

# First Notes



## MCA amends certain Rules relating to Corporate Social Responsibility

19 October 2022

### First Notes on

Financial reporting

**Corporate law updates**

Regulatory and other information

Disclosures

### Sector

**All**

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

### Relevant to

**All**

Audit committee

CFO

Others

### Transition

**Immediately**

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

### Introduction

The Companies Act, 2013 (the 2013 Act) became effective from 1 April 2014. Section 135 of the 2013 Act mandates certain class of companies meeting the prescribed threshold to spend at least two per cent of the average net profits of the company on the Corporate Social Responsibility (CSR) activities. Over the years, the CSR regulations in India have evolved leading to stricter compliance.

In this regard, the Ministry of Corporate Affairs (MCA), vide a notification dated 20 September 2022 issued the Companies (CSR Policy) Amendment Rules, 2022 (CSR Policy Amendment Rules). These amendments are effective from the date of their publication in the official gazette i.e., 20 September 2022.

In this issue of the First Notes, we aim to provide an overview of the amendments to the CSR Rules.

### Overview of the revised CSR norms

- **Constitution of a CSR Committee by a company having any amount in its unspent CSR account:** Rule 3(1) of the CSR Policy Rules requires every company, including its holding or subsidiary company, and a foreign company, fulfilling the prescribed criteria<sup>1</sup>, to comply with the provisions of Section 135 of the 2013 Act. Additionally, Section 135(6) of the 2013 Act provides specific requirements for the 'CSR Unspent Amount'.

### Amendment

A new requirement has been added to the CSR Policy Amendment Rules stating that a company that has any amount outstanding in its unspent CSR account should constitute a CSR Committee and comply with the relevant provisions of Section 135 of the 2013 Act.

<sup>1</sup> Section 135(1) of the Companies Act, 2013 states that 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, or
- Turnover of INR1,000 crore or more, or
- Net profit of INR5 crore or more.

<sup>2</sup> Section 135(6) of the Act provides that any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 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 CSR account. Such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of three 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 30 days from the date of completion of the third financial year.

- **Omission of Rule 3(2) of the CSR Policy Rules:** This rule required that every company that ceases to fulfil the criteria prescribed under Section 135(1) of the 2013 Act for three consecutive financial years is not required to constitute a CSR Committee and comply with the provisions under Sections 135(2) to 135(6) of the 2013 Act.

#### **Amendment**

Rule 3(2) of the CSR Policy Rules has now been omitted.

- **Categories of entities that can implement CSR activities broadened:** Rule 4(1) of the CSR Policy Rules provides that the Board of Directors must ensure that CSR activities can be undertaken by a 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 80G 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 or
  - 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.

#### **Amendment**

In addition to the categories of companies listed above, new class of entities exempt under Section 10 Clause (23C) which may be approved by the Principal Commissioner or Commissioner, have been included through the MCA amendment as implementation agencies. These include:

- Any other fund or institution established for charitable purposes having regard to the objects of the fund or institution and its importance throughout India, or throughout any State or States,
  - Any trust (including any other legal obligation), or institution wholly for public religious purposes, or wholly for public religious and charitable purposes, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof,
  - Any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad), and
  - Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness, or for the reception and treatment of persons during convalescence, or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae).
- **Change in the limits of expenses incurred towards impact assessment that can be considered as CSR spend:** Rule 8 of the CSR Policy Rules provides that every company having an average CSR obligation of INR10 crore or more in pursuance of Section 135(5) of the 2013 Act in the three immediately preceding financial years, should undertake an impact assessment, through an independent agency, of their CSR projects having outlays of INR1 crore or more, and which have been completed not less than one year before undertaking the impact study.

In this regard, such a company may book an expenditure towards CSR for that financial year, which should not exceed five per cent of the total CSR expenditure for that financial year or INR50 lakh, whichever is less.



### Amendment

The aforementioned limit to book expenditure towards impact assessment has now been amended to two per cent (earlier five percent) of the total CSR expenditure for that financial year or INR50 lakh, whichever is higher (earlier whichever is lower).

- **Revisions in the format for the annual report on CSR activities:** Annexure II of the CSR Policy Rules prescribes a format for the annual report on CSR activities which needs to be included as a part of company's board report. MCA has now issued certain amendments to the format of the annual report. Some of the key revisions in the format are included below:
  - **Executive summary:** Companies are now required to provide **an executive summary along with the weblinks** of impact assessment of CSR projects carried out,
  - **Aggregation of disclosure on CSR spent:** The format prescribed by the Companies (CSR Policy) Amendment Rules, 2021 required disclosures of details of each project undertaken by the company (both on-going projects as well as other projects). As per the revised format, companies now need to disclose only the **total amount** spent on on-going and other CSR projects,
  - **Additional disclosures in unspent CSR amount:** In the disclosure of details of unspent CSR amount for the preceding three FYs, companies are now also required to disclose the balance amount in unspent CSR account, and deficiency, if any, in accordance with Section 135(6) of the 2013 Act.

