



Luthra and Luthra
LAW OFFICES INDIA

Update – Key amendments to CSR regime

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The Ministry of Corporate Affairs (“MCA”) vide its notification dated September 20, 2022 has prescribed certain changes in the Corporate Social Responsibility (“CSR”) regime (“CSR Amendment”) by amending the Companies (Corporate Social Responsibility Policy) Rules, 2014 (“CSR Rules”) effective from September 20, 2022. We have herein-below briefly analyzed the key changes:

1. Constitution of CSR committee

As per section 135 of the Companies Act, 2013 (“Act”), a company which meets the prescribed thresholds¹ is required to constitute a CSR committee unless the amount to be spent on CSR in a financial year does not exceed INR 5 million. Prior to the CSR Amendment, under the CSR Rules, a company was not required to constitute a CSR committee and comply with the other conditions specified under section 135 of the Act only if it ceased to meet the aforesaid thresholds for three consecutive financial years (“Cooling-Off Period”).

However, post the CSR Amendment, the above inconsistency under the Act and CSR Rules have been removed and the relevant company is now relieved from complying with the requirement of having a CSR committee and other conditions specified under section 135 of the Act after it ceases to meet the aforesaid thresholds during the immediately preceding financial year (and would not be required to have a Cooling-Off Period of three consecutive financial years, as was previously specified under the CSR Rules). Having said this, it has been prescribed that a company having any amount in its Unspent CSR Account² would be required to constitute the CSR Committee and comply with the other conditions specified under section 135 of the Act.

2. CSR Implementation agencies

Prior to the CSR Amendment, a section 8 company, registered public trust or registered society (“Identified Vehicles”) which were registered under sections 12A and 80G of the Income-tax Act, 1961 (“Income Tax Act”) were eligible to act as implementing agency/ies for the purposes of CSR, subject to meeting relevant prescribed conditions. Post the CSR Amendment, the Identified Vehicles which are **exempted under sub-clauses (iv), (v), (vi) or (vi a) of clause (23C) of section 10 of the Income Tax Act** would additionally be considered as eligible CSR implementing agencies under the Act. Accordingly, the following would also qualify as CSR implementing agencies (in addition to Identified Vehicles which are registered under sections 12A and 80G of the Income Tax Act):

¹ (a) Net worth of INR 5 billion or more, or (b) turnover of INR 10 billion or more, or (c) net profit of INR 50 million or more during the immediately preceding financial year.

² As per section 135(6) of the Act, any unspent CSR amount (pursuant to any ongoing project) shall be transferred by the company within 30 days from the end of the financial year to an Unspent CSR Account. Such amount is required to be spent by the company towards CSR within three financial years FYs from the date of such transfer.

- (a) fund or institution for charitable purpose,
- (b) trust or institution for wholly public religious purpose or wholly public religious and charitable purpose,
- (c) university or educational institution for educational purpose and not for purpose of profit, and
- (d) hospital or an institution for reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment, existing solely for philanthropic purposes and not for purpose of profit.

Aside, it has also been clarified that the entity established under an Act of Parliament or a State legislature would mean a statutory body constituted to undertake activities covered in Schedule VII of the Act³.

3. Expenditure of impact assessment

A company undertaking impact assessment is allowed to book the expenditure of impact assessment towards CSR up to **2%** of the total CSR expenditure for the financial year or INR 5 million, which is **higher** (*as opposed to erstwhile limit of 5% of the total CSR expenditure or INR 5 million, whichever is less*). By way of the CSR Amendment, the thresholds of the amount of expenditure (incurred towards undertaking the impact assessment) which can qualify as CSR expenditure have been reduced.

This newsletter is only for general informational purposes, and nothing herein should be regarded as or constitute legal advice (which can only be given after being formally engaged and being familiarized with all the relevant facts).

³ Schedule VII of the Act provides a list of permitted CSR activities.

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