

Companies (Corporate Social Responsibility) Rules, 2021

The Ministry of Corporate Affairs introduced various amendments to CSR provisions through the Companies (Corporate Social Responsibility) Rules, 2021 which was notified on January 22, 2021.

The amendment provides more transparency on CSR spending and provides rules on monitoring and implementing CSR activities.

Major Changes

- Specifically excludes activities which will not be considered as CSR such as, any activity undertaken outside India, contribution to political party, activities benefiting employees, activities carried out for fulfilment of any other statutory obligation.
- Defines Ongoing projects – which shall not exceed three financial years
- Introduces CSR Registration Number
- Annual action plan to be formulated by CSR Committee
- Administrative overhead expenses on CSR shall not exceed 5% of the total CSR expenditure
- Excess spending can be set off in the next three financial year
- CSR amount may be spent for acquisition of capital assets
- Display of CSR activities on the company's website
- Detailed CSR reporting
- Impact assessment on CSR projects for companies whose CSR obligation is more than Rs. 10 Crores

Implementation of CSR activities -

The CSR activities can be implemented by the Company itself or only through a company established under Section 8 of the Companies Act or Registered Public Trust or Registered Society, registered under Section 12A and 80G of the Income Tax Act –

- Either established by the company singly or through other companies or
- Established by State or Central Government or
- having an established track record of at least three years in undertaking similar activities. or
- through any entity established under Act of parliament

CSR definition

The following activities shall not be considered for CSR:

- Activities undertaken in pursuance of normal course of business of the company
- Any activity undertaken by the company outside India (except for training of Indian sports personnel representing any State or Union territory at national level or India at international level)
- Contribution of any amount directly or indirectly to any political party under section 182 of the Act.
- activities that significantly benefit the employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019
- activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services
- activities carried out for fulfillment of any other statutory obligations under any law in force in India;

Ongoing Project

Ongoing Project for the purpose of CSR 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 it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification.

CSR Expenditure

Administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

If the company spends an amount in excess of required amount (2%) such excess amount may be set off against the requirement to spend in the next immediate succeeding three financial years' subject to resolution passed by the Board in this regard.

Unspent CSR Amount

If the company fails to spend the entire CSR amount, but the same is been allocated to any specific approved project then such unspent amount will have to be transferred to Unspent CSR Account opened by the Company for the purpose within 30 days form the end of financials year and shall be spent within 3 financial years on that particular project.

If the unspent amount has not been allocated to any ongoing project, then such amount shall be transferred to Fund specified under Schedule VII within a period of six months from the end of financials year such as Prime Minister's National Relief Fund, PM CARES Fund, Clean Ganga Fund.

CSR Registration Number

With effect from April 1, 2021 all entities which intends to undertake CSR activities shall mandatorily obtain Unique Corporate Social Responsibility Registration Number by filing form CSR 1 with Ministry of Corporate Affairs.

No company shall donate/conduct/implement their CSR activities through any trust/Section 8 companies/ Society which does not have CSR Registration Number.

However, if the Company is carrying any CSR projects by itself and not through any trust or section 8 company, then the Company need not register and obtain CSR registration number.

Mandatory CSR impact assessment

Companies having minimum of Rs.10 Crores of average CSR obligation in last 3 years shall have to undertake mandatory impact assessment. The report of such assessment is required to be formed a part of the annual report

Board responsibility and CFO certification

In addition to the monitoring by the board, the amendment requires the Chief Financial Officer or the person responsible for financial management to give utilisation certificate of the disbursements made.

Annual Action Plan

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy. Annual Action Plan to include:

- list of CSR Projects approved
- manner of execution
- modalities of utilization of funds and implementation schedules
- monitoring and reporting mechanism
- on recommendation of CSR Committee Annual Action Plan may be altered by the Board.

Additional disclosures on the website of the company

This is an important proposal for the companies which have / are required to have a functional website. This requires the companies to *inter alia* mandatorily disclose the CSR projects approved by the board.

Annual CSR Report

There are several additional details required in the report which is by and large in line with the additional requirement.

Consequence of not spending

The Company will be liable to pay penalty twice the amount of default or Rs. 1 Crore, whichever is less and every officer liable to pay penalty at 10% of default or Rs. 2 Lakhs, whichever is less.

Actions required before March 31, 2021

Since the provisions are applicable from January 22, 2021, any amount that remains unspent on ongoing project in FY 2020-21, will have to be transferred to separate account within 30th April, 2021. Ongoing projects are those CSR projects already undertaken by the company and is yet to be completed.

If the unspent amount has not been allocated to any ongoing project, then such amount shall be transferred to Fund specified under Schedule VII such as PM Cares Fund, PM National Relief Funds, Clean Ganga Fund before March 31, 2021 or within a period of six months from the end of financials year.