### Our comments

The CSR amendments provide more clarity on certain aspects of implementation. These are timely and will be relevant for companies which are covered under the provisions of Section 135 of the 2013 Act. Some points to consider are as below:

- **CSR committee:** As per the amendment, a CSR Committee is required to be formed to monitor the CSR activities undertaken by a company, as long as there is any amount lying in the unspent CSR account. The amendment clarifies that companies that incur CSR expenditure should form a CSR Committee to monitor its activities. The omission of Rule 3(2) is also in line to the amendment made in Rule 3(1) mentioned above since now companies which have any amount outstanding in its unspent CSR account should constitute a CSR Committee and comply with the relevant provisions of Section 135 of the 2013 Act.
- **Additional class of entities as implementation agencies:** A new class of entities which can act as implementation agencies (covered under Section 23(23C) of the IT Act) have been added. These include:
  - a fund or institution established for charitable purposes
  - any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes
  - any university or other educational institution existing solely for educational purposes and not for purposes of profit or any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.

While MCA has broadened the list of implementation agencies who can receive the CSR contribution, these entities should engage in the activities as given in the Schedule VII of the 2013 Act (which specifies the list of eligible activities which may be included by companies in their CSR policy). Hence, these new set of entities would need to be in compliance with the requirements of Schedule VII of the 2013 Act.

Companies should also take note of the revised e-form CSR-1 "Registration of entities for undertaking CSR activities", which has been duly amended to incorporate the above amendment.



## Our comments (continued)

- **Change in the limits of expenses incurred towards impact assessment that can be considered as CSR spend:** The amendment introduced is likely to allow companies to spend adequate amounts towards impact assessment studies. This is due to the fact that the threshold for such expenditure has been relaxed i.e. to two per cent of the total CSR expenditure for that financial year or INR50 lakh, whichever is higher. The change in the limit will enable companies to undertake meaningful impact studies especially for entities that are involved in large CSR projects.
- **Revisions in the format for the Annual Report on CSR activities and alignment with Form CSR-2:** On 11 February 2022, MCA amended Rule 12 of the Companies (Accounts) Rules, 2014, thereby inserting a new sub-rule (1B) which requires every company covered under section 135(1) of the 2013 Act to furnish a report on CSR in Form CSR-2 to the Registrar of Companies (RoC) for the preceding FY 2020-2021 and onwards. Form CSR-2 is required to be filed with the RoC as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be. Form CSR-2 requires project wise detailed disclosures of CSR activities undertaken by the company such as the names of the projects, amount spent, location of the projects, mode of implementation agencies, etc.

It is important for companies to note that certain changes have been made in the format of the Annual Report on CSR such as of providing an executive summary, aggregation of disclosures of CSR spent, etc. The detailed information to be provided in Form CSR-2 remains unchanged.

Companies should consider the changes in the format for the Annual Reports and disclosure requirements in Form CSR-2 for the Board Meetings to be held on or after 21 September 2022.

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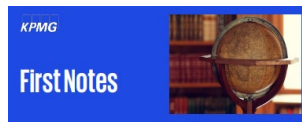


### Issue no. 74 – September 2022

The topics covered in this issue are:

- Greenhouse Gas Statements
- Assessment of material misstatement in the financial statements
- Regulatory updates

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



### Digital lending guidelines applicable to banks and NBFCs

#### 30 September 2022

The digital lending landscape in India has sharply risen, especially during the COVID-19 pandemic. Banks and NBFCs are increasingly lending either directly through their own digital platforms or through a digital lending platform under an outsourcing arrangement. Such outsourcing arrangements are generally entered into with Lending Service Providers (LSP)/ Digital Lending Applications (DLAs).

On 2 September 2022, RBI issued the guidelines on digital lending (the guidelines), which are applicable to all Regulated Entities (REs). The REs would also need to ensure that the LSPs engaged by them, and the digital lending apps of the REs and of the LSPs engaged by the REs comply with the guidelines.

In this issue of the First Notes, we aim to provide an overview of the digital lending lifecycle and the guidelines issued by RBI.

To access the First Notes, please click [here](#)

## 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 6 October 2022, KPMG in India conducted the VOR webinar – Key financial reporting updates for the quarter ended 30 September 2022. In the webinar, key updates from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA) and the Institute of Chartered Accountants of India (ICAI) were discussed for the quarter ended 30 September 2022.

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

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