

# First Notes



## MCA amended CSR provisions under the Companies Act, 2013

12 February 2021

<b>First Notes on</b>
Financial reporting
<b>Corporate law updates</b>
Regulatory and other information
Disclosures
<b>Sector</b>
<b>All</b>
Banking and insurance
Information, communication, entertainment
Consumer and industrial markets
Infrastructure and government
<b>Relevant to</b>
<b>All</b>
Audit committee
CFO
Others
<b>Transition</b>
<b>Immediately</b>
Within the next three months
Post three months but within six months
Post six months
Forthcoming requirement

### Background

The Ministry of Corporate Affairs (MCA) made certain amendments in the past to the provisions of the Companies Act, 2013 (2013 Act) relating to:

- Corporate Social Responsibility (CSR) through the Companies (Amendment) Act, 2019 (2019 Amendment Act) which received the assent of the President of India on 31 July 2019. These amendments help decriminalise certain offences under the Companies Act, 2013 (2013 Act). Most of the amendments were made effective from 15 August 2019, except for the amendments relating to CSR.
- Decriminalisation of certain compoundable offences and rationalisation of penalties under the 2013 Act through the Companies (Amendment) Act, 2020 (2020 Amendment Act). It also included certain other amendments which were aimed to provide ease of doing business by corporates in India including amendments relating to CSR provisions. These amendments were also not notified by the MCA.

### New development

Recently, MCA has notified the CSR related amendments under the 2019 Amendment Act and 2020 Amendment Act. Amendments have also been made to the Companies (CSR Policy) Rules, 2014 (CSR Rules).

This issue of First Notes provides an overview of the revised CSR mandate.



## Overview of the revised CSR norms

- **Calculation of CSR spend (Section 135(5)):** Currently, Board of Directors (BoD) of every company that falls within the specified threshold<sup>1</sup> is required to ensure that in every Financial Year (FY), the company spends at least two per cent of the average net profits of the company made during the **three immediately preceding FYs**, as per its CSR policy.

### Amendment

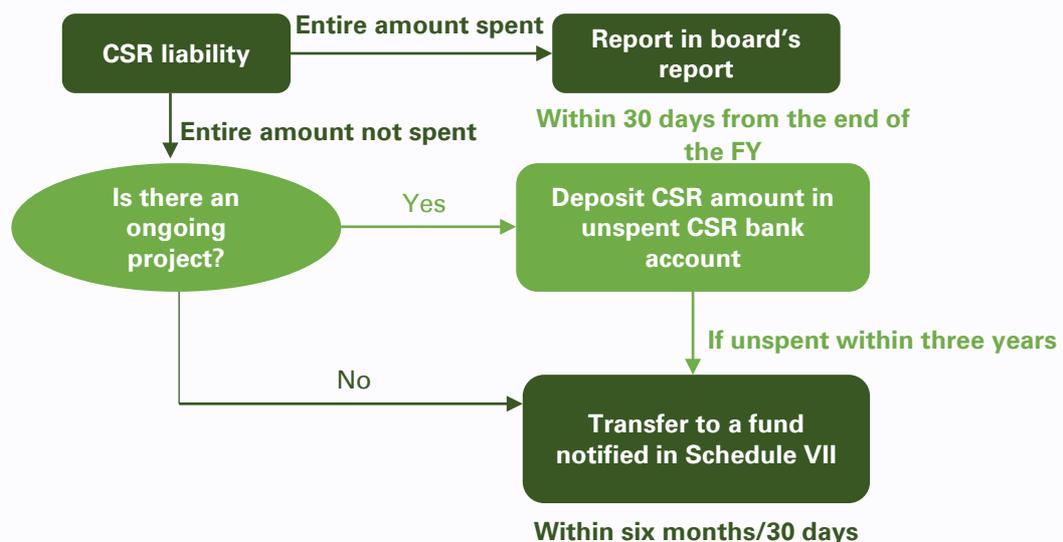
In case a company has not completed a period of three FYs since its incorporation, then the BoD would be required to ensure that the company spends at least two per cent of the average net profits of the company **during such immediately preceding FYs**.

*(Emphasis added to highlight the change)*

- **Spending for CSR mandatory (Section 135(5) and 135(6)):** Currently, if a company fails to spend the amount earmarked for CSR activities during a year, then the BoD is required to disclose the reasons for not spending the amount in the board's report.

