

## Redesigning of CSR Regime

The Ministry of Corporate Affairs (“MCA”) by way of notification dated January 22, 2021, brought into effect the Companies (Corporate Social Responsibilities Policy) Amendment Rules, 2021 (“CSR Rules”). The CSR Rules aims to enhance transparency and disclosures with respect to CSR activities. These amendments in CSR Rules have been proposed with an aim to ensure strict compliance with the provisions of the said rules and also an attempt to preclude any mala-fide use of CSR funds by the companies. Some of the key takeaways from the amendments are as follows:

### 1. Amendment in the definition of Corporate Social Responsibility (“CSR”)<sup>1</sup>

Keeping in mind the current pandemic situation, the CSR Rules have modified the definition of CSR to clarify that the activities undertaken in pursuance of normal course of business of the company shall not be included within the definition of CSR. However, the CSR Rules have made an exemption stating that the companies that are engaged in the research and development activity of new vaccines, drugs and medical devices in their normal course of business may undertake such activities related to Covid-19 for the financial years 2020-21, 2021-22, 2022-23 and the same shall fall within the ambit of CSR subject to certain conditions as specified in Rule 2(d)(i) of the CSR Rules.

The CSR Rules further clarifies that the following activities shall not be regarded as CSR:

- a) Any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union Territories at National or International level;
- b) Contribution of any amount made directly or indirectly to any political party pursuant to Section 182 of the Companies Act, 2013 (“Companies Act”);
- c) Activities benefiting employees of the company as per Section 2(k) of the Code on Wages, 2019;
- d) Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services; or



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<sup>1</sup> Rule 2(d) of the CSR Rules

- e) Activities carried out for fulfillment of any other statutory obligations under any law in force in India.

## **2. Implementation of CSR Policy<sup>2</sup>**

The CSR Rules have provided for an entirely fresh rule for the implementation of CSR as against the existing rules. The CSR Rules state that a company can undertake CSR activities either by itself or through a company incorporated under Section 8 of the Companies Act, or a registered public trust or a registered society registered under Section 12A and 80G of the Income Tax Act, 1961, which may be established by the company, either singly or along with another company or, by the Central or State Government, and has an established track record of at least 3 (three) years in undertaking similar activities, as the case may be. It further includes any entity established under an Act of Parliament or a State Legislature.

It is pertinent to note that, every company who intends to undertake any CSR activity must register itself with the Central Government by filing Form CSR-1 electronically with the Registrar of Companies on MCA portal. On the submission of the said form on MCA portal, the company shall be provided with a unique CSR registration number for its future use.

The CSR Rules attributes a responsibility on the Board of the company ("**Board**") to monitor and implement CSR projects in accordance with the project timelines to ensure that the funds so disbursed for CSR are used solely for the approved purpose. In addition to the above, it also provides that a company may engage or collaborate with other organizations for designing, monitoring and undertaking of CSR projects or programs as per its policy. The Board is responsible for disclosing the composition of the CSR Committee, CSR Policy and Projects approved on its website, if any, for public access.

## **3. CSR Committee and its obligations<sup>3</sup>**

The CSR Rules have mandated the CSR committee to formulate and recommend to the Board, an annual action plan which shall be in consonance with the CSR policy of the company. The action plan shall include, *inter alia*, list of CSR projects or programs that are approved to be undertaken in areas or subjects specified in Schedule VII of the Companies Act, manner of execution of such projects or programs, modality of utilization of funds and implementation schedules for such projects or programs, monitoring and reporting mechanism for the projects or programs and details of need and impact assessment, if any, for the projects undertaken by the company.

The CSR Rule further grants powers on Board to alter the annual action plan in accordance with the CSR Committee's recommendation based on reasonable justification.

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<sup>2</sup> Rule 4 of the CSR Rules

<sup>3</sup> Rule 5 of the CSR Rules

#### **4. CSR Expenditure<sup>4</sup>**

The CSR Rules have expanded the scope of Rule 7 of the existing rules in terms of CSR expenses and funding. It poses a duty upon the Board to ensure that the administrative overhead shall not allocate more than 5% (five per cent) of the total CSR expenditure for the financial year, thereby aiming to mitigate any false expenses undertaken by the company in the name of CSR.

The CSR rule further clarifies that any surplus funding arising out of the CSR activities, shall not form part of the business profit of the company other than those specified in the rules and must be reinvested into the same CSR project or shall be transferred to the Unspent CSR Account and spent in accordance of the CSR policy or transferred to a fund specified in Schedule VII of the Companies Act, within a period of 6 (six) months of the expiry of the financial year.

The CSR Rules also allows the companies to set off the excess CSR expenditures above the allocated 2% (two per cent) in any financial year up to immediate succeeding 3 (three) financial years provided that the Board of the company shall pass a resolution ensuring that the aforementioned excess amount is exclusive of the surplus arising out of the CSR activities.

#### **5. Creation or Acquisition of Capital Asset out of CSR Fund<sup>5</sup>**

Companies are now permitted to spend funds approved for CSR for creating/acquiring capital assets which shall be held by the company through the following:

- a) a section 8 company registered under the Companies Act;
- b) registered public trust/society- having charitable objects;
- c) any beneficiary of the CSR project (can be in the form of self-help groups, collectives, entities); and
- d) public authorities.

**Notwithstanding the above**, the Board shall ensure that any capital asset created by the company prior to the commencement of CSR Rules, shall be transferred to any of the aforementioned entities within 180 (one hundred and eighty) days from the commencement of the CSR Rules. The Board shall have the authority to increase such a period of 180 (one hundred and eighty) days by not more than 90 (ninety) days on reasonable justifications.

#### **6. Reporting under CSR<sup>6</sup>**

The CSR Rules have modified the CSR reporting mechanism to include the filing of annual report on CSR containing particulars as specified in Annexure I and II of the CSR Rules, as applicable. The CSR Rules provides that in case of a foreign company, the balance sheet filed to the Registrar under Section 381 (1)(b) of the Companies Act, must contain the annual report on CSR.

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<sup>4</sup> Rule 7 of the CSR Rules

<sup>5</sup> Rule 7(4) of the CSR Rules

<sup>6</sup> Rule 8 of the CSR Rules

Furthermore, the CSR Rules puts an obligation on every company having an average CSR obligation of INR 10,00,00,000 (Indian Rupees Ten Crores) or more to undertake impact assessment of their CSR projects having spending of INR 1,00,00,000 (Indian Rupees One Crore) or more. The said impact assessment shall be undertaken by the independent agency and can only be done after 1 (one) year of completion of the project. The report of the said impact assessment is required to be annexed to the annual CSR report and placed before the Board for approval.

Additionally, a company undertaking impact assessment is permitted to book expenditure up to INR 50,00,000 (Indian Rupees Fifty Lakhs) or 5% (five per cent) of the total CSR expenditure, whichever is less, as an expenditure towards impact assessment. The expenditure raised by the company towards impact assessment shall be exclusive of administrative overhead expenses defined under Rule 2(1)(d) of CSR Rules.

### **Conclusion**

The CSR Rules allude towards a rather refined system of CSR in India, one which is in consonance with sustainability and the normativity of responsibility of the companies towards society. It provides for a much structured and transparent mechanism as compared to the existing rules of CSR. The model promulgated through the amendment aims at a greater degree of responsibility as well as accountability on the part of the company. It is expected that the amendment shall have a significant impact on companies dealing with CSR activities.

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