

## Rules governing Corporate Social Responsibility (CSR) amended

### Introduction

As per Section 135 of the Companies Act, 2013 (the Act), CSR is mandatory in India. The Ministry of Corporate Affairs (MCA) had notified 1<sup>st</sup> April 2014 as the date on which the provisions of Section 135 and Schedule VII of the Act came into force.

Section 135 is applicable to every company (including its holding or subsidiary, and a foreign company having branches/project office in India) which meets any of the following criteria during the immediately preceding financial year (FY)-

- Net worth of Rs. 500 crores or more
- Turnover of Rs. 1,000 crores or more
- Net Profit of Rs. 5 crores or more.

The Board of Directors must ensure that the company spends at least 2% of its average net profit made during the 3 immediately preceding FYs towards CSR activities.

### Overview of Amendments

The MCA has notified the Companies (CSR Policy) Amendment Rules, 2022 on 20<sup>th</sup> September 2022 by amending the Companies (CSR Policy) Rules, 2014. The amendments include the following:

#### ▪ Rule 3- CSR

##### ▲ New proviso inserted in Rule 3(1)

A company having any amount in its Unspent CSR Account as per Section 135(6) of the Act should constitute a CSR Committee and comply with the provisions contained Section 135(2) to (6).

#### CNK Comments

*As per the CSR Rules, any surplus arising out of the CSR activities should be ploughed back into the same project or should be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or such surplus amount should be transferred to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the FY.*

*As per the amendment, companies having unspent CSR amount are required to constitute a CSR Committee. The exemption granted under Section 135(9) of the Act from the constitution of CSR Committee where the expense towards CSR does not exceed Rs. 50 lakhs will not apply in such cases. The motive for this change could be that role of CSR committee will be required to monitor large unspent amounts of ongoing CSR projects till they are fully utilized.*

##### ▲ Rule 3(2) deleted

As per this Rule, every Company which does not meet the above-mentioned criteria for 3 consecutive FYs is not required to – (a) constitute a CSR Committee; and (b) comply with the

provisions of the Section 135 of the Act till such time it meets the criteria mentioned above. This Rule has been deleted.

### CNK Comments

*Prior to this amendment, even the companies which ceased to be covered under Section 135(1) of the Act were required to comply with the provisions of Section 135 of the Act i.e., incurring CSR expenditure, constituting CSR Committee etc. for 3 FYs. Henceforth, the companies will get immediate exemption from CSR compliance and expenditure obligations upon ceasing to meet the criteria mentioned under Section 135(1) of the Act in the immediately preceding FY.*

#### ▪ Rule 4 (1)- CSR Implementation

Sub rule (1) has been substituted . Substituted sub-rule states the following :

The Board should ensure that the CSR activities are undertaken by the company itself or through, –

- ▲ a company established under Section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of Section 10(23C) or registered under Section 12A and approved under 80G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or
- ▲ 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
- ▲ any entity established under an Act of Parliament or a State Legislature ; or
- ▲ a company established under Section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of Section 10 (23C) or registered under Section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least 3 years in undertaking similar activities.

### CNK Comments

*The amended CSR Rules have now widened the type of entities that can be appointed as implementation agencies*

#### ▪ Rule 8 (3)- CSR Reporting

A company undertaking impact assessment may book the expenditure towards CSR for that FY, which should not exceed 2% (*earlier 5%*) of the total CSR expenditure for that FY or Rs. 50 lakhs, whichever is higher (*earlier whichever is less*).

### CNK Comments

*Companies generating higher profits and undertaking larger CSR expenditure will have proportionately higher amount to allocate towards assessing the impact of CSR projects undertaken.*

#### ▪ Annexure II -Format for the Annual Report on CSR Activities to be included in the Board's Report for FY commencing on or after 1<sup>st</sup> April 2020

This Annexure has been substituted. The revised format is more comprehensive. *Inter alia,*

following details are required :

- ▲ Details of composition of CSR Committee, name of the Director, Number of meetings held and attended
- ▲ Web-links where composition of CSR Committee , CSR Policy and CSR Projects are approved by the Board and disclosed on the website of the company
- ▲ Executive summary along with web-links of Impact Assessment of CSR Projects carried out
- ▲ Details about the CSR amount spent against ongoing projects and those other than ongoing projects.

### CNK Comments

*Though some of these changes are welcome, CSR compliances are becoming more stringent. Companies need to be aware of these changes and ensure compliance.*

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