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TOWARDS A STRONGER INDIAN CSR REGIME: KEY CHANGES EFFECTED BY THE CSR AMENDMENT RULES 2022

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The Companies Act, 2013 (Companies Act) was the first legislation to require eligible companies (a) to form board level committees to focus on corporate social responsibility (CSR Committee); (b) to formulate a corporate social responsibility policy; and (c) to spend 2% of average net profits of the company on corporate social responsibility (CSR). Introduced as a “comply or explain” model, it was soon morphed into a mandatory obligation. What constitutes the discharge of social responsibility and what does not, has been debated and discussed over past few years. The government’s endeavour, based on empirical evidence and ground realities, has been to balance the societal expectations and compliance.

Recently on 20 September 2022, the Ministry of Corporate Affairs (MCA) has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (2022 Amendment Rules) to the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules). As in the past, the 2022 Amendment Rules will operate prospectively. Section 135 and Schedule VII of the Companies Act, 2013 read with the CSR Rules collectively constitute the laws regulating the CSR legal regime in India. In 2021, the CSR regime was set for a major overhaul vide the Companies (Corporate Social Responsibility Policy) Amendment Rules 2021 (2021 Amendment Rules), followed by notifications of MCA. Please refer our earlier Ergo Update on 2021 Amendment Rules [here](#). In February 2022, MCA had amended the Companies (Accounts) Rules 2022 to provide a new [Form CSR-2](#) (*Report on Corporate Social Responsibility (CSR)*) for making the CSR reporting more robust. In this update, we have analysed the key changes introduced by the 2022 Amendment Rules.

Key highlights of the 2022 Amendment Rules

- **Mandatory constitution of CSR Committee in case of unspent CSR amount:** If a company fulfilled any of the three criteria set forth in section 135(1) of the Companies Act, the first obligation cast on it was to formulate a CSR Committee. Given certain practical difficulties and the quantum of CSR budgets of individual companies, certain companies were exempted from constituting a separate board CSR committee (for instance, a company having a CSR obligation of not more than INR 50 lakh in a financial year). Needless to say, the CSR obligations were to be discharged and monitored by the board of directors itself. Since 21 January 2021, a company which could not spend its CSR fund within the financial year had an option to select an ‘ongoing multi-year CSR project’ and earmark its CSR budget to that project. Such company was required to transfer the unspent CSR amount to a separate bank account with a scheduled bank and continue spending on the ongoing CSR projects. With effect from 20 September 2022, a company which was hitherto exempted from constituting a CSR Committee has

any amount to be utilized on ongoing projects, will be required to constitute a board level CSR Committee. The amendment is a step to strengthen governance around implementation of CSR by utilizing services of a dedicated sub-committee to take ownership and responsibility of the ongoing project which may go on up to 3 (three) years.

- *Additional institutions now eligible to be appointed as implementation agency:* Under the extant CSR Rules, a company required to fulfill the CSR obligations may do so by itself or through an eligible implementation agency (IA). With effect from 20 September 2022, a section 8 company, public charitable trust or a society (registered under the Societies Registration Act) and which is exempted under sub-clauses (iv), (v), (vi) and (via) of section 10(23C) of the Income Tax Act, 1961 (IT Act) is also eligible to become an implementation agency for CSR, albeit subject to obtaining registration with the MCA by filing Form CSR-1. The amendment thus opens up more avenues for companies to deploy the CSR funds for charitable purposes; public religious purposes or for public religious and charitable purposes; activities of any eligible university or other educational institution existing solely for educational purposes; or hospitals 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.
- *Threshold for permitted expenditure towards mandatory impact assessment changed:* The 2021 Amendment Rules provided for mandatory impact assessment of certain projects based on twin test of average CSR obligation in the 3 (three) immediately preceding financial years of INR 10 crores or more and the CSR expenditure on a project being of INR 1 crore or more. The 2021 Amendment Rules further provided that the expenditure towards such mandatory impact assessment may be booked as valid CSR expenditure to the extent of INR 50 lakhs or 5% of the total CSR expenditure, whichever is *higher*. Under the 2022 Amendment Rules, the threshold has been reduced to INR 50 lakhs or 2% of the total CSR expenditure, *whichever is lower*. This is likely to create an artificial barrier for companies to spend appropriate amounts on impact assessment of the CSR projects. For larger CSR projects, it could also limit the ability of companies to engage the services of international impact assessment organisations.
- *Amendment to the mandatory disclosures:* Annexure II to the CSR Rules (*Format For The Annual Report On CSR Activities To Be Included In The Board's Report For Financial Year Commencing On Or After The 1st Day Of April, 2020*) which prescribes the disclosures of the CSR compliance under the annual report have since been streamlined to the extent that the duplication between Form CSR-2 and Annexure II has been eliminated reducing some disclosure and compliance burden. Since the CSR Rules were amended on 20 September 2022, the new formats will apply in case of all companies which have sought extension of time to hold their annual general meetings beyond 30 September 2022.

Conclusion

The 2022 Amendment Rules are a commitment to strengthen the CSR regime in India. The changes effected by the 2022 Amendment Rules are both clarificatory and enables wider spectrum of entities which can qualify for IA to undertake CSR activities and projects. As a result, with effect from 20 September 2022, a few more organisations with social objective and purpose became eligible to be registered and used as implementation agencies for CSR projects. The 2022 Amendment Rules are also a nod to statutorily increase governance vis-à-vis CSR, as now companies which have

Unspent CSR Account are required to establish CSR Committee, which reflects on the push to such companies to ensure timely compliance with the annual action plan formulated and adopted by each company of their own accord.

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