

Amendments to CSR Framework

Companies Act, 2013

February 2021



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Background



- ▶ Several amendments to Section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014 have been notified with effect from 22 January 2021.
- ▶ In summary, the Government's intent is to address a variety of areas such as the need for enhanced oversight, governance and compliance, greater transparency and potential abuse management. In addition, it intends to create an enabling framework, mandate assessment of project impact, and prescribe treatment of unspent amounts / excess spend and penalties for non-compliance.
- ▶ In the ensuing slides, we have provided a snapshot on the key amendments to the CSR provisions, potential next steps for companies and areas of EY support



Key Amendments to CSR Framework

1

Comply OR pay penalties

Reinforcement of mandatory nature of CSR obligations. Penalties introduced – not compoundable

2

Treatment of Unspent CSR

Mandated transfers w.r.t FY 21
Ambiguity on past shortfalls
Distinction between unspent amounts for 'on-going' and other projects.

3

Carry forward and set-off of excess CSR spend

Permitted over next 3 FYs (CSR surpluses not covered)

4

Mandatory income tax /MCA registrations for CSR Implementing Agencies

Anti-abuse / Digital records

5

Sharper focus on governance, internal controls, accountability

Enhanced roles for Board of Directors, CSR Committee, CFO

6

Impact assessment (IA)

Mandated for projects of 1cr+, completed at least 1 year prior to IA (for qualifying companies with average 10 cr spend in past 3 FYs)



Key Amendments to CSR Framework

7

Definition of CSR

Specific exclusions (eg. spend in the normal course of business, for employees, for sponsorships deriving marketing benefits)

8

Administrative Overheads

Clearly defined to mean expenses incurred by the company for 'general management and administration' of CSR functions. Limit of 5% of CSR spend

9

Surplus arising out of CSR activities

Mandated ploughing back into projects, transfers to Unspent CSR Account or prescribed Funds

10

Creation /acquisition of assets

Restrictions on ownership of CSR assets (only by prescribed CSR vehicles or beneficiaries or public authority)

11

Definition of CSR Policy

Enlarged to cover a statement containing CSR approach and direction by the Board / guiding principles for selection, implementation, monitoring of CSR activities and action plan formulation

12

Enhanced disclosures

Applicable from FYs on or after 1 April 2020



Next Steps/ Way Forward

8. Evaluate and finalise the additional disclosures in the annual report/ website



7. Formulate Annual action plan



6. Determine applicability/ modalities of Impact Assessment



5. Refresh the roles of Board / CSR Committee / CFO and set-up new SOPs for the annual process



2. Review the current CSR spend/ potential shortfall/ surplus by 31 March



4. Ensure Implementing Agencies are duly registered per requirements



3. Determine the treatment of unspent amounts (basis nature of projects) and excess spend/ CSR surplus, if any



1. Review CSR Policy and assess if it complies with the new requirements



How can EY help?



CSR policy and procedures

Assist in preparation / review of CSR policy, SOPs (including actions, roles and responsibilities) and CSR Committee terms of reference
Advise on updates required as per new requirements and industry best practices



CSR projects and spend

Review the existing / proposed CSR projects / activities/ spend and implementation framework for eligibility and compliances

Suggest refinements, if any



Regulations

Advise on provisions of the Companies Act/ Rules including new regulatory requirements such as determination of ongoing projects, treatment of unspent amounts, set-off of surplus spend, applicability of Impact Assessment, etc. on a need basis



CSR Governance & Reporting

Advise on governance best practices in administering the company's CSR initiatives
Advise on disclosures to be made in the CSR Annual Report and assist with drafting the Report
Review of annual action plan



Knowledge

Familiarising the Board, CSR Committee / CS / Tax, and other departments on CSR requirements/ compliances and their related roles/ responsibilities

CSR - Areas in which EY ECG can help

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