

*De Jure*

*October 31, 2022*

## RECENT AMENDMENT TO CSR RULES



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## INTRODUCTION

The concept of Corporate Social Responsibility ("**CSR**") was initially introduced to forward the idea and vision of harmonized growth of social and economic ecosystem of the nation. The regulators recognized the potential impact that the Corporates can have in catapulting the socio-economic growth of the nation. Accordingly, the Companies Act, 2013 (the "**Act**") introduced the regulatory framework of CSR and mandated the same for certain prescribed companies stipulating, inter alia, the avenues for disbursement of profit, quantum of spending to be made and its reporting to the regulators. Since, its introduction, the regulatory regime qua CSR has matured, through various amendments to the CSR regime, to reflect a more developed and progressive outlook, the latest among them being notified on September 20, 2022 vide Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (the "**Amendment Rules**").

## PRIMARY CRITERIA FOR CONSTITUTION OF CSR COMMITTEE

Every company having

- (i) a net-worth of rupees five hundred crores or more; or
- (ii) turnover of rupees one thousand crores or more; or
- (iii) a net profit of rupees five crores or more,

during the immediately preceding financial year are required to constitute a CSR Committee and comply with the provisions of CSR as laid down in Section 135 of the Act read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 ("**CSR Rules**").

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## KEY CHANGES <sup>1</sup>

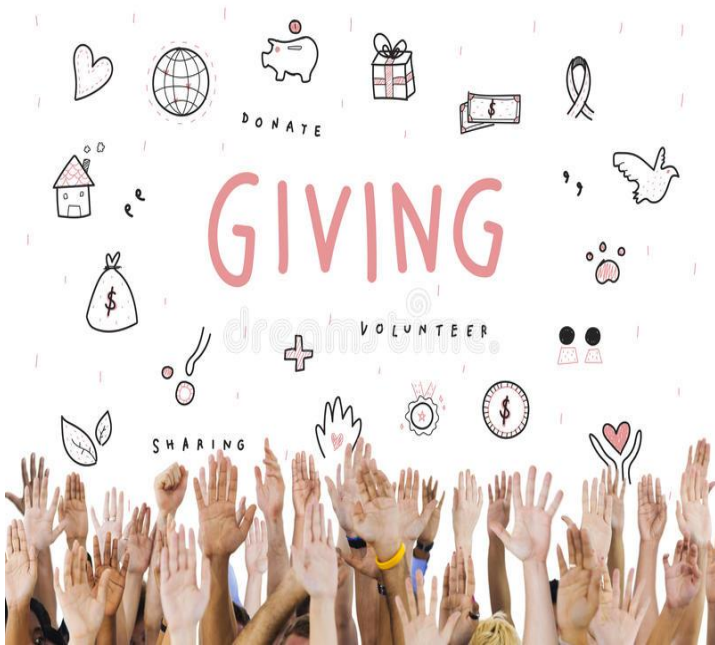
1. **Applicability to constitute CSR Committee:** The Amendment Rules have modified the CSR Rules wherein certain provisions of CSR, such as formation of CSR Committee and incurring CSR expense, are no more required to be complied by those companies who do not meet the prescribed threshold limits stipulated under Section 135 of the Act. Earlier, the CSR Rules required the companies to comply with such CSR norms, for a period of three years, even when the company's net-worth or profitability or turnover fell below the threshold limits. This is a welcome relief to the industry, because the requirement to comply with the CSR norms even when the company's net-worth or profitability or turnover falling below the threshold limits was not only considered daunting but also not in sync with Section 135 of the Act. With this amendment, the anomaly seems to have been addressed. Furthermore, this amendment has streamlined Rule 3 of the CSR Rules with sub-section 1 of Section 135 of the Act and settled all and any ambiguity on the applicability of the provisions of CSR.

However, the requirement of CSR Committee will continue to be applicable in a certain scenario. The Amendment Rules provides that a **company having any amount in unspent CSR Account shall continue with the CSR Committee** and comply with the provisions of Section 135 of the Act. Basically, unspent CSR Account is required to be opened by a company, coming under the ambit of Section 135, wherein any amount earmarked for CSR expenditure and the same remaining unspent is required to be transferred to the unspent CSR Account in terms of Section 135 of the Act.

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<sup>1</sup> The gazette of India notifying amendments to the provisions of CSR can be found at:

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



**2** **Institutions eligible to implement the CSR Activities:** The Amendment Rules, have expanded the ambit of entities/institutions through which the Companies can implement their CSR activities. Companies, in addition to undertaking the CSR Activities by itself, may now implement the same through:

a. A Company established under Section 8 of the Act, Registered Public Trust or a registered society exempted under sub-clauses (iv), (v), (vi) or (via) of Clause (23C) of Section 10 or registered under Section 12A and approved under 80G of the Income Tax Act, 1961, **established by the company**, either singly or along with any other company;

- b. Companies established under Section 8 of the Act or registered trust or registered society, established either by Central Government or by State Government;
- c. An entity established by an act of parliament or a state legislature and having the objects to undertake activities prescribed under Schedule VII of the Act; and
- d. Company established under Section 8 of the Act, Registered Public Trust or a registered society exempted under sub-clauses (iv), (v), (vi) or (via) of Clause (23C) of Section 10 or registered under Section 12A and approved under 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

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- 3 **Impact Assessment:** Every company having average CSR obligation of Rupees ten crores or more in pursuance of sub-section (5) of section 135 of the Act, in the three immediately preceding financial years, is required to undertake an impact assessment, through an independent agency, of their CSR projects having outlays of Rupees one crore or more, and which have been completed not less than one year before undertaking the impact study. A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed **2%** of the total CSR expenditure for that financial year or Rupees fifty lakhs, whichever is **higher**. Earlier, such expenditure could not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less. The Amendment Rule, while lowering the percentage of expenditure from 5% to 2% for companies undertaking impact assessment, has however determined the minimum amount of expenditure to be Rupees fifty lakh. This amendment appears to have germinated from the demands of certain stakeholders to enhance the limit of CSR expense towards impact expenditure. If one considers the amendment, it would be interesting to actual understand the quantum of companies who might be able to utilize the enhanced limit.
- 4 **Reporting of CSR Activities undertaken by the Company:** The regulators have reduced the disclosure requirement to be submitted along with the Directors' Report which is part of a company's annual report. Specifically, the requirement to report the details on ongoing projects has been dispensed off with save and except the amount with respect to ongoing CSR project. While the requirement has been done away with as part of the Director's Report, which is available to the shareholders of a company, similar information continues to be required to be disclosed in annual report of CSR i.e. Form CSR-2. May be the regulators could provide some enlightenment on this aspect.
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## CONCLUSION

The Amendment to the provisions of CSR is in most likelihood prove as a relief to the Companies as the same has eased the compliance requirements under the Act. The regulators, vide the Amendment Rules, have, inter-alia, synchronized the regulatory requirements stated under Section 135 of the Act and the corresponding CSR Rules and increased the eligibility of institutions entitled to implement the CSR Activities of the Company, thereby simplifying the CSR construct. This amendment could prove to be a boost to the CSR ecosystem as it has strengthened the companies in meeting their CSR goals while at the same time has done away with redundant compliances.



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