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COMPANY SECRETARIES

# Knowledge Capsule

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# This version consist of

Top highlights of Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021,"

- ▶ The Ministry of Corporate Affairs has released a new order notifying the amendments in the CSR rules for companies. It comes into effect starting January 22.  
**"These rules may be called the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021,"**



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**1. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, modifies the Rules regarding CSR Implementation, CSR Expenditure, CSR Report. The basics of amendments and modifications are Discussed as follow.**

1. The most important amendment is **CSR Spending made mandatory from voluntary**
2. As per the new provisions, every entity that intends to undertake any CSR activity will have to register itself with the Central Government by filing the form CSR-1 electronically with the Registrar of Companies, with effect from April 1, 2021. "Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally... On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically,
3. Companies "may also engage international organisations 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," MCA stated in the order.  
**Provided** only central government notified organisation shall qualify as the international organisation.
4. With this amendment, the Companies will not only have to specify the reasons for not spending the amount for CSR, but also have to transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year (Unless the unspent amount relates to any ongoing project referred to in sub-section (6).



# What is ongoing project?



a multi-year project having timelines not exceeding three years excluding the financial year in which it was commenced.



Project that was initially not approved as a multi-year project can be made ongoing by extending the duration beyond one year by the board based on reasonable justification.



It appears that CSR Project duration cannot be more than three years.



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Besides this, From the financial year starting from April 01, 2020 CSR report shall be in annexure-II. Annexure-II mandates following additional disclosure.

- In other words, from 1st April, 2020 companies undertaking CSR activities will have to share.

Impact Assessment for big CSR projects	Carry forward and set off of CSR expenditure	Annual action plan for CSR by Board every year in addition to CSR policy	Tweaks in reporting formats of Board Report	Mandatory disclosure of CSR projects and activities on company website	Capital Asset acquisition and its holding restricted to three bodies broadly	Transfer of unspent amount to government notified fund

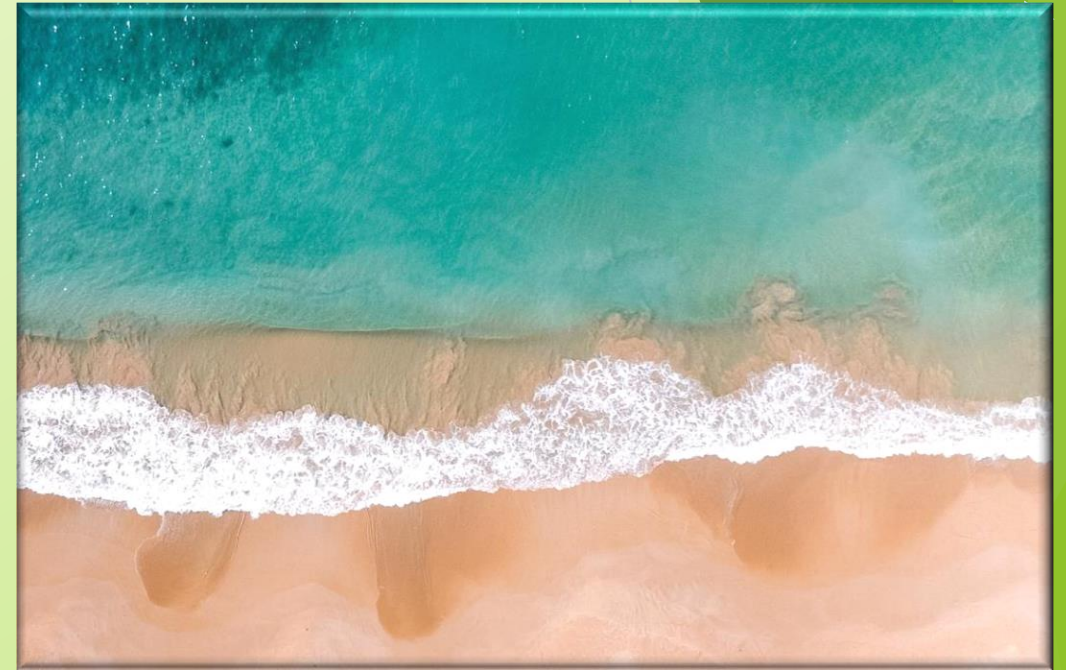


## FAQ's for clear understanding of “Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021,”

### 1. What is not included in CSR activities?

Inclusive definition now made exclusive and activities not considered as CSR specified clearly. Accordingly, the following activities shall not be considered CSR:

- Activities undertaken in pursuance of normal course of business of the company (except COVID 19 related R & D up to the financial year 2022-23, subject to certain conditions);
- 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 under section 182 of the Act.
- activities that significantly benefit the employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);
- activities supported by the companies on sponsorship basis for deriving marketing





## 2. What is treatment of unspent CSR amount not relating to ongoing project

Where amount doesn't relate to any ongoing project, then in case of failure to spend the same, will require carrying forwarding of the same to a Fund specified in Schedule VII, **within 6 months of close of financial year**, in addition to disclosure of reasons for not spending in Board Report. So amount remaining unspent (other than ongoing project) for the financial year 2020-21 shall be transferred to Schedule VII fund latest by September 30, 2021.

