

CORPORATE SOCIAL RESPONSIBILITY (CSR): UPDATED GUIDELINES

On **22nd January, 2021**, the Indian Ministry of Corporate Affairs **updated** the existing CSR guidelines. Following is a summary of the same. It should be noted that other provisions related to CSR shall continue to remain in force.

In this article,

1. **Act** means the Companies Act, 2013
2. **Board** means Board of Directors of a company

I. COMPLIANCE TO BE UNDERTAKEN BY COMPANIES LIABLE TO CSR

Sr. No.	Particulars	Compliance
1.	CSR Activities	<p>Henceforth, your CSR activities shall not include any activity which is/will:</p> <ol style="list-style-type: none"> A. Done by the you in pursuance to normal course of business B. Executed outside India C. Consists contribution of any amount directly or indirectly to any political party D. Benefit employees of the company E. Done on sponsorship basis for deriving marketing benefits F. For fulfilment of any other statutory obligations under any law
2.	CSR Implementing entity	<ol style="list-style-type: none"> A. Each CSR implementing entity: <ol style="list-style-type: none"> a. Must be registered under the Section 8 of the Act, or must be a registered Trust or must be a registered Society under respective governing legislations (established by the company, either singly or along with any other company or such entity can also be an independent entity having no relationship with the

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		<p>company). Such entity shall also be registered under section 12A and 80G of the Income Tax Act having an established track record of at least three years in undertaking similar activities (Registration under section 12A & 80G of Income Tax Act as well as track record of three years not required if such entity is established by the Central Government or State Government) OR</p> <p>b. Must be established under an Act of Parliament or a State legislature</p> <p>B. Every CSR implementing entity shall register itself and obtain a unique CSR Registration number with the Central Government by filing the form CSR-1 electronically with effect from the 01st day of April 2021</p>
<p>3.</p>	<p>Additional Duties for Board and senior management</p>	<p>A. Chief Financial Officer or the person responsible for financial management shall now certify that CSR funds so disbursed have been utilised for the purposes and in the manner as approved by the Board.</p> <p>B. In case of ongoing projects, the Board of a company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period</p> <p>C. The Board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.</p> <p>D. Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII (of the Act), within a period of six months of the expiry of the financial year</p> <p>E. If excess amount is spent by the Company then such</p>

		<p>excess amount may be set off against the requirement to spend CSR up to immediately succeeding three financial years subject to passing a Board Resolution to that effect. It should be noted that the excess amount available for set off <i>shall not include the surplus arising out of the CSR activities</i></p> <p>F. The CSR amount may be spent by a company for creation or acquisition of a capital asset subject to conditions</p> <p>G. The company is required to display its CSR activities on its website.</p>
4.	CSR Committees	<p>A. Discharge of CSR Committee: Where the amount to be CSR funds to be spent by a company does not exceed INR 5 million no CSR Committee is required to be constituted. The functions of such Committee provided shall, in such cases, be discharged by the Board of Directors of such company.</p> <p>B. Wherever required, the CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-</p> <ol style="list-style-type: none"> a. the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; b. the manner of execution of such projects or programmes; c. the modalities of utilisation of funds and implementation schedules for the projects or programmes; 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 Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect
5.	Decriminalization of CSR non-compliance	If a company is in default in complying with the provisions of the Act related to CSR, the company is now liable to a penalty of

	<p>twice the amount required to be transferred by the company to the fund specified in Schedule VII of the Unspent CSR Account, as the case may be, or INR 10 million, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or INR 200000, whichever is less</p> <p>It should be noted that this amendment has resulted in decriminalization of CSR non-compliance by eliminating imprisonment related provisions.</p>
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II. NOTE FOR PROFESSIONALS INVOLVED IN CSR COMPLIANCE

Sr. No.	Particulars	Compliance
1.	CSR Activities and Implementation	<p>A. Ensure the CSR implementing entity is registered as mentioned above and that it has a unique CSR Registration Number (applicable from 01st day of April 2021)</p> <p>B. CSR Reporting: Ensure that the Board's Report of a company liable for CSR compliance includes an annual report on CSR as per prescribed format.</p>
2.	Calculation of Net Profit for the purpose of earmarking CSR Funds	<p>Henceforth, Net Profit for the purpose of determining CSR earmarked funds shall not include:</p> <p>A. Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and</p> <p>B. Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act</p>

If you need any assistance in undertaking CSR Compliance, obtaining unique CSR Registration Number or in ensuring your CSR funds are being spent as required under the law, please contact us on octagona.india@octagona.com

5th March, 2021
Pune
