

Shift In The Indian CSR Environment

written by Neha Mathew | March 22, 2021



Corporate Social Responsibility (“CSR”) in common parlance refers to the activities undertaken by a corporate entity targeted towards the betterment of the community and society in toto. With the recent amendment to the Companies (Corporate Social Responsibility Policy) Rules 2014 (“CSR Rules”) notified on February 22, 2021 (“Amendment to CSR Rules 2021”)[1], these activities must not be confused as mere endowments in the form of charities, rather they must fall in the ambit of the newly amended Section 135[2] and Schedule VII of the Companies Act 2013 (“CA 2013/Act”).

The changes that have been introduced in the amendment will be analyzed in depth in this article.

Pre and Post Amendment – A comparative analysis of CSR under CSR Rules and Amendment to CSR Rules 2021 read with CA 2013

- New definition of CSR[3] :

CSR Rules	Amendment to CSR Rules 2021
Earlier, the definition of CSR Policy only stipulated the following exclusions: 1. Funding to political parties 2. Expenditure on company’s normal course of business 3. Activities carried out to benefit the employees	Following new exclusions have been added: 1. Money spent on sponsorship as an act of marketing 2. Activities carried out for fulfilling statutory obligation under any law 3. Activities carried outside India except amount spent on training of Indian sports players representing India internationally

The earlier definition of CSR although wide in scope enabled entities to work around their obligation under the Act by reporting mere donations in their Board Report[4] which did not fall under the purview of CSR Activities under Schedule VII of the Act. With the new exclusions, the Ministry of Corporate Affairs (“MCA”) intends to safeguard the scope of Section 135 of the Act so as to ensure genuine contribution by entities towards CSR.

- Treatment of “Unspent Amount”[5] and “Surplus”:

CSR Rules	Amendment to CSR Rules 2021

<p>Earlier, CSR Rule 6 only stipulated the following:</p> <ol style="list-style-type: none"> 1. The surplus arising from CSR activities must not be treated as 'Business Profit' but shall refer to the excess of income generated over the expenditure on CSR activities, for instance, income generated as a result of contribution towards setting up of women hostels.' 2. Administrative Overheads' was not defined. 	<p>New changes with respect to the treatment of unspent amount and surplus mandate the following:</p> <ol style="list-style-type: none"> 1. Any surplus arising out of CSR activities must either be ploughed back into the same CSR project or transferred to the Unspent CSR Account or the Fund specified under Schedule VII of the Act.[6] This means such surplus cannot be used for spending under 'Administrative Overheads'. 2. 'Administrative Overheads' have now been restricted to 5% of the CSR budget. However, salaries of staff engaged in the management of the CSR project can continue to be billed under this head. On the other hand, salaries of staff engaged in the implementation functions of the project will fall under the ambit of the remaining 95% of CSR budget. 3. Relief granted to companies that have spent in excess on CSR activities than what is required under law by setting off such excess amount for such number of succeeding Financial Years ("FY") equivalent for which the amount has been already spent.
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The newly introduced provision on 'Unspent CSR Amount' enables corporate entities to channelize it in a sustainable mode thereby not only meeting the present statutory requirements under the Act but also fulfilling their future obligations.

- **Increased Penalties[7] :**
 Post the amendment, MCA has increased the penalty imposed on corporate entities for default in implementation of their obligations specified under Sub-section 5 and Sub-section 6 of Section 135 of the Act ("Said Sub-Sections"). The Said Sub-Sections mandate the treatment of the 'unspent amount' and how it must be transferred by the entity to either the fund created under Schedule VII of the Act or the Unspent CSR account. On the other hand, the penalty on individual officers for the same default has been decreased.

Penalties under Section 135 of the Act (Pre -Amendment)	Penalties under Section 135 of the Act (Post - Amendment)
<p>For Company: Fine = 50,000/- < Rs. 25 Lakh/-; For Individual Officer: Imprisonment: Extendable upto 3 years; or Fine = Rs. 50,000/- < Rs. 5 Lakh/-; or with both.</p>	<p>For Company: 2 x Amount required to be transferred to Fund under Schedule VII/ Unspent CSR Account or Rs. 1 crore/- (whichever is less); For Individual Officer: 1/10th x Amount required to be transferred to Fund under Schedule VII/ Unspent CSR Account or Rs. 2 lakh/- (whichever is less).</p>

MCA's intention to increase the penalty on the obligations under the Said Sub-Sections stems from its intent to ensure accountability and compulsory compliance of CSR activities by the corporate entities.