### Amendment

A company would be mandatorily required to utilise the unspent amount earmarked for CSR activities, failing which it would be transferred to a fund specified in Schedule VII of the 2013 Act as explained in the diagram below.



*(Source: KPMG in India's analysis, 2021 basis the provisions notified by MCA)*

- **Unspent amount of CSR on ongoing CSR projects:** In case the CSR amount remains unspent pursuant to any ongoing CSR project undertaken by a company as per its CSR policy, then the company should transfer such unspent amount to a special account within a period of 30 days from the end of the FY. The special account should be opened by the company in any scheduled bank for the specific FY and would be called the 'unspent CSR account'.

The company should spend the amount transferred to the unspent CSR account within a period of three FYs from the date of such transfer as per its obligation towards the CSR policy.

In case it fails to spend the amount within the specified period, it would be required to transfer the same to a fund specified in Schedule VII of the 2013 Act, within a period of 30 days from the date of completion of the third FY.

<sup>1</sup>A company which meets any of the given threshold in the immediately preceding FY is required to comply with the CSR norms:

- Net worth of INR500 crore or more
- Turnover of INR1,000 crore or more or
- Net profit of INR5 crore or more.

## Overview of the revised CSR norms (cont.)

- **Unspent CSR amount in cases other than ongoing projects:** When there is no ongoing project, the unspent amount should be transferred to a fund specified in Schedule VII of the 2013 Act within a period of six months from the expiry of the FY.

The MCA is yet to specify a fund in the Schedule VII to the 2013 Act where unspent CSR amount could be transferred. Hence, the CSR Rules clarify that until a fund is specified in Schedule VII of the 2013 Act, the unspent CSR amount, if any, should be transferred by the company to any fund included in Schedule VII of the 2013 Act<sup>2</sup>.

### Our comments

The change brought in by the amendments to spend the CSR amount will lead to a change in the accounting of CSR expenditure in the financial statements of the companies. Pursuant to the amendments made by the 2019 Amendment Act, the Institute of Chartered Accountants of India (ICAI) in its technical guide on 'Accounting for Expenditure on CSR Activities'<sup>3</sup> provided following clarifications with respect to accounting of unspent amount of CSR:

- **In case of ongoing projects:** A company would be required to recognise a provision for a liability to the extent to which the amount is to be transferred to the 'unspent CSR account within 30 days of the end of the FY'.
- **In cases other than ongoing projects:** A provision for liability representing the extent to which the amount is to be transferred to 'a fund specified in Schedule VII of the 2013 Act' would need to be recognised in the financial statements.

In both these cases i.e., ongoing and other than ongoing projects, if a company has already undertaken certain CSR activity for which a liability has been incurred by entering into a contractual obligation, a provision for liability for the amount representing the extent to which CSR activity was completed during the year needs to be recognised in the financial statements even though the payment for the same has not been made during the year.

The amount transferred to the separate bank account would be the full amount, however, provision would be created after deducting the provision created for the CSR activity completed, if applicable and as provided.



- **Revised definitions (Rule 2 of CSR Rules):** The amendments have revised definitions of certain terms relevant to the applicability of CSR provisions under the 2013 Act. Those, *inter alia*, include:
  - **CSR:** Currently, CSR has been defined<sup>4</sup> to mean and include:
    - Projects or programmes relating to activities, areas or subjects specified in Schedule VII of the 2013 Act or
    - Projects or programmes relating to activities undertaken by the BoD of a company in pursuance of recommendations of the CSR committee of the board as per declared CSR policy of the company subject to the condition that such policy will include activities, areas or subjects specified in Schedule VII of the 2013 Act.

### Amendment

As per the revised definition, CSR would mean the activities undertaken by a company in pursuance of its statutory obligation laid down in Section 135 of the 2013 Act but should not include the following:

- Activities undertaken in pursuance of normal course of business of the company.
- Any activity undertaken by the company outside India except for training of Indian sports personnel representing any state or union territory at national level or India at international level.
- Contribution of any amount directly or indirectly to any political party.

<sup>2</sup>Amendments made to the CSR Rules (Rule 10).

<sup>3</sup>Issued by ICAI in June 2020.

<sup>4</sup>Definition under the CSR Rules.

## Overview of the revised CSR norms (cont.)

- d. Activities benefitting employees of the company as defined in Section 2(k) of the Code on Wages, 2019.
- e. Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services.
- f. Activities carried out for fulfilment of any other statutory obligations under any law in force in India.

