

Companies (Corporate Social Responsibility Policy), Amendment Rules, 2021.

The Government has amended Companies (Corporate Social Responsibility Policy) Rules, 2014 with an objective to increase accountability, transparency and flexibility, w.e.f. January 22, 2021, i.e. amended provisions will become applicable for the Financial Year 2020-21.

DEFINITIONS

Administrative overheads: mean the expenses incurred by the company for general management and administration of the CSR functions in the company but shall not include expenses directly incurred for designing, implementation, monitoring, and evaluation of a particular CSR project or program.

International organization: refers to an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.

Ongoing Project: means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding 3 years excluding the financial year in which the project commenced and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond 1 year by the board based on reasonable justification.

DEFINITION OF CSR CHANGED TO INTRODUCE NEGATIVE LIST OF ACTIVITIES

The following activities/ contributions shall not constitute CSR expenditure:

- a) *Activities undertaken in the normal course of business.* Exception provided to companies engaged in R&D to undertake and include R&D activities for new COVID-19-related vaccines, drugs and medical devices for the financial years 2020-2021, 2021-2022 and 2022-2023 under their CSR policy subject to defined conditions
- b) *Activity undertaken outside India* except for training of Indian sports personnel representing any State or Union territory at the national level or India at international level.
- c) *Contribution to any Political Party*, of any amount directly or indirectly.

- d) *Activities benefitting employees of the company.*
- e) *Activities supported by companies on a sponsorship basis for deriving marketing benefits for its products or services.*
- f) *Activities carried out for fulfillment of any other statutory obligations under any law in force in India.*

MANDATORY REGISTRATION OF CSR VEHICLES/ INTERMEDIARIES

- The CSR activities of a company may be undertaken through a company established u/s 8 of the Act, public trust or a registered society or an entity established under the Act of Parliament or a State legislature (entities).
- Such entities are required to register with the Central Government w.e.f April 01, 2021 by filing e-form CSR -1 with ROC.
- On submission of e-form CSR-1, a unique CSR registration number will be generated by the system automatically.

MONITORING OF CSR ACTIVITIES

International Organization can be engaged for designing, monitoring and evaluation of the CSR projects as per company's CSR policy as well as for capacity building of their own personnel for CSR

However, the responsibility of the Board will be to ensure that the disbursed funds are utilized for approved purpose and in the manner certified by the Chief Financial Officer or person-in-charge of financial management.

Further, the Board shall monitor smooth implementation of ongoing projects within the approved timelines/ year-wise allocations and shall have the power to make modifications in the on-going projects to ensure implementation within the permissible time limit.

TREATMENT OF SURPLUS ARISING OUT OF CSR ACTIVITIES OR EXCESS CSR AMOUNT

Surplus arising out of CSR activities shall not form part of the business profits of a company and shall 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 to a Fund specified in Schedule VII, within 6 months from the end of the financial year.

Any excess amount spent by the company may be set off against future CSR obligations in immediately succeeding 3 financial years 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;
- the Board of the company shall pass a resolution to that effect.
- Board shall also ensure that the administrative overheads shall not exceed 5% of total CSR expenditure for the financial year.

ACQUISITION OF CAPITAL ASSETS

- The rules allow the CSR funds to be spent for creation or acquisition of a capital asset. However, the capital assets shall be held by the CSR vehicles/ intermediaries or beneficiaries of CSR projects or a public authority.

MANDATORY IMPACT ASSESSMENT

- Companies with average CSR obligation of INR 10 crore or more in the 3 immediately preceding financial years are required to undertake impact assessment through an independent agency for CSR projects of INR 1 crore or more and which have been completed not less than one year before undertaking the impact study.
- The impact assessment reports are to be placed before the Board and annexed to the annual CSR report
- Expenditure on impact assessment may be accounted for towards CSR of that financial year, which shall not exceed 5% of the total CSR expenditure in the relevant financial year or INR 50 lakh, whichever is less.

CSR REPORTING

New format has been prescribed for annual report on CSR having enhanced reporting requirements and includes the following disclosures:

- details regarding meetings of CSR committee;
- details of impact assessment of CSR projects;
- set-off of any excess CSR amount against future CSR obligations;
- amount spent on administrative overheads, impact assessment, if applicable, and on ongoing projects; etc.

The Board also needs to disclose the composition of CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.