

**BRIEF NOTE ON AMENDMENT IN PROVISIONS RELATING TO
CORPORATE SOCIAL RESPONSIBILITY UNDER COMPANIES ACT, 2013**

The Ministry of Corporate Affairs (the MCA) has issued notification S.O. 324(E) dated 22nd January, 2021 to notify the Section 21 of the Companies (Amendment) Act, 2019 whereby amending Section 135 of the Companies Act, 2013.

The MCA has also issued notification S.O. 325(E) dated 22nd January, 2021 to notify the Section 27 of the Companies (Amendment) Act, 2020 whereby amending Section 135 of the Companies Act, 2013.

Further, the MCA has issued notification dated 22nd January, 2021 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014.

These amended Rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. These Rules shall come into force from the date of publication in the Official Gazette. Further, these Rules have been published in Official Gazette on 22nd January, 2021.

Highlights of amended provisions of Corporate Social Responsibility (CSR) are detailed below:

I. MEANING OF CSR

Corporate Social Responsibility (CSR) means the activities undertaken by a Company as per the areas or subject, specified in Schedule VII of the Companies Act, 2013 ("Act").

EXCLUSION FROM CSR

1. Activities under taken in normal course of business.

[**Exception:** In case the company do expenses which is related to the research and development activity of new vaccine, drugs and medical devices in their normal course of business and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act]

2. Any activity undertaken by the company outside India

[**Exception:** training of Indian sports personnel representing any State or Union territory at national level or India at international level]

3. contribution to any political party under section 182 of the Act;
4. activities benefitting employees of the company as defined in section 2(k) of the Code on Wages, 2019
5. sponsorship activities supported by the companies for deriving marketing benefits for its products or services
6. activities carried out for fulfilment of any other statutory obligations under any law in force in India.

II. CSR POLICY

CSR Policy means policy as approved by the board of a company on the recommendations of its CSR Committee which may inter-alia include the following:

1. Guiding Principles for selection of CSR activities.
2. Guiding Principles for implementation of those CSR activities.
3. Guiding Principles for Monitoring of CSR Projects.
4. Guiding Principles for formulation of annual action plan.
5. Areas or subjects in which company intends to undertake those activities.

III. ONGOING PROJECTS

Ongoing Project” means a project undertaken by a Company in fulfilment of its CSR obligation which must be a *multi-year project having a maximum duration of 3 years* excluding the financial year in which it was commenced.

The board on reasonable justification may convert a project which was initially not approved as a multi-year project into ongoing project by extending the duration beyond one year.

IV. ADMINISTRATIVE OVERHEADS

Administrative overheads” means the expenses incurred by the company for ‘general management and administration’ of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme.

The administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.

V. ANNUAL ACTION PLAN

The Board will approve on the recommendations of its CSR Committee, the annual action plan which may inter-alia include the following:

1. The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act.
2. The manner of execution of such projects or programmes.
3. The modalities of utilisation of funds and implementation schedules for the projects or programmes
4. Monitoring and reporting mechanism for the projects or programmes.
5. Details of need and impact assessment, if any, for the projects undertaken by the company.

The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

VI. DUTY OF CSR COMMITTEE

1. CSR committee will amend/revise the CSR Policy and recommend the same to the Board for approval.
2. CSR committee will formulate the Annual action plan and recommend the same to the Board for approval.
3. CSR committee will decide that company will undertake CSR activities by itself or through implementing agencies.

If a company’s CSR obligation is less than or upto Rs. 50 lacs, then the Company shall not be required to constitute the CSR committee and the board of directors shall discharge all the function of the CSR committee as prescribed.

VII. DUTY OF BOARD

1. On recommendation of the CSR Committee, the Board will approve the CSR Policy
2. On recommendation of the CSR Committee the Board will approve the annual action plan.
3. The Board shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it.
4. The Board shall obtain a certificate from Chief Financial Officer or the person responsible for financial management who will certify the same.
5. The Board shall monitor the implementation of the ongoing project with reference to the approved timelines and year-wise allocation and if required make modification for smooth implementation of the project within the overall permissible time period.
6. Review of impact assessment.

VIII. IMPLEMENTING AGENCIES

Below can be act as implementing agencies:

1. A company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or
2. A company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or
3. Any entity established under an Act of Parliament or a State legislature; or
4. A company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

Implementing agencies is required to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021.