The amendments clarify that companies engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for FYs 2020-21, 2021-22, 2022-23. However, certain conditions have to be fulfilled:

- a. Such research and development activities should be carried out in collaboration with any of the institutes or organisations given under Schedule VII (point (ix)) to the 2013 Act
- b. Details of such activity should be disclosed separately in the annual report on CSR included in the board's report.

### Our comments

The amendments to the CSR Rules have also revised the definition of CSR. Key points to consider are:

- **Benefits to employees:** Activities benefitting employees of the company as defined under the Code on Wages, 2019 (code) would not be considered eligible CSR activities. Aligning the definition with that of the code could pose challenges for companies as the definition of employees under the code is comprehensive and also includes contractual employees. Therefore, companies would need to evaluate the definition of employees under the code for the purposes of the CSR activities. In the past, MCA through its circular dated 12 January 2016<sup>5</sup> had clarified that the CSR projects/programmes/activities that benefit only the 'employees of the company and *their families*' will not qualify as eligible CSR activities. However, as per the amended provisions, activities benefitting employees (with no reference to families) of a company will not be considered as eligible CSR activities. Therefore, companies should evaluate the implications of this change.
- **Activities on sponsorship basis:** Another significant item that has been excluded from the definition of CSR is activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services.

In the past, MCA in its FAQ<sup>5</sup> had clarified that one-off events such as marathons/awards/charitable contribution/advertisement/sponsorships of TV programmes, etc. would not qualify as eligible CSR activities. With the notified provisions, activities supported by the companies on sponsorship basis *for deriving marketing benefits for its products or services* would be considered ineligible CSR activities.

Companies, in general, display their logos/banners in the sponsorship events. Classification of activities on sponsorship basis which are not meant for deriving marketing benefits for a company's products or services would be challenging and involve significant amount of judgement. Therefore, companies should carefully evaluate the implication of this change.



- **CSR policy:** As per CSR Rules, CSR policy relates to the activities to be undertaken by the company in areas or subjects specified in Schedule VII to the 2013 Act and the expenditure thereon, excluding activities undertaken in pursuance of normal course of business of a company.

#### Amendment

As per the revised definition, CSR policy would mean a statement containing the approach and direction given by the BoD of a company, taking into account the recommendations of its CSR committee, and includes guiding

<sup>5</sup>MCA general circular no. 01/2016 dated 12 January 2016.

## Overview of the revised CSR norms (cont.)

principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

### Our comments

The amendments to the CSR Rules have broadened the scope of reporting by companies by introducing a revised definition of 'CSR policy'. Instead of covering the CSR activities to be undertaken by a company and the expenditure thereon, a company will need to indicate the approach and direction given by its BoD. The BoD would also consider the recommendations of its CSR committee including guiding principles for selection, implementation and monitoring of activities as well as the annual action plan in its CSR policy.

Pursuant to the CSR policy, CSR committee is required to formulate and recommend to the BoD an annual action plan which should necessarily include the modalities of utilisation of CSR funds and implementation schedules for the projects or programmes, monitoring and reporting mechanism for the projects or programmes and details of need and impact assessment for the projects undertaken by the company.

On the basis of the recommendation of the CSR committee and reasonable justification to that effect, the BoD of a company can alter the action plan at any time during the FY. Basis the change of the plan, company would need to consider whether any update to the CSR policy is required.



- **New definitions (Rule 2 of CSR Rules):** The amendments have introduced following new definitions in the CSR Rules:
  - **Ongoing project:** In accordance with the notified amendments under the 2019 Amendment Act, a new definition has been included in the CSR Rules on 'ongoing project'. An ongoing project has been defined to mean a multi-year project undertaken by a company in fulfilment of its CSR obligation with timelines not exceeding three years (excluding the FY in which it was commenced). It should also include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the BoD based on reasonable justification.

### Our comments

The definition of ongoing projects is in line with the main provisions incorporated in the 2013 Act which allows companies to utilise the unspent CSR amount pursuant to ongoing projects within a period of three FYs from the date of transfer of the unspent amount to the unspent CSR account.

An ongoing project may also include a project not approved as a multi-year project initially but whose duration has been extended beyond one year by the BoD based on reasonable justification. This is expected to provide companies with some relief as now they could classify their projects which has been extended for more than a year as an ongoing project and accordingly, could utilise the unspent CSR amount in subsequent FYs.



