

## FAQs on Corporate Social Responsibility (CSR) issued by MCA

### Applicability of CSR

- The Company having net worth of rupees **five hundred crore or more**, or **turnover of rupees one thousand crore or more** or **net profit of rupees five crore or more** during the immediately preceding financial year is required to comply with CSR provisions
- The compliance with CSR requirements is specific to each company and not to its holding or subsidiary.
- Section 135(1) of the Act applies to section 8 companies as well.
- The CSR provisions would become applicable even If the company has not completed three financial years since its incorporation, but it satisfies any of the criteria mentioned in section 135(1).

### CSR Framework

- The Compositions of CSR Committee would be for:
  - (a) **Listed / Unlisted Public companies:** Three or more directors, out of which at least one shall be an independent director.
  - (b) **Private Companies:** Two or more directors
- The requirement for constitution of the CSR Committee is not mandatory in case the spent by a company on CSR does not exceed fifty lakh rupees.
- Functions of CSR Committee are:
  - (i) formulate and recommend the CSR policy to the Board;
  - (ii) recommend the amount of expenditure to be incurred on CSR activities;
  - (iii) monitor the CSR policy of the company from time to time; and
  - (iv) formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the items as mentioned in rule 5(2) of the Companies (CSR Policy) Rules, 2014.
- The responsibilities of the Board of a CSR-eligible company include the following —
  - (i) approve the CSR policy;
  - (ii) disclose contents of such policy in its report and also place it on the company's website, if any;
  - (iii) ensure that the activities included in the CSR policy are undertaken by the company;
  - (iv) 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;

- (v) satisfy itself regarding the utilisation of the disbursed CSR funds; and
  - (vi) if the company fails to spend at least two per cent of the average net profits of the company, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount and transfer the unspent CSR amount as per provisions of sections 135(5) and 135(6) of the Act.
- The Government has no direct role in the approval and implementation of the CSR programmes /projects of a company.
  - The existing legal provisions such as mandatory disclosures, accountability of the CSR Committee and the Board and provisions for audit of accounts of the company provide sufficient mechanisms for monitoring.
  - The Government monitors the compliance of CSR provisions through the disclosures made by the companies in the MCA 21 portal. In case of any violation of CSR provisions, action can be initiated by the Government against such non-compliant companies.

### **CSR Expenditure**

- Profit before tax to be considered for computing net profit under section 135 of the Act and it should be in accordance with the provisions of section 198 of the Companies Act, 2013.
- Limit for administrative overheads is five percent of total CSR expenditure and it's includes 'general management and administration' expenses.
- Expenses incurred by implementing agencies on the management of CSR cannot be considered as administrative overheads.
- Surplus refers to the income generated from the expenditure on CSR activities and shall be utilised only for CSR purposes.
- Contribution to corpus of any entity is not an admissible CSR expenditure w.e.f. 22nd January, 2021.
- Expenses related to transfer of capital assets will be qualify as admissible CSR expenditure in the year of such transfer.
- Excess amount spent on CSR activities can be set off against CSR expenditures up to the immediately succeeding three financial years w.e.f 22nd January, 2021.
- Set off of excess amount spent on CSR activities can be carried forward up to immediately succeeding three financial years, otherwise it will lapse. It is applicable from 22nd January, 2021 and has a prospective effect, thus no carry forward shall be allowed for the excess amount spent, if any, in financial years prior to FY 2020-21
- It is not mandatory to spent CSR expenditure only in local areas of the Company unless the Company balance local area preference with national priorities.

- CSR expenditure incurred by Company cannot be claimed as business expenditure.
- No Specific tax exemption have been extended to CSR expenditure and hence does not form a part of business expenditure.
- CSR contribution cannot be in kind and monetized
- CSR expenditure cannot be incurred on activities beyond Schedule VII of the Companies Act, 2013
- CSR expenditure can be incurred in multiple modes i.e Activities route, Contribution to funds route and Contribution to incubators and R&D projects
- Contributions to Swachh Bharat Kosh, Clean Ganga Fund, Prime Minister's National Relief Fund (PMNRF), Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) and any other fund set up by the Central Government and notified by the Ministry of Corporate Affairs shall be admissible funds for CSR expenditure.
- Contribution to any other fund not specified in Schedule VII of the Act, cannot be an admissible CSR expenditure.
- CSR should not be interpreted as a source of financing the resource gaps in Government Schemes
- Involvement of employees in CSR projects of a Company cannot be monetized.

### **CSR Activities**

- Rule 2(1) (d) of the Companies (CSR Policy) Rules, 2014 specifies ineligible CSR activities
- Any activity benefits directly the employees will not be considered as eligible CSR activity and shall be considered as an *"activity benefitting employees"*
- Sponsorship activities of an event are done with an aim of deriving marketing benefits for a company's product or services and hence cannot be considered as CSR activity.
- Rule 2(1) (d) (ii) of the Companies (CSR Policy) Rules, 2014 specifies that any activity undertaken by the company outside India shall not be an eligible CSR activity unless it is training of Indian sports personnel representing any State or Union Territory at national or international level.
- Rule 4(4) in Companies (CSR Policy) Rules, 2014 allows Companies with small CSR funds to collaborate with other Companies for undertaking CSR activities by way of pooling their CSR resources.