## 3. What is treatment of unspent CSR amount relating to ongoing project?

Such unspent CSR amount with respect to ongoing project To be transferred within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account (UCSRA). So amount remaining unspent (ongoing project) for the financial year 2020-21 shall be transferred to UCSRA latest by April 30, 2021.

- NOTE: Extended time for spending unspent amount relating to ongoing Project - Such amount shall be spent within a period of 3 financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year. So amount remaining unspent transferred for FY 2020-21 to UCSRA, has to be utilized for the project up to FY 2023-24, otherwise shall be transferred to a fund specified in Schedule VII.



#### 4.What is ‘National Unspent CSR Fund’?



Central Government shall establish a ‘National Unspent CSR Fund’ for purpose of transferring the unspent amount of companies, which shall be then used for activities outlined in Schedule VII.



Until such fund is created the unspent CSR amount in terms of provisions of sub-section (5) and (6) of section 135 of the Act shall be transferred by the company to any fund as specified in schedule VII of the Act.



PMNRF, PM CARES, Swach Bharat Kosh, Clean Ganga Fund are the funds specified under Schedule VII.



## 5. What are the consequences of non-transferring of unspent amount in aforesaid manner?

Offence decriminalised vide CAA, 2020

Company liable to pay penalty twice the amount of default or Rs. 1 crore, whichever is less

Every officer liable to pay penalty @ 10% of default or Rs. 2 lacs, whichever is less



## 6. What are the treatment of administrative overheads relating to CSR activities as per new amendment?

As per new amendment the Definition of Administrative overheads added the following provisions



Only the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions classified as Administrative overheads.



The expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme specifically excluded.



The administrative overheads not to exceed five percent of total CSR expenditure of the company for the financial year.



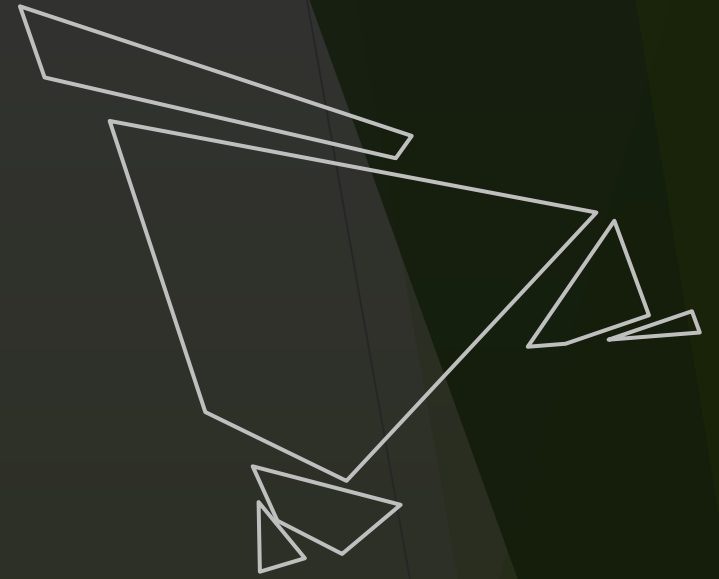
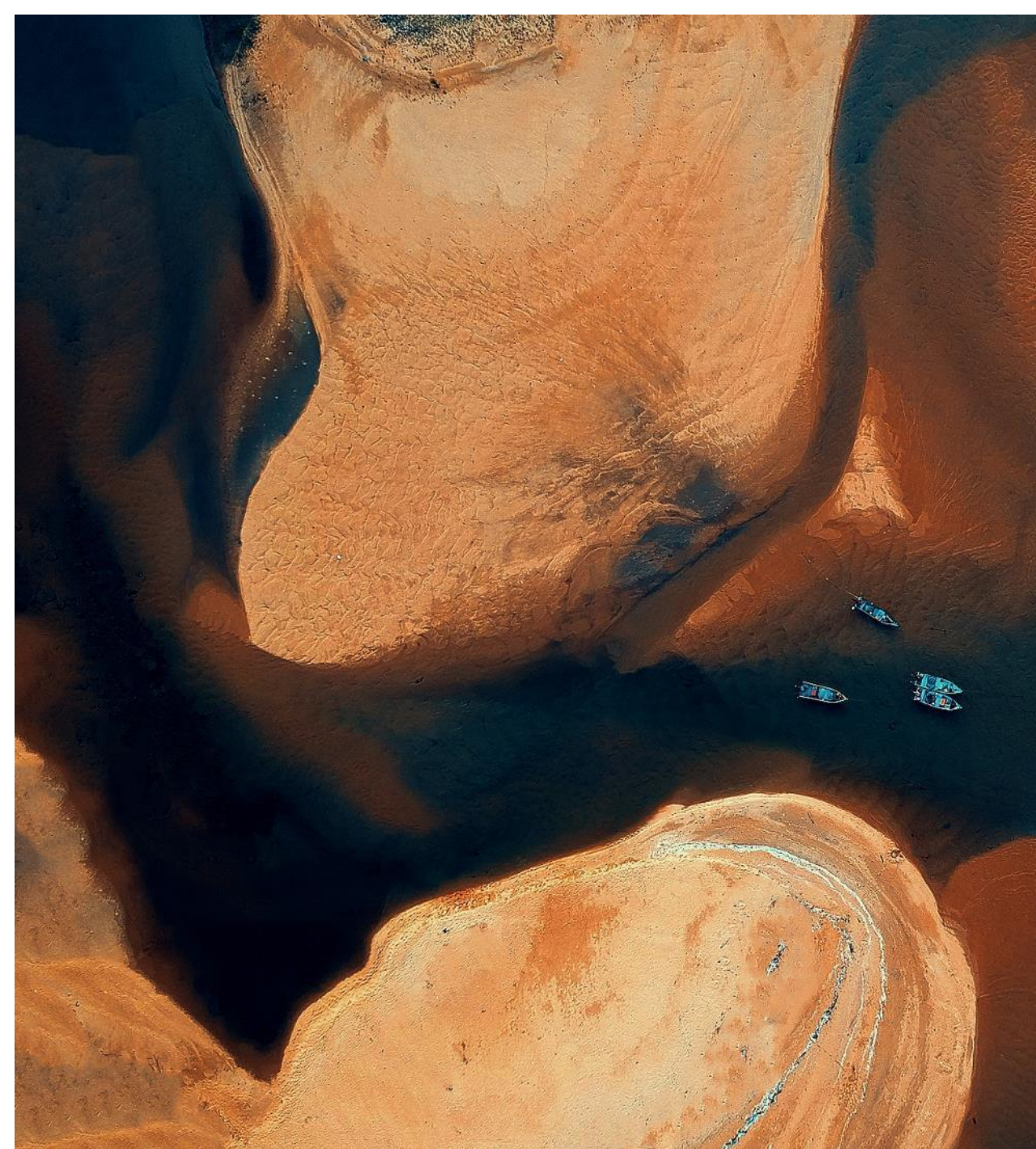
## 7. What is the treatment of any surplus arising out of CSR activities?