- **Administrative overheads:** Administrative overheads have been defined to mean the expenses incurred by the company for 'general management and administration' of CSR functions in the company. It should not include the expenses directly incurred for the designing, implementation, monitoring and evaluation of a particular CSR project or programme.
- **CSR implementation (Rule 4 of CSR Rules):** Currently, a company can undertake CSR activities in the following ways:
  - a. CSR activities itself or
  - b. CSR activities through a third party being company/trust/society established under Section 8 of the 2013 Act/Non-Government Organisation (NGO).

## Overview of the revised CSR norms (cont.)

A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with CSR Rules.

### Amendment

As per the amendments, CSR activities can be undertaken by the company itself or through:

- a. A company established under Section 8 of the 2013 Act, or a **registered public trust or a registered society, registered under Section 12A and 80 G of the Income Tax Act, 1961 (IT Act)**, established by the company, either singly or along with any other company,
- b. A company established under Section 8 of the 2013 Act or a registered trust or a registered society, established by the Central Government (CG) or State Government
- c. Any entity established under an Act of Parliament or a State legislature or
- d. A company established under Section 8 of the 2013 Act, or a **registered public trust or a registered society, registered under Section 12A and 80G of the IT Act** with an established track record of at least three years in undertaking similar activities.

*(Emphasis added to highlight the changes)*

- **Mandatory registration (Rule 4 of CSR Rules):** As per the amendments, every entity (covered in point (a) to (d) above) that intends to undertake any CSR activity should register itself with the CG by filing the form CSR-1 electronically with the Registrar of Companies (ROC) with effect from 1 April 2021. The provisions would not apply to the CSR projects or programmes approved prior to 1 April 2021.

Form CSR-1 should be verified digitally by a Chartered Accountant (CA) in practice, Company Secretary (CS) in practice or a cost accountant in practice.

### Our comments

This will help create a database for organisations that can undertake CSR activities and will facilitate companies to identify such registered entities for their CSR purposes.



- **International organisation for monitoring CSR projects (Rule 4 of CSR Rules):** A company may engage international organisations<sup>6</sup> for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.
- **Certification by board on the amount spent (Rule 4 of CSR Rules):** The BoD of the company should satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it. It should be certified by the Chief Financial Officer (CFO) or the person responsible for financial management of the company.
- **Monitoring ongoing project (Rule 4 of CSR Rules):** The BoD of a company should monitor the implementation of the ongoing project with reference to the approved timelines and year-wise allocation and should be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.
- **CSR committee (Rule 5 of CSR Rules):** Currently, every company required to make a CSR spend should constitute a CSR committee. **The CSR committee is required to institute a transparent monitoring mechanism for implementation of the CSR projects, programmes or activities undertaken by the company.**

### Amendment

The amendments require a CSR committee to formulate and recommend an annual action plan in pursuance of its CSR policy to the BoD. The action plan should include the following:

- a. The list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII to the 2013 Act

<sup>6</sup>International Organisation' means an organisation notified by the CG as an international organisation under Section 3 of the United Nations (Privileges and Immunities) Act, 1947 to which the provisions of the Schedule to the said Act apply.

## Overview of the revised CSR norms (cont.)

- b. The manner of execution of such projects or programmes
- c. The modalities of utilisation of funds and implementation schedules for the projects or programme
- d. Monitoring and reporting mechanism for the projects or programmes and
- e. Details of need and impact assessment, if any, for the projects undertaken by the company.

The BoD may alter such plan at any time during the FY, as per the recommendation of its CSR committee, based on the reasonable justification to that effect.

*(Emphasis added to highlight the change)*

- **Exemption from formation of a CSR committee (Section 135(9)):** If the amount to be spent by a company on CSR is less than INR50 lakh then a CSR committee is not required to be formed. In this case, the BoD of such a company would discharge the functions of a CSR committee.

### Our comments

The high-level committee on CSR highlighted that a requirement of constituting a CSR committee for smaller companies with low prescribed CSR amount could lead to increased operational cost for such companies. Also, as per the committee, undue burden must not be cast upon companies such that compliances are made in breach rather than in adherence. However, the exemption adds another responsibility for the BoD of such companies as they would now be required to carry out the functions of the CSR committee. Companies impacted by this exemption should also deliberate on this aspect.



- **Manner of accounting of surplus arising from CSR activities (Rule 7 of CSR Rules):** As per the current provisions, CSR expenditure should include all expenditure including contribution to corpus, or on projects or programmes relating to CSR activities approved by the BoD on the recommendation of its CSR committee. However, it does not include any expenditure on an item not in conformity or not in line with activities which fall within the areas or subjects, specified in Schedule VII of the 2013 Act.

