

THE COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2021 (“CSR 2021”)

Introduction:

The Ministry of Corporate Affairs (“MCA”) has amended Companies (Corporate Social Responsibility Policy) Rules, 2014 (“CSR 2014”) vide circular no. G.S.R. 40(E) dated 22nd January 2021 (“Amendment Rules”). The Amendment Rules is effective from 22nd January 2021.

Overview of the Amendment Rules

a. Amended definition of Corporate Social Responsibility (“CSR”)

The Amendment Rules have revised the definition of CSR to exclude specific activities which will not be considered as a CSR (*as provided below*):

i. activities undertaken in pursuance of normal course of business of the company.

However, any activity undertaken by a company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business (subject to certain conditions) may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23.

ii. any activity undertaken by the company outside India except for training of Indian sports personnel representing national level or international level.

iii. contribution of any amount either directly or indirectly to any political party under section 182 of the Act.

iv. activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019.

v. activities supported by the companies on sponsorship basis for receiving marketing benefits for its products or services.

vi. carried out for fulfilment of any other statutory obligations under any law in force in India.

b. CSR Implementation

The amended rule 4 states that the Company can undertake CSR activities by itself or through (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, established by the company either singly or along with any other company or company having an established track record of at least 3 (three) years in undertaking

similar activities; (b) a company established by the Central Government or State Government; or (c) any entity established under an act of Parliament or a State legislature.

Every entity that needs to undertake CSR activity will have to register itself with the Central Government by filing e-form CSR-1 with effect from the 1st April 2021.

c. CSR Committee

In Rule 5(2) of CSR 2014, the following sub-rule shall be substituted, to mandate the CSR Committee to formulate and recommend to the board, an annual action plan in pursuance of CSR policy, which shall include: (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; (b) the manner of execution of such projects or programmes; (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes; (d) monitoring and reporting mechanism for the projects or programmes; and (e) details of need and impact assessment, if any, for the projects undertaken by the company.

However, the Board may at its discretion alter the annual action plan at any time during the financial year, as per the recommendation of CSR Committee stating reasonable justification.

d. CSR Expenditure

Rule 7 which deals with CSR Expenditure has been expanded to provide for rules regarding management of funds allocated to CSR. The board shall ensure that the administrative expenses allocated by a company in a financial year shall not exceed 5% (five percent) of the total CSR expenditure. Further, any surplus shall not form part of the business profit of a company and shall be invested back into the same project or shall be transferred to the unspent CSR Account and spent in pursuance of CSR policy of the company or transfer to a Fund specified in Schedule VII, within a period of 6 (six) months of the expiry of the financial year.

Further, through the Amended Rules, the companies are now allowed to set off CSR expenditure in excess of the required 2% (two percent) expenditure in any financial year upto immediately succeeding 3 (three) financial years, such that the excess amount available shall not include the surplus arising out of the CSR activities. The Board of the company shall pass a resolution to that effect.

e. CSR Reporting

As per the amended Rule 8 the board's report of a company shall include an annual report on CSR in the manner prescribed. In case of a foreign company, the balance sheet filed as per section 381(1)(b) of the Act, shall contain an annual report on CSR in the manner prescribed. Further, the companies having average CSR obligation of ten crore rupees or more in three immediately preceding financial years are required to undertake impact assessment through an independent agency for their CSR projects. The impact assessment reports are required to be placed before the Board and annexed to the annual report on CSR. A company undertaking impact assessment can book the expenditure

towards CSR for that financial year not exceeding 5% (five percent) of the total CSR expenditure or fifty lakh rupees, whichever is less.

Conclusion:

The Ministry of Corporate Affairs seeks to give effect to changes introduced in Section 135 of Companies Act with respect to concepts such as meaning of CSR, CSR Policy, CSR Implementation thereby simplifying compliances for the companies.

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