

Duties and responsibilities of Board in compliance with corporate social responsibility (CSR) provisions

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The Companies (Corporate Social Responsibility) Amendment Rules, 2021 has been notified and it is effective from 22nd January, 2021.

The responsibility of the Board has been increased which includes, inter alia, proper utilisation of funds disbursed, monitoring the implementation of projects and making modifications wherever necessary for smooth implementation of the project, to do impact assessment.



A new concept of certificate from CFO or the person responsible for financial management has also been introduced. There is no change in the applicability of the provision of corporate social responsibility (CSR).

The applicability of the provision of CSR continues to be for every company which has its:

- a) net worth of rupees five hundred crore or more; or
- b) turnover of rupees one thousand crore or more; or
- c) net profit of rupees five crore or more, during the immediately preceding financial year.

The Board shall on the recommendations of the CSR Committee, consider and approve the CSR Policy containing the approach and directions including guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Manner of implementation

The Board of the company can undertake the CSR activities either itself or through any implementing agencies. Implementing agency means:

- i. 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 (43 of 1961), established by the company, either singly or along with any other company, or

- ii. 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
- iii. Any entity established under an Act of Parliament or a State legislature; or
- iv. 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.

The Board shall ensure that the implementing agency is registered with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from April 1, 2021.

Monitoring the utilisation of fund

- The Board of a company shall satisfy that the funds so disbursed have been utilised for the purposes and in the manner approved by it.
- The Board shall take into consideration the certification from the chief financial officer or the person responsible for financial management to this effect.
- The Board shall, in case of on-going project, monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall make modifications, if any, for smooth implementation of the project within the overall permissible time period.

On-going 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 on-going project by extending the duration beyond one year.

Annual action plan

The Board on the recommendation of CSR Committee will approve the annual action plan which may inter-alia include:

- i. The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- ii. the manner of execution of such projects or programmes;
- iii. the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- iv. monitoring and reporting mechanism for the projects or programmes; and
- v. details and need of impact assessment, if any, for the projects undertaken by the company.

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

CSR expenditure

The Board shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years in pursuance of its Corporate Social Responsibility Policy.

The Board shall ensure that the administrative overheads shall not exceed five per cent of total CSR expenditure of the company for the financial year.

Administrative overheads here 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.

Treatment of unspent CSR amount

Where the unspent amount does not relate to on-going projects, the Board shall transfer the unspent amount to a fund specified in Schedule VII within a period of 6 months of the expiry of the financial year;

Where the unspent amount relates to on-going projects, the Board shall transfer the unspent amount 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.

Treatment of surplus arising out of CSR funds

Any surplus arising out of the CSR activities:

- i. shall not form part of the business profit of a company;
- ii. shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transferred to a fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

CSR reporting

The Board shall in its report disclose:

- i. Composition of the CSR Committee;
- ii. Annual report on CSR containing particulars specified in Annexure II of the Rules;
- iii. Reasons for not spending the CSR amount.

Impact assessment

- The Board shall ensure that if a company is having average CSR obligation of Rs 10 crore or more in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of the CSR projects having outlays of Rs 1 crore or more and having completed not less than 1 year before undertaking the impact study;
- The Board shall take note of the impact assessment reports and shall also form part of the annual report on CSR.

Set off of excess CSR spend

The company may set off the excess amount spent, i.e., amount spent 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 subject to the conditions that:

- i. 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 this rule.
- ii. the Board of the company shall pass a resolution to that effect.

Capital assets

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

- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority:

Transfer capital asset to implementing agency within 180 days from the commencement of the CSR amendment rules (i.e. from 22.01.2021), if it is in the name of the company; the period can be extended by not more than 90 days with the approval of the Board based on reasonable justifications.

Non-applicability of CSR Committee

If a company's CSR obligation is less than or up to Rs 50 lakh 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.

Conclusion

The amended CSR Rules have thrown a lot of responsibility on the Board of directors of a company. It is also equally interesting that the concept of set off of excess CSR spent has been spelt out while at the same time very strictly introducing the transfer of unspent CSR amount. The Board has to depend on the CFO certification on the monitoring of utilisation of funds disbursed but the rules are silent on the role of outside professionals.

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