### Amendment

As per the modified provisions, any surplus arising out of the CSR activities should not form part of the business profit of a company and should either be ploughed back into the same project or should be transferred to the unspent CSR account and spent in pursuance of CSR policy and annual action plan of the company. It can also transfer the surplus amount to a fund specified in Schedule VII to the 2013 within a period of six months of the expiry of the FY.

### Our comments

In accordance with the technical guide issued by ICAI, the term 'surplus' ordinarily means excess of income over expenditure pertaining to an entity or an activity. Thus, in respect of a CSR project, programme, or activity, it needs to be determined whether any surplus is arising therefrom.

The *Framework for Preparation and Presentation of Financial Statements* issued by the ICAI, defines 'income' as an 'increase in economic benefits during the accounting period in the form of inflows or enhancements of assets or decreases of liabilities that result in increases in equity, other than those relating to contributions from equity participants'.

Since the surplus arising out of CSR activities does not arise from transactions with shareholders, accordingly, it meets the definition of 'income' for accounting purposes. Therefore, ICAI in the technical guide clarified that surplus arising out of CSR project, programme, or activities would be recognised in the statement of profit and loss. Also, since this surplus cannot form part of business profits of the company, the same should immediately be recognised as a liability for CSR expenditure in the balance sheet and recognised as a charge to the statement of profit and loss.

Also, in order to compute the limit of two per cent of the average net profits criteria as per Section 135 of the 2013 Act, such surplus would not be included in the computation.



## Overview of the revised CSR norms (cont.)

However, certain CSR activities are conducted through a Section 8 company, which may be required to be consolidated while preparing consolidated financial statements. In this case, the parent entity preparing consolidated financial statements should evaluate the accounting and presentation of the surplus (if any) that is generated at the level of Section 8 company while undertaking CSR activities. MCA should consider providing clarity in this regard.

- **Set-off of excess CSR amount (Rule 7 of CSR Rules):** Currently, in case a company spends an amount in excess of the prescribed limit of two per cent on CSR activities in a given year, then it is not allowed to set-off such excess amount against the amounts to be spent on CSR activities in future period.

### *Amendment*

The amendments permit a company which spends an amount in excess of the prescribed amount of two per cent on CSR activities, to set-off excess amount against the requirement to spend up to immediately succeeding three FYs subject to the fulfillment of following conditions:

- a. The excess amount available for set off should not include the surplus arising out of the CSR activities, if any and
- b. The BoD of the company should pass a resolution to that effect.

### Our comments

As set-off excess amount is allowed now, the companies would need to reconsider their current accounting being followed by them.

As per the guidance issued by ICAI, in case a company decides to adjust excess amount spent against future obligation, then an asset would have to be recognised to the extent of such excess amount spent. If a company decides not to carry forward excess spend in full or in part, then excess amount would be recognised as an expense.



- **Creation/acquisition of an asset (Rule 7 of CSR Rules):** As per the amendments, the CSR amount may be spent by a company for creation or acquisition of a capital asset, which should be held by:
  - a. A company established under Section 8 of the 2013 Act, or a registered public trust or registered society with charitable objects and CSR registration number
  - b. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities or
  - c. A public authority<sup>7</sup>.

With respect to the capital asset created by a company prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2021, the company should comply with the prescribed requirement within a period of 180 days from such commencement which may be extended by further period of up to 90 days with the approval of the BoD based on reasonable justification.

### Our comments

As part of CSR initiatives, companies spend money to create capital assets e.g., a school building. The amendments address the accounting treatment of the CSR amount spent by a company for creation or acquisition of a capital asset. They clarify that an asset should be held by either of the following:

- a. A company established under Section 8 of the 2013 Act, a registered public trust or registered society, with charitable objects and CSR registration number
- b. Beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities or



<sup>7</sup>Public authority means 'public authority' as defined in Section 2(h) of the Right to Information Act, 2005.

## Overview of the revised CSR norms (cont.)

### c. A public authority.

A company would not be eligible to record an asset created out of the CSR spend in its books of account. This is in line with the recommendation of the high-level committee on CSR which believed that capital-intensive spending for creation of assets are desirable from the perspective of achieving Sustainable Development Goals (SDGs) and fulfilling social development requirements.

In case capital assets are currently being held by companies, then such companies would be required to comply with the requirement within a period of 180 days from the date of commencement of amendments to the CSR Rules i.e., up to 21 July 2021 which could be extended up to a further period of 90 days with the approval of the board of directors based on reasonable justification. Companies should start initiating process for implementing this requirement.