“Any surplus arising out of the CSR activities shall not form part of the business profit and shall be ploughed back into the same project or transferred to the Unspent CSR Account, and spent in pursuance of CSR policy and annual action plan of the company within six months of the expiry of the financial year.”

## 8. when to form CSR committee?

- **CSR Committee not required**, if amount to be spent by a company does not exceed fifty lakh rupees.
- In such cases Board shall discharge all functions of CSR Committee.





Important points on “Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021,”

## 1. Companies can do CSR either on its own or through Implementing Agency.

Three major changes had been made



### CSR Registration

w.e.f. 01.04.2021 registration of such entity shall be mandatory by filing form CSR 1. Unique CSR Registration Number shall be generated for each entity.



### Only trust

Only registered public trust now allowed as against any registered trust, except in case established by CG/SG



### IT Registration

In addition to registration under respective act, registration under the provisions of section 12A & 80 G of the Income Tax has been made mandatory.

- 12A is understandable, as it exempts the entity from tax liability.
- 80G provides deductions to donor,



## 2. Responsibilities of a Board and CFO

The Board shall be responsible to

- ▶ satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it.
- ▶ monitor the implementation of the project with reference to the approved timelines and year-wise allocation.
- ▶ to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

CFO or the person responsible for financial management shall certify to the effect.

# 3. Annual Action Plan



## Annual Action Plan

- ▶ The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy.
- Annual Action Plan to include:
  1. List of CSR Projects approved
  2. Manner of execution
  3. modalities of utilisation of funds and implementation schedules
  4. monitoring and reporting mechanism
- On recommendation of CSR Committee Annual Action Plan may be altered by the Board.



## 4. Impact Assessment

- ▶ A company having the obligation of spending average CSR amount of Rs 10 Crore or more in the three immediately preceding financial years in pursuance of Section 135(5) of the Act, shall undertake impact assessment.
  - Impact assessment to be done by an independent agency.
  - Impact assessment to be done in respect of CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.
  - The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.
  - Impact assessment expenditure for a financial year shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

## 5. Capital Assets held for CSR activities

- ▶ The CSR Assets to be held by a Section 8 Company, or Registered Public Trust, or registered society with charitable objects, having CSR registration number or beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities or a public authority.
- ▶ Any CSR asset created prior to these Rules, required to comply within a period of 180 days (Board may extend by 90 days).

## 6. Website Disclosures.

### New Disclosure on Website

- constitution of CSR committee,
- The Projects approved by CSR committee.





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# Thank You



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