

## MCA notifies effective date of amendments in CSR provisions (1/3)

### Introduction

The Ministry of Corporate Affairs (MCA) has notified 22 January 2021 as the date on which amendments in Section 135 – Corporate Social Responsibility (CSR) of the Companies Act 2013 shall come into effect.

These amendments were notified through Section 21 of the Companies Amendment Act, 2019 (CAA2019) and Section 27 of the Companies Amendment Act, 2020 (CAA2020). Additionally, the MCA notified Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 with effect from 22 January 2021.

### Highlights of the Act

- **Clarification for new companies:** The companies which are in existence for less than 3 years, the average of the profits of the financial years for which it is in existence is to be taken into account instead of 3 financial years, for calculating CSR amount to be spent.
- **Additional compliances for CSR funds:** If a company fails to spend CSR amount in any financial year, the board report is required to contain the reasons for not spending the amount. Following additional compliances have been notified:
  - (a) The unspent amount is required to be transferred to any fund specified in Schedule VII, within a period of six months of the expiry of the financial year (in the case there is no ongoing project).
  - (b) The unspent amount is to be transferred to a special account to be opened by the company in any scheduled bank to be called the unspent CSR account within 30 days from the end of the financial year (in the case of an ongoing project). Such amount shall be spent on CSR activities within three financial years. Failing which, the unspent amount is required to be transferred to any fund specified in Schedule VII, within 30 days.
  - (c) If the company spends an amount in excess of the requirement, such company may set off such excess amount in succeeding three financial years

## MCA notifies effective date of amendments in CSR provisions (2/3)

### Highlights of the Act (contd)

- **Introduction of penal provisions:** Penalty of twice the unspent CSR or INR 1 crore, whichever is less may be imposed on the company, and penalty of 1/10th of unspent CSR or INR 2 lakh, whichever is less may be imposed on all officers in default. It should be noted here that while both the CAA2019 and CAA2020 specified different penal provisions, CAA2020 substituted the penal provisions specified under CAA2019. Therefore, the penalty as contained in CAA2020 has been considered.
- **Exemption from constituting CSR committee in certain cases:** If the amount to be spent does not exceed INR 50 lakh, the requirement for the constitution of CSR committee shall not be applicable.

### Highlights of the Rules

- **New modes of undertaking CSR:** CSR activities can now be undertaken by the company itself or through
  - (a) Section 8 company/registered public trust/registered society, (with 12A and 80G registration under Income-tax Act, 1961), established by the company, either singly or along with any other company, or
  - (b) Section 8 company/registered trust/registered society established by the government; or
  - (c) Any entity established under an Act of Parliament or a state legislature; or
  - (d) Section 8 company/registered public trust/registered society, (with 12A and 80G registration under Income-tax Act, 1961) having an established track record of at least three years in undertaking similar activities. It may be noted here that earlier, there was no specific provision of doing CSR by the company itself. Further, there was also no specific mention about 12A and 80G registration.

# #GTRegulatoryUpdates

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## MCA notifies effective date of amendments in CSR provisions (3/3)

### Highlights of the Rules (contd)

- **Requirement of CSR registration number for undertaking CSR activity:** Form CSR-1 is to be submitted with the Registrar of Companies (RoC) with effect from 1 April 2021 by every entity who intends to undertake CSR activity
- **Other key amendments in CSR rules:**
  - (a) Companies may now engage international organisations for designing, monitoring and evaluating the CSR projects and for capacity building of their personnel for CSR.
  - (b) Administrative overheads have been defined and capped to 5% of total CSR expenditure.
  - (c) Companies having an average CSR obligation of INR 10 crore or more in three immediately preceding financial years will be required to do impact assessment, through an independent agency, of their CSR projects having outlays of INR 1 crore or more, and which have been completed not less than one year before undertaking the impact study.