

## CSR Amendments

The Ministry of Corporate Affairs recently made amendments to the Companies (Corporate Social Responsibility) Rules, 2014 and Section 135 of the Companies Act, 2013 on January 22<sup>nd</sup>, 2021. Here is the overview of the changes.

Sr NO.	Subject	Key Changes
1.	CSR Activities	<p><b>Activities that shall NOT be considered CSR:</b></p> <ul style="list-style-type: none"><li>Activities that are undertaken in the normal course of the company and those that significantly benefit the employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019)</li></ul> <p><b>Exception:</b> COVID-19 related Research &amp; Development up to the financial year 2022-23, subject to certain conditions</p> <ul style="list-style-type: none"><li>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);</li><li>Political Contributions</li><li>Sponsorship Activities</li></ul> <p><b>Activities that shall be considered CSR:</b></p> <ul style="list-style-type: none"><li>The asset created using CSR funds must be owned by either the organisation supported or by beneficiaries of the project or by a public authority</li></ul>
2.	CSR Spending	<p><b>Unspent CSR Funds</b></p> <p>Any unspent CSR Funds remaining at the end of the financial year needs to be transferred in the following ways:</p> <ul style="list-style-type: none"><li><b>Not relating to ongoing project:</b> In case of failure to spend CSR amount, the amount needs to be carried forward to a fund</li></ul>

		<p>specified in Schedule VII within 6 months of the close of the financial year .The reasons for not spending have to be mentioned in the Board Report.</p> <ul style="list-style-type: none"> <li>• <b>Relating to ongoing projects:</b> To be transferred within a period of 30 days from the end of the financial year to a special account to be opened by the company for the specified financial year in any scheduled bank. The account will be called Unspent Corporate Social Responsibility Account (UCSRA)</li> <li>• <b>Time period for spending unspent amount related to ongoing projects:</b> Such amount shall be spent within a period of 3 financial years from the date of transfer, failing which the company shall transfer the same to a fund specified in Schedule VII within a period of 30 days from the date of completion of the third financial year.</li> </ul> <p><b>Surplus CSR Funds</b></p> <p>In case of any surplus amount that arises out of CSR Activities:</p> <ul style="list-style-type: none"> <li>• The amount must be spent on the same project from which the surplus arose</li> <li>• The amount can be transferred to the UCSRA account of the company</li> <li>• The amount must be transferred to fund specified in Schedule VII of the act</li> </ul> <p><b>Excess CSR Funds</b></p> <ul style="list-style-type: none"> <li>• If a company has spent the mandated 2% on CSR, the company can set off such excess amount against the CSR spends in the next three financial years. However, the board of directors need to pass a resolution for this.</li> </ul> <p><b>NOTE:</b> This excess cannot include surplus arising out of CSR activities.</p> <p><b>Consequences of Non-Transfer of Funds</b></p> <ul style="list-style-type: none"> <li>• The offence has been decriminalised vide CAA,2020</li> <li>• Company is liable to pay penalty twice the amount of default or Rs.1 crore, whichever is less</li> </ul>
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3.	Impact Assessment	<p><b>Requirements for mandatory impact assessment of CSR projects</b></p> <ul style="list-style-type: none"> <li>Companies that have an average CSR spend of Rs.10 crore or more in the past three financial years</li> <li>All CSR projects that have a Rs.1 crore or more budget and have been completed for a period of one year prior to undertaking the impact assessment</li> <li>The impact assessment needs to be carried out by an independent agency. The cost of the agency cannot exceed 5% of the total CSR spend for that year or Rs.50 Lakh whichever is lower</li> <li>Impact Assessment needs to be presented before the Board and added as an annexure in the Annual Report</li> </ul>
4.	Administrative Overheads	<ul style="list-style-type: none"> <li>Administrative overhead can be defined as expenses incurred for 'general management and administration' of CSR functions in a company</li> <li>Expenses directly incurred for the designing, implementation, monitoring and evaluation of a particular CSR project or programme has been <b>excluded</b>.</li> <li>Administrative overheads cannot exceed 5% of the total CSR expenditure of the company for the financial year</li> </ul>
5.	Governance and Transparency	<p><b>CSR Policy</b></p> <ul style="list-style-type: none"> <li>A company's CSR policy must include details of their CSR philosophy, guiding principles, implementation and monitoring activities as well as annual action plan</li> </ul> <p><b>Website Disclosure</b></p> <ul style="list-style-type: none"> <li>If the company has a website, it is mandatory for them to disclose the composition of CSR committee, CSR policy and projects that have been approved by the board.</li> </ul> <p><b>CSR Committee</b></p> <ul style="list-style-type: none"> <li>The CSR committee needs to formulate an annual action plan for annual spends. The action plan will detail the list of CSR projects, implementation and monitoring schedules and details of impact assessment.</li> <li>In case of CSR spends below Rs. 50 Lakhs, there is no requirement to form a separate CSR committee, Board of Directors can perform that function.</li> </ul>

6.	Annual Disclosure	<ul style="list-style-type: none"> <li>For the financial year starting on or after April 01,2020, the CSR Report shall be in Annexure-II</li> <li>Company's Chief Financial Officer (or equivalent) has to certify that the CSR funds have been disbursed and utilised in the form and manner approved by Board of Directors.</li> <li>Additional disclosures in Annexure-II <ul style="list-style-type: none"> <li>-Impact Assessment</li> <li>- Amount available for setoff</li> <li>- CSR amount spent against ongoing project</li> <li>-Administrative overhead</li> <li>-Unspent amount against ongoing project</li> <li>-Details of capital assets</li> </ul> </li> </ul>
7.	Support from International Organisations	<ul style="list-style-type: none"> <li>International organisations as notified under the United Nations (Privileges and Immunities) Act, 1947 can assist and play a role in the CSR ecosystem.</li> <li>Some of the entities under United Nations (Privileges and Immunities) Act, 1947 <ul style="list-style-type: none"> <li>- International Labour Organization</li> <li>- World Health Organization</li> <li>- Food and Agriculture organization of the World Bank</li> <li>- UNESCO</li> <li>- International Monetary Fund (IMF)</li> </ul> </li> <li>A company may engage international organisations for designing, monitoring and evaluation of CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.</li> </ul>

### Impact of these amendments on the Non Profit Sector:

- The following entities are now allowed to raise CSR funds:

A section 8 company, a registered public trust or society, each of these needs to be registered under Section 12A and 80G of the Income Tax Act, 1961. These entities can be

- Independent organizations that have an established track record of at least three years in undertaking similar projects
- Established by the company undertaking the CSR project itself
- Those established by the Central or State Government or established under State Legislature or Act of Parliament.

2. Each implementing agency will require to be registered by the Ministry of Corporate Affairs (MCA). Following registration, a unique CSR number shall be generated for each entity. From April 1,2021, this unique number will have to be quoted on the annual report of companies who have appointed such agencies.