In certain cases, CSR activities could be conducted through a company under Section 8 of the 2013 Act. If such a Section 8 company needs to be consolidated in the consolidated financial statements of the parent company, then parent company should evaluate the accounting and presentation of such an asset. MCA should consider providing clarity in this regard.

- **Impact assessment (Rule 8 of CSR Rules):** The amendments require every company with an average CSR obligation of INR10 crore or more (in the three immediately preceding FYs) to undertake an impact assessment of their CSR projects which meets both the given conditions:
  - a. It has an outlay of INR1 crore or more and
  - b. It has been completed not less than one year before undertaking the impact study.

The assessment should be done through an independent agency. The impact assessment reports should be placed before the BoD and should be annexed to the annual report on CSR.

Further, a company undertaking impact assessment may book the expenditure towards CSR for that FY not exceeding five per cent of the total CSR expenditure for that FY or INR50 lakh, whichever is less.

### Our comments

Though the amendment is applicable to certain prescribed companies, other companies not falling in this threshold could perform the impact assessment as a best practice.

The report of the impact assessment would be placed before the BoD and would be attached with the annual report on CSR. The need for such an assessment would be disclosed in their CSR policies as well. The assessment by an independent agency is expected to provide reasonable credibility to the CSR projects undertaken by a company and would appropriately justify the CSR spend.



- **Display of CSR activities on website (Rule 9 of CSR Rules):** Currently, the BoD of the company is required to disclose the contents of CSR policy in its report which should also be displayed on the company's website, if any.

### *Amendment*

In addition to the CSR policy, the amendments to the CSR Rules requires BoD to mandatorily disclose the following on its website, if any for public access:

- a. Composition of the CSR committee and
  - b. Projects approved by the BoD.
- **New format of annual report on CSR (Annexures to CSR Rules):** The amendments have introduced a new format for the annual report on CSR activities to be included in the board's report of a company for FY commencing on or after 1 April 2020. Some of the new disclosures to be made by companies in the annual report are as follows:
    - a. Details about the composition of CSR committee including name of director, designation/nature of directorship and number of CSR committee meetings held and attended during the year along with the web-link where the composition is disclosed on the company's website

## Overview of the revised CSR norms (cont.)

- b. Details of impact assessment of CSR projects, if applicable along with the report and amount spent on impact assessment
- c. Details of the amount available for set off and amount required to be set off for the FY, if any
- d. Details of CSR amount spent against ongoing projects and other than ongoing projects for the FY
- e. Computation of amount available for set off in succeeding FYs
- f. Details of unspent CSR amount for the preceding three FYs including amount transferred to unspent CSR account and fund specified in Schedule VII of the 2013 Act.
- g. In case of creation or acquisition of a capital asset, disclose following details relating to the asset so created or acquired through CSR spent in the FY (asset-wise):
  - i. Date of creation or acquisition of the capital asset(s)
  - ii. Amount of CSR spent for creation or acquisition of capital asset
  - iii. Details of the entity, public authority or beneficiary under whose name such capital asset is registered, their address, etc.
  - iv. Details of the capital asset(s) created or acquired (including complete address and location of the capital asset).

It also provides the format of e-form CSR-1 for registration of entities undertaking CSR activities.

- **Penal provision (Section 135(7)):** The amendments have prescribed penal provisions in case a company defaults in complying with the following requirements:
  - a. Disclosure of unspent amount in an annual report on CSR
  - b. In case of projects other than ongoing projects, transfer unspent CSR amount in a fund specified under Schedule VII of the 2013 Act within a period of six months of the expiry of the FY
  - c. In case of ongoing projects:
    - i. Transfer unspent CSR amount relating to into an unspent CSR bank account within a period of 30 days from the end of the FY
    - ii. Transfer balance amount of unspent CSR account after three years into a fund specified in Schedule VII within a period of 30 days from the date of completion of the third FY.

In case of the above-mentioned defaults:

- a. A *company* would be liable to a penalty of twice the amount required to be transferred by the company to the fund specified in Schedule VII of the 2013 Act or the unspent CSR account or INR1 crore, whichever is less.
- b. Every *officer* of the company who is in default would be liable to a penalty of one-tenth of the amount required to be transferred by the company to the fund specified in Schedule VII of the 2013 Act or the unspent CSR account or INR2 lakh, whichever is less.