• Implementation of the CSR Activities:

CSR Rules	Amendment to CSR Rules 2021
<p>Earlier, 'Due Procedure' and 'Techniques' were not stipulated for the implementation of the CSR Policy and Rule 5 only provided for instituting a transparent monitoring mechanism.</p>	<p>Now, the following implementation strategies have been introduced:</p> <ol style="list-style-type: none"> 1. With effect from 1st April 2021, corporate entities have to register their implementing agency[8] by submitting form CSR-1 following which a unique CSR Registration Number ("CSRRN") is generated.[9] 2. Rule 8 provides for mandatory impact assessment via independent agency by entities disbursing Rs.10 crore or more as their 2% of average net profit from 3 preceding FY, after 1 year of the completion of the CSR project. 3. The role of the Chief Financial Officer (CFO) has been emphasized upon. The board of a company ("Board") shall monitor the implementation of an ongoing project and satisfy itself that the funds disbursed have been utilised for the approved purposes and in the manner as certified by the CFO.

With the introduction of CSRRN, it appears that the government aims to track the entities and their respective CSR activities. Additionally, the obligation of an 'impact assessment' aims at ensuring intervention by the corporate entities for the benefit of the socially/economically backward sphere of the society.[10]

Timeframe for CSR Activities

Another pertinent question that arises from the analysis of the above provisions is the timeframe of carrying out CSR activities. This can be better understood by categorizing on the following basis:

- a. Entities with 'No Ongoing Project' - The corporate entity has a period of 1 FY to meet its statutory obligations under Section 135 of the Act and implement the annual action plan approved by the Board.[11]
- b. Entities with an 'Ongoing Project' - The Amendment to CSR Rules 2021 define 'Ongoing Project' as a 'multi-year project' for which a corporate entity has a timeframe of 3 years (excluding the FY during which the Ongoing Project was commenced) to meet its statutory obligations under Section 135 of the Act. Such 'Ongoing Projects' also include those which were prima facie not approved as 'multi-year projects' but on reasonable justification have been permitted by the Board to extend their timeline beyond one year.[12]

The amendment, therefore, empowers the Board to remodel a project in interest of their statutory obligations subject to the timeframe mentioned above[13].

Contributions under Section 135 v. Section 181 of the Act

Based on the perusal of the provisions of section 135 and section 181, it is pertinent to understand the vision of MCA in relation to charitable contributions made by body corporates. There is a clear distinction between the contributions being made pursuant to section 135 and section 181 and both cannot be accounted for under the same umbrella.

With respect to the treatment of contributions under Section 135 and Section 181 of the Act, there exist a few intelligible differences:

1. Nature of compliance: Obligation to contribute under Section 135 of the Act

- is mandatory for only certain entities which are registered under the Act^[14] and to which the thresholds provided therein apply, while contributions under Section 181 of the Act are not obligatory in nature;
2. Approval of contribution: All contributions towards CSR projects must be approved by way of a board meeting. While under Section 181 of the Act, only those contributions in a given financial year require permission of shareholders in general meeting, aggregate amount of which exceeds 5% of the average net profits for the 3 immediately preceding FY;
 3. Tax exemptions: Contributions under Section 181 of the Act qualify as deductions under Section 80G^[15] of the Income Tax Act 1961.

Concluding Remarks

In furtherance of the government's 'ease of doing business in India' initiative, the MCA's move to set off the excess amount spent on CSR by companies is indeed a welcome relief. The Amendment Rules 2021 have revamped the CSR Policy, emphasizing improved implementation with distinct guidelines. Companies are now encouraged to plan their CSR activities better and provide more details in their report to the Board.

With the newly introduced Amendment Rules 2021, the government clearly calls for greater accountability from companies and a profound impact on society. These changes have altogether bestowed a new facet to India's CSR environment.

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- [1] Available at: http://www.mca.gov.in/Ministry/pdf/CSRAmendmentRules_22012021.pdf
 - [2] Available at: https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf
 - [3] CSR Rules, Rule 2(d).
 - [4] CA 2013, s. 134(2)(o).
 - [5] CA 2013, s. 135(5): Unspent Amount – *relates to any amount remaining unspent out of the amount earmarked for CSR activities*
 - [6] CSR Rules, Rule 7(2).
 - [7] CA 2013, s. 135(7).
 - [8] CSR Rules, Rule 4(1): *Implementing Agency - Company established u/s 8 of the Act/ Registered public trust u/s 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company/ Central or State Government or any entity established under an Act of Parliament/ State legislature.*
 - [9] CSR Rules, Rule 4(2)
 - [10] Report of the High Level Committee on CSR 2018, MCA, GOI (07.08.2019), available at: https://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf
 - [11] CA 2013, s. 135(5).
 - [12] CSR Rules, Rule 2(1)(i)
 - [13] CSR Rules, Rule 4(6).

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