (Board may extend by 90 days)

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NEW DEFINITIONS:

1. **CSR Policy:** CSR Policy to include:
 - Approach and direction given by the Board of the Company, taking into account the recommendations of its CSR Committee;
 - Guiding principles for the selection, implementation and monitoring of the activities as well as the formulation of the annual action plan
2. **Ongoing Project:** “Ongoing Project” means a multi-year project having timelines not exceeding three years excluding the financial year in which it was commenced.
 - Project that was initially not approved as a multi-year project can be made ongoing by extending the duration beyond one year by the board based on reasonable justification.
 - It appears that CSR Project’s duration cannot be more than three years.
3. **Net Profit:** Net profit as per its financial statement with the applicable provisions of the Act, but doesn’t include:
 - Any profit arising from any overseas branch or branches of the Company, whether operated as a separate company or otherwise; and
 - Any dividend received from other companies in India, which are covered under and complying with the provisions of Section 135 of the Act.
4. **Net Profit for foreign Company:** Net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section(1) of Section 381, read with section 198 of the Act.

CSR COMMITTEE: (Rule 5(2))- Committee shall formulate and recommend to the Board, an annual action plan in pursuance to its CSR Policy, which shall include the following:

- The list of CSR projects or programmes that are approved to be undertaken in the area of Schedule VII
- Manner of the execution of such projects
- Modalities of utilization of funds and implementation of schedule for the projects
- Monitoring and reporting mechanism for the projects or programmes; and
- Details of need and impact assessment, if any, for the project undertaken by the Company.

RESPONSIBILITIES OF BOARD: (Rule 4(5-6))

- The Board shall satisfy itself that the funds so disbursed have been utilized for the purpose and in the manner as approved by it.
- The CFO or the person responsible for the financial management shall certify to the effect.
- In case of an ongoing project, the board shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modification, if any required.

Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com).

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