### Our comments

If there is a non-compliance with the relevant provisions of the CSR under the 2020 Amendment Act, then MCA has removed imprisonment provisions for the officers in default.



**Effective date:** The amendments are effective from the date of their publication in the official gazette i.e., 22 January 2021 except those relating to filing of form CSR-1 which is effective from 1 April 2021.

## Our comments

The MCA has notified the much-awaited provisions relating to CSR along with prescribing certain very important requirements through amendments to the CSR Rules. The amendments are in line with the recommendations of the high-level committee of CSR<sup>8</sup> which were aimed towards developing a robust and coherent CSR regulatory and policy framework and underlying ecosystem.

The amendments demonstrate a clear move away from a 'comply or explain' approach in the original provisions of the 2013 Act to now making CSR as a legal obligation i.e., mandatory to spend two per cent CSR amount. This results in a liability recognition by companies as soon as the obligation arises.

Some of the key points to consider are as follows:

- **Reporting on CSR spend:** Currently, companies are required to disclose the amount of expenditure incurred on CSR activities by way of a note to the statement of profit and loss. The amendments require a certification by the CFO/person responsible for financial management of the company that funds so disbursed have been utilised for the purposes and in the manner as approved by the BoD. This is expected to provide greater credibility to the amount spend by the companies on CSR projects with increased monitoring of the progress of such projects.

In case a company undertakes CSR activity through a third party/NGO, ICAI has advised companies to obtain an Independent Practitioner's Report on Utilisation of CSR Funds from the auditor/CA in practice of the third party/NGO, to whom the funds are given by the company for implementing CSR activity. In such cases the auditor/CA in practice of the third party/NGO would submit the Independent Practitioner's Report on Utilisation of CSR Funds *after verifying that the third party has spent the funds on CSR activities* as per Section 135 read with Schedule VII to the 2013 Act and related regulations in accordance with the Guidance Note on Reports or Certificates for Special Purposes issued by the ICAI.

Additionally, it should be noted that the new auditor's report i.e., Companies (Auditor's Report) Order, 2020 (CARO 2020) also requires an auditor to report compliances by a company with respect to the following:

- a. *In case of an ongoing project:* The company has transferred the unspent CSR amount to a special account within a period of 30 days from the end of the FY in compliance with the provisions of Section 135(6) of the 2013 Act.
- b. *In other cases (other than ongoing projects):* The company has transferred unspent amount to a fund specified in Schedule VII to the 2013 Act within a period of six months of the expiry of the FY in compliance with the provisions of Section 135(5) of the 2013 Act.

- **Enhanced responsibility of the BoD:** With the amended CSR provisions, there would be a significant increase in the responsibilities of the BoD of a company. Some of the additional responsibilities are as follows:
  - Certification by the company's CFO to the fact that the CSR funds so disbursed have been utilised for the purposes and in the manner as approved by the BoD.
  - Monitoring implementation of the ongoing project with reference to the approved timelines and year-wise allocation.
  - Review of the impact assessment reports of the CSR projects.
  - Review of the annual action plan formulated by the CSR committee.
  - Ensuring that the CSR policy, composition of the CSR committee and projects approved by it have been displayed on the company's website.
- **Applicability of the provisions:** The provisions of the 2019 and 2020 Amendment Act relating to CSR and the amendments to the CSR Rules are effective from the date of their publication in the official gazette i.e., 22 January 2021, except those relating to filing of Form CSR-1 which is effective from 1 April 2021. However, companies may need to undertake specific evaluation and might need legal advice while examining applicability date of these provisions on their CSR activities.

<sup>8</sup>The committee was formed by MCA on 28 September 2018. The committee issued its report on 7 August 2019.

# KPMG in India offices

## Ahmedabad

Commerce House V, 9th Floor,  
902, Near Vodafone House,  
Corporate Road,  
Prahlad Nagar,  
Ahmedabad – 380 051  
Tel: +91 79 4040 2200

## Bengaluru

Embassy Golf Links Business  
Park,  
Pebble Beach, 'B' Block,  
1st & 2nd Floor,  
Off Intermediate Ring Road,  
Bengaluru – 560071  
Tel: +91 80 6833 5000

## Chandigarh

SCO 22-23 (1st Floor)  
Sector 8C, Madhya Marg  
Chandigarh – 160 009  
Tel: +91 172 664 4000

## Chennai

KRM Towers, Ground Floor,  
1, 2 & 3 Floor, Harrington Road  
Chetpet, Chennai – 600 031  
Tel: +91 44 3914 5000

