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31 August 2021

Revised CSR Provisions under the Companies Act, 2013

The Corporate Social Responsibility (CSR) provisions underwent many amendments in the last two years. Certain provisions were newly inserted in 2019 and 2020 which took effect from 22 January 2021. Consequential amendments were also made in CSR Rules. We present below, a concise summary of the CSR provisions as they stand today.

1. Applicability:

CSR provisions are applicable to companies where, in the immediately preceding financial year (FY) either of the following thresholds are met:

- Net worth of INR 500 crore
- Turnover of INR 1,000 crore
- Net profit of INR 5 crore

2. CSR Spending:

The amount to be spent on CSR activities in every FY should be minimum 2% of the average net profits made during the immediately preceding 3 FYs (lesser time period, if the company has been in existence for less than 3 years).

3. Constitution of CSR committee*:

Where the minimum applicable CSR spending by the company does not exceed INR 50 lakh, there is no requirement for the constitution of a CSR committee and instead, those functions shall be discharged by the Board of Directors (BOD) of the company.

4. Utilisation of the CSR funds*: The company must use the CSR funds for the approved activities.

a. The utilisation of unspent amount should be made as follows:

- Ongoing CSR project: Unspent amount shall be transferred to a special account called 'Unspent Corporate Social Responsibility Account' within 30 days from the end of the FY which shall be then spent in accordance with its CSR policy within the next 3 FYs.
- Other CSR projects/activities: The unspent amount shall be transferred to a Fund specified in Schedule VII, within 6 months of the expiry of the FY.

b. Excess spending: If the company spends an amount in excess of the requirements, it may set-off such excess amount against the requirement to spend under CSR obligations upto 3 immediate succeeding FYs, subject to the conditions that:

1. The excess amount available for set-off shall not include the surplus arising out of the CSR activities.
2. BOD of the company passes a resolution to that effect.

* With effect from 22 January 2021

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5. Other practical aspects (Covered by CSR Rules as amended w.e.f. 22 January 2021)

a. CSR activities to be undertaken by the company the itself or through:
- Section 8 Company, or
- Registered public trust, or
- A registered society, or
- Any entity established under an Act of Parliament or a State legislature.

b. Every implementing agency mentioned in rule 4(1) of the Companies (CSR Policy) Rules, 2014 shall mandatorily register itself on the MCA21 portal w.e.f. 1 April 2021, to enable it to undertake CSR activities on behalf of the company in Form CSR-1.

c. Administrative overheads shall not exceed 5% of the total CSR expenditure of the company for the given FY.

d. The BOD's report of the company, pertaining to any FY shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

e. Impact assessment: Every company having an average CSR obligation of INR 10 crore or more in the immediately 3 preceding FYs shall undertake an impact assessment of only those CSR projects, which have outlays of INR 1 crore or more, and which have completed at least 1 year before undertaking the impact assessment.

f. The BOD of the company shall mandatorily disclose the following on its website:
- Composition of the CSR Committee
- CSR Policy
- Projects approved by the BOD

Therefore

Corporate Social Responsibility has recently been subjected to close review by the regulators. With the recent amendments, the CSR provisions have undergone major changes, making their understanding & implementation even more important and produce an overall impact on society and the profits of the company. The Companies (CSR Policy) Amendment Rules 2021 have introduced new concepts like impact assessment audit, engagement of International Organisations for CSR Projects and CSR implementation. The new rules are more elaborate and provide clarity. The structured provisions would help companies to effectively spend towards CSR obligations.

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