IX. UNSPENT AMOUNT

1. The Board is required to transfer any unspent amount which does not relate to ongoing projects to a Fund specified in Schedule VII within a period of 6 months of the expiry of the financial year.
2. The Board is required to transfer any unspent amount which relates to ongoing projects to a special account for that financial year called the Unspent Corporate Social Responsibility Account (“Unspent CSR Account”) within a period of 30 days from the end of the financial year

X. SURPLUS OUT OF CSR FUND

1. If the company is having any surplus arising out of the CSR activities shall not form part of the business profit of a company.
2. Surplus is required to be ploughed back into the same project or transferred to the Unspent CSR Account and 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 6 months of the expiry of the financial year.

XI. SET OFF OF EXCESS CSR SPEND

The Company may set off the excess amount spent i.e. amount spend more than required as per section 135(5) excluding surplus arising out of CSR activities, out of the obligation to be spent up to immediate succeeding three financial years as per the details mentioned in Rules 7(3).

XII. IMPACT ASSESSMENT

If the company is having average CSR obligation of Rupees 10 crore or more in pursuance in the 3 immediately preceding financial years, the company shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of Rupees 1 crore or more, and which have been completed not less than 1 year before undertaking the impact study.

XIII. CAPITAL ASSETS

If company is having any capital assets created from the CSR funds prior to the commencement of CSR Rules, 2021, it shall be transferred to the entities as defined under Rule 7(4) within the period of 180 days which may further be extended for not more than 90 days with board approval and reasonable justification.

XIV. DISCLOSURE IN THE BOARD REPORT

1. Composition of the CSR Committee.
2. Annual Report on CSR (including Impact assessment reports, if any) in Annexure II.
3. Reasons for not spending the CSR amount.

XV. DISCLOSURE ON WEBSITE

The following will be required to be uploaded on the Website of the Company, if any:

- a) Composition of the CSR Committee
- b) CSR Policy
- c) Projects approved by the Board

XVI. ANNUAL REPORT ON CSR

The annual report on CSR will be as per Annexure II of the CSR Rules.

XVII. PENALTY

If a company fails to transfer the unspent account as specified in section 135(5) section 135(6) of the Act,

- a. the company shall be liable to **a penalty of twice the amount** required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or **one crore rupees, whichever is less,**
and
- b. every officer of the company who is in default shall be liable to a penalty **of one-tenth of the amount** required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, **or two lakh rupees, whichever is less.**

Necessary links are given below:

1. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 - <http://egazette.nic.in/WriteReadData/2021/224640.pdf>
2. MCA notification S.O. 324(E) dated 22nd January, 2021-
http://www.mca.gov.in/Ministry/pdf/CommencementNotificationCAA_23012021.pdf
3. Companies (Amendment) Act, 2019- http://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf
4. MCA notification S.O. 325(E) dated 22nd January, 2021- http://www.mca.gov.in/Ministry/pdf/CommencementNotification_23012021.pdf
5. Companies (Amendment) Act, 2020 - http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Suggestions may be sent to rupesh@cacsindia.com

**Dr. S. Chandrasekaran | Senior Partner | Chandrasekaran Associates | Company Secretaries 11-F, Pocket
Four | Mayur Vihar Phase One | Delhi - 110 091 | Tel. +91-11-2271 0514 sankara@cacsindia.com |
info@cacsindia.com | www.cacsindia.com**

DISCLAIMER

CACS Bulletin is not intended as a source of advertising or solicitation and the contents of the same should not be construed as professional / legal advice. Readers should take specific advice from a qualified professional when dealing with specific situations and should not consider this as an invitation for a professional-client relationship. Without the prior permission of Chandrasekaran Associates, Company Secretaries, the CACS Bulletin or content thereof or reference to it should not be made in any documentation or correspondences. We make no warranty of any kind with respect to the subject matter included herein or the completeness or accuracy of this issue of CACS Bulletin. While CACS has taken every care in the preparation of this Bulletin to ensure its accuracy, however, the Companies are requested to check the latest position with the original sources before acting. The firm and the partners are not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this issue of CACS Bulletin and in no event shall be liable for any damage or loss resulting from reliance on or use of this information. Without limiting the above the firm and the partners shall each have no responsibility for any act, error or omission, whether such acts, errors or omissions result from negligence, accident or any other cause.