

**Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022****Background**

As per section 135(5) of the Companies Act, 2013 ('the Act'), every company having a net worth of INR 500 crore or more, or turnover of INR 1,000 crore or more, or a net profit of INR 5 crore or more during the immediately preceding financial year ('FY') shall constitute a Corporate Social Responsibility ('CSR') Committee of the Board consisting of 3 or more directors. Out of these, at least 1 director shall be an independent director.

The company shall ensure that it spends a minimum of 2% of its average net profits (i.e., an average of the preceding 3 years) on CSR activities. Any unspent CSR amount related to any ongoing project needs to be transferred by the company within 30 days from the end of the FY to a special account with a scheduled bank ('Unspent Corporate Social Responsibility Account'), which shall be spent by the company as per its CSR Policy within 3 FY. The unutilised amount, if any (after 3 years) shall be transferred to a Fund specified in Schedule VII.

**Amendment by the ministry of corporate affairs (MCA) on 20 September 2022**

MCA has amended Rule 3, 4, 8 and annexure-II of the Companies (Corporate Social Responsibility Policy) Rules, 2014 ('the Rules').

- **Rule 3:** The amended rule 3 requires that a company having any amount in its unspent CSR account as per section 135 (6) shall constitute a CSR committee and comply with the provisions contained in section 135(2) to 135(6).

Before the above amendment, a company that did not satisfy the net worth/turnover/net profit criteria (as mentioned above) for 3 consecutive years was not required to constitute a CSR committee. Thus, the other provisions relating to CSR reporting like

- the board of directors ('BOD') report regarding the composition of the CSR committee,
- formulation of the CSR policy and monitoring thereof,
- minimum CSR spending, etc.

became inapplicable in such a case.

With the current amendment, this exemption does not hold good. A company having any unspent CSR amount is required to constitute a CSR committee and the BOD and the CSR committee together have to comply with all the reporting provisions.

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- **Rule 4 (CSR implementation):** Hitherto, a company could undertake CSR activities jointly with registered public charitable trusts and societies. Now the scope is widened to include funds or institutions established for charitable purposes, universities, educational institutions and hospitals which are established for public purposes of charity, education, and medical treatment respectively. These are covered under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 of the Income-tax Act, 1961 and approved under section 80G or are registered under section 12A of the Income-tax Act, 1961. The institutions covered under section 10(23C) mentioned above are approved by the Principal Commissioner/Commissioner of Income-tax and essentially established as:
  - Funds/institutions - for public charitable/religious purposes
  - Educational institutions - solely for educational purposes and not for purpose of profit.
  - Hospitals/institutions - solely for treating of persons with prescribed illnesses and their rehabilitation, existing solely for philanthropic purposes, and not for the purpose of profit.
- **Rule 8 (CSR reporting):** Impact assessment applicable for companies whose CSR is INR 10 crore or more in the 3 immediately preceding FY. As per the amendment, a company undertaking impact assessment may book the expenditure towards CSR for that FY, which shall not exceed 2% (hitherto 5%) of the total CSR expenditure for that FY or INR 50 lakh, whichever is higher (hitherto less.) This amendment ensures that a minimum of INR 50 lakh will be permitted for impact assessment.
- **Annexure-II (New format of the annual report):** MCA has released a new format for the annual report on CSR activities which is to be included in the board's report for the FY commencing on or after 1 April 2020. Accordingly, the composition of the CSR committee requires the companies to provide the executive summary along with the weblinks of impact assessment of CSR projects carried out.

## Weblink

<https://www.mca.gov.in/bin/dms/getdocument?mds=1Wt3uUYzV0rGCr2Vxa8ztQ%253D%253D&type=open>

## Therefore

The amendments in the CSR rules ensure accountability and responsibility by the companies towards unspent CSR amounts lying idle. The new rule 8 ensures that a minimum of INR 50 lakh is booked towards CSR, thus increasing the basic monetary limit of CSR spending by companies undertaking impact assessment. A positive step is taken by the MCA by widening the scope of CSR implementing agencies being funds or institutions set up and approved under the Income-tax Act, 1961 like educational institutions, universities, hospitals, etc.