### **CSR Implementation**

- The company may undertake CSR activities through following three modes of implementation as prescribed under rule 4 of the Companies (CSR Policy) Rules

- Rule 4(1) of the Companies (CSR Policy) Rules, 2014, specified the list of eligible entities which can act as an implementing agency for undertaking CSR activities.
- All three types of entities i.e a section 8 Company, or a registered public trust, or a registered society are required to have income-tax registration u/s 12A as well as 80G of the Income Tax Act, 1961 to act as implementing agency, except for any entities established by Central or State Government.
- Registered public trust would include trusts registered under the Income Tax Act, 1961 in respect of those states where registration of public trusts is not mandatory.
- The identification of suitable implementing agencies is the main purpose for registering implementing agency on the MCA21 portal.
- It is mandatory for implementing agency to register itself in the MCA21 portal w.e.f. 1<sup>st</sup> April, 2021 in order to enable it to undertake CSR activities on behalf of the company other than any ongoing project which has been approved between 22<sup>nd</sup> January, 2021 and 31<sup>st</sup> March, 2021.
- The requirement of filing e-form CSR-1 does not arise in case the company carries out CSR activities directly.
- An international organisation cannot act as an implementing agency. However, they can be engaged for the limited purposes of designing, monitoring, and evaluation of the CSR projects or programmes, or for capacity building of personnel of the company involved in CSR activities.

### **Ongoing Project**

- Ongoing project has been defined under rule 2(1)(i) of the Companies (CSR Policy) Rules, 2014
- The project should have commenced within the financial year to be termed as 'ongoing'.
- An ongoing project will have 'commenced' when the company has either issued the work order pertaining to the project or awarded the contract for execution of the project.
- The maximum permissible time period shall be three financial years excluding the financial year in which it is commenced and time period of an ongoing project cannot be extended beyond its permissible limit.
- In case of ongoing projects, the major responsibilities of the Board include:
  - (i) identification of the ongoing projects;
  - (ii) year-wise allocation of funds;
  - (iii) transferring the unspent money to a separate bank account as prescribed under sub-section (6) of section 135;

- (iv) monitoring the implementation of the projects with reference to the approved timelines and year-wise allocation; and
  - (v) making modifications, if any, for smooth implementation of the projects within the overall permissible time period.
- The Board may abandon or modify an ongoing project under exceptional circumstances, by providing reasonable justification to that effect.
  - The budget outlay dedicated for one project can be used against another project.

### **Treatment of Unspent CSR Amount**

- If a company spends less than the amount required to be spent under their CSR obligation, the Board shall specify the reasons for not spending in the Board's report and shall deal with the unspent amount in the following manner:
  - (a) **If the unspent amount pertains to Ongoing Projects-**The Company shall spent "unspent amount" to a separate bank account of the company to be called as 'Unspent CSR Account' within 30 days from the end of the financial year.
  - (b) **If the unspent amount pertains to other than Ongoing Projects-** The Company shall spent "unspent amount" to any fund included in Schedule VII of the Act within 6 months from the end of the financial year. The transfer of unspent amount will be considered as compliance with section 135(5) of the Act.
- Companies are not permitted to spend the unspent CSR amount, other than the amount pertaining to ongoing projects, on any CSR activity during the intervening period of six months after the end of the financial year. Such unspent CSR amount is required to be transferred to any fund included in Schedule VII of the Act.
- The implementing agency acts on behalf of the company and mere disbursement of funds for implementation of a project does not amount to spending unless the implementing agency utilises the whole amount.
- A company needs to open a separate 'Unspent CSR Account' for each financial year but not for each ongoing project.
- The unspent CSR Account can be utilised only for meeting the expenses of ongoing projects. The special account cannot be used by the company as collaterals or creating a charge or any other business activity.
- An ongoing project initiated by a company in any previous financial years cannot be classified as an ongoing project.
- The Board can either transfer the unspent CSR amount of previous financial years to 'Unspent CSR Account' or continue as per the previous accounting practices adopted by the company.

- The non-compliance with the provisions regarding transfer of unspent amount is a civil wrong and shall attract the following penalties:
  - (a) **Company:** The Company is required to transfer **twice** the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, as the case may be, or one crore rupees, whichever is less.
  - (b) **Every Officer in Default:** 1/10th of the unspent amount required to be transferred to any fund included in Schedule VII of the Act or Unspent CSR Account, or two lakh rupees, whichever is less.
  
- In case of non-compliance with any other CSR provisions of the section or rules, the provisions of section 134(8) or general penalty under section 450 of the Act will be applicable. Further, in case of non-payment of penalty within the stipulated period, the provisions of section 454(8) will be applicable.

### **Impact Assessment**

- Rule 8(3) of the Companies (CSR Policy) Rules, 2014 mandates following class of companies to conduct impact assessment:
  - (a) companies with minimum average CSR obligation of Rs. 10 crore or more in the immediately preceding 3 financial years; and
  - (b) companies that have CSR projects with outlays of minimum Rs. 1 crore and which have been completed not less than 1 year before undertaking impact assessment.
  
- The purpose of impact assessment is to assess the social impact of a particular CSR project.
  
- The company is required to undertake impact assessment of the CSR projects completed on or after January 22, 2021.
  
- The impact assessment be conducted by an independent agency.
  
- The expenditure incurred on impact assessment is over and above the specified administrative overheads of 5%. Expenditure up to a maximum of 5% of the total CSR expenditure for that financial year or 50 lakh rupees (whichever is lower) can be incurred separately for impact assessment.
  
- Impact assessment report shall be placed before the Board and shall be annexed to the report on CSR.
  
- In case two or more companies choose to collaborate for the implementation of a CSR project, then the impact assessment carried out by one company for the common project may be shared with the other companies for the purpose of disclosure to the Board and in the annual report on CSR.

## **CSR Reporting & Disclosure**

- The Board's Report pertaining to any financial year, for a CSR-eligible company, shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the CSR rules, as applicable.
- In case of a CSR-eligible foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II of the said rules, as applicable
- The following disclosure shall be made on the Company Website:
  - (i) Composition of the CSR Committee;
  - (ii) CSR Policy; and
  - (iii) Projects approved by the Board.