## Gurugram

Building No.10, 8th Floor  
DLF Cyber City, Phase II  
Gurugram, Haryana – 122 002  
Tel: +91 124 307 4000

## Hyderabad

Salarpuria Knowledge City, 6th  
Floor, Unit 3, Phase III, Sy No.  
83/1, Plot No 2, Serilingampally  
Mandal,  
Ranga Reddy District,  
Hyderabad – 500 081  
Tel: +91 40 6111 6000

## Jaipur

Regus Radiant Centre Pvt Ltd.,  
Level 6, Jaipur Centre Mall,  
B2 Bypass Tonk Road  
Jaipur – 302 018.  
Tel: +91 141 - 7103224

## Kochi

Syama Business Centre  
3rd Floor, NH By Pass Road,  
Vytilla, Kochi – 682 019  
Tel: +91 484 302 5600

## Kolkata

Unit No. 604,  
6th Floor, Tower – 1,  
Godrej Waterside,  
Sector – V, Salt Lake,  
Kolkata – 700 091  
Tel: +91 33 4403 4000

## Mumbai

1st Floor, Lodha Excelus,  
Apollo Mills  
N. M. Joshi Marg,  
Mahalaxmi, Mumbai – 400 011  
Tel: +91 22 3989 6000

## Noida

Unit No. 501, 5th Floor,  
Advant Navis Business Park  
Tower-A, Plot# 7, Sector 142,  
Expressway Noida,  
Gautam Budh Nagar,  
Noida – 201 305  
Tel: +91 0120 386 8000

## Pune

9th floor, Business Plaza,  
Westin Hotel Campus, 36/3-B,  
Koregaon Park Annex, Mundhwa  
Road, Ghorpadi, Pune – 411 001  
Tel: +91 20 6747 7000

## Vadodara

Ocean Building, 303, 3rd Floor,  
Beside Center Square Mall,  
Opp. Vadodara Central Mall,  
Dr. Vikram Sarabhai Marg,  
Vadodara – 390 023  
Tel: +91 265 619 4200

## Vijayawada

Door No. 54-15-18E, Sai Odyssey,  
Gurunanak Nagar Road, NH 5,  
Opp. Executive Club, Vijayawada,  
Krishna District ,  
Andhra Pradesh - 520008  
Contact: 0866-6691000

## KPMG in India's IFRS institute



Visit KPMG in India's IFRS institute - a web-based platform, which seeks to act as a wide-ranging site for information and updates on IFRS implementation in India.

The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

---

## Missed an issue of Accounting and Auditing Update or First Notes



### Issue no. 54 – January 2021

The topics covered in this issue are:

- Going concern disclosures: Guidance by IASB
- Common financial statement frauds: Insights from SEC enforcement actions
- Business combination under common control - IASB's proposed accounting
- Regulatory updates.



### MCA notified certain provisions of the Companies (Amendment) Act, 2020

13 January 2021

On 30 September 2020, the Companies (Amendment) Act, 2020 (2020 Act) received the assent of the President of India. The 2020 Act incorporates amendments suggested by the Company Law Committee (CLC) in its report.

Recently, the Central Government notified certain sections of the 2020 Act effective from 21 December 2020. The notified amendments mainly relate to the following:

- Decriminalisation of certain compoundable offences i.e., rationalisation of 46 compoundable offences and adoption of a principle-based approach to decriminalise the offences and
- Rationalisation of penalties.

This issue of First Notes provides an overview of the notified sections of the 2020 Act.



### Voices on Reporting

KPMG in India is pleased to present **Voices on Reporting (VOR)** – a series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 18 January 2021, KPMG in India released the VOR – Quarterly updates publication. The publication provides a summary of key updates from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Institute of Chartered Accountants of India (ICAI) and the Reserve Bank of India (RBI) that are expected to be relevant for stakeholders for the quarter ended 31 December 2020.

To access the publication, please click [here](#).

---

**Feedback/queries can be sent to [aaupdate@kpmg.com](mailto:aaupdate@kpmg.com)**

**Previous editions are available to download from: [home.kpmg/in](http://home.kpmg/in)**

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.

© 2021 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

KPMG (Registered) (a partnership firm with Registration No. BA- 62445) converted into KPMG Assurance and Consulting Services LLP (a Limited Liability partnership firm) with LLP Registration No. AAT-0367 with effect from July 23, 2020.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization. The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.