

## Proposed Amendments in the CSR Law: What it means for you

22 August 2019

There is a lot of buzz around The Companies Act, 2013 and the recent amendments proposed in July 2019. These amendments also comprise changes in CSR directives. These proposed CSR amendments have not yet been notified by the Central Government and the earlier CSR law in India remains the same as on date.

***But, what are the CSR directive amendments that have been proposed? What does it imply for you if you are a part of the CSR team of a company? Are there any ramifications or is it much ado about nothing?***

There are four key changes that one needs to bear in mind:

1. *If you're a compliant company (have been spending your allocated CSR funds annually) – you have nothing to worry about.*

***However, what happens to the unspent amounts from your allocated CSR budget?***

Any unspent CSR amount at the end of every financial year that is **not related to an ongoing project** that is undertaken by a company in pursuance of its Corporate Social Responsibility Policy, would need to be transferred by the Company within a period of six months of the expiry of the financial year to any of the Funds\*\* specified in Schedule VII of the Act.

Any unspent CSR amount at the end of every financial year that **relates to an ongoing project** that is undertaken by a company in pursuance of its Corporate Social Responsibility Policy, would need to be transferred by the Company within a period of 30 days from the end of the financial year, to a new bank account to be called as the “Unspent Corporate Social Responsibility Account”.

The amount from this “Unspent Corporate Social Responsibility Account” is to be utilised by the company in pursuance of its Corporate Social

Responsibility Policy within a **period of 3 financial years** from the date of such transfer, failing which the company would need to transfer the same to any of the Funds\*\* specified in Schedule VII of the Act within a period of 30 days from the date of completion of the third financial year.

\*\* Funds as on July 31, 2019 include:

- (a) Swachh Bharat Kosh;
- (b) Prime Minister's National Relief Fund; or
- (c) Clean Ganga Fund.

***How can the 'Unspent Corporate Social Responsibility Account' be advantageous?***

This can be used to fund multi-year projects (up to 3 years) to achieve large-scale outcomes. It also allows corporates to formally plan and use provisions for multi-year engagements with non-profits, thus allowing corporates to support interventions working on engendering systemic change.

**2. If you are a new company, and meet all the financial threshold criteria for CSR, you'll have to allocate CSR funds. Previously, only companies that:**

- (a)** fulfilled the financial threshold specified in Section 135 (1) of the Act; AND
- (b)** which had completed a period of three financial years since its incorporation,

were required to spend 2% of the average net profits of the immediately preceding three years towards CSR activities.

By virtue of this amendment of Section 135 (5), even if a company has not completed 3 financial years since its incorporation, as long as the company meets the threshold specified in Section 135 (1), i.e., **(i)** Company having a net worth of INR 500 Crore or more; **(ii)** a turnover of INR 1000 Crore or more; or **(iii)** a net profit of INR 5 Crore or more, during the immediately preceding financial years, such company is required to spend 2% of its average net profits of the preceding financial years towards CSR activities.

### 3. *The penalty for non-compliance may become more stringent*

This signals government interest to closely monitor and control CSR expenditure and may be a precursor for more stringent auditing of CSR spends by corporates.

Going forward if the amendments are notified, in the event a company fails to:

**(a)** comply with Section 135 (5), i.e., does not spend 2% of the average net profits towards CSR while being required to do so under Section 135 (1) or does not transfer any unspent CSR Amount (not allocated for any ongoing project) to a fund mentioned in Schedule VII; and/or **(b)** comply with Section 135 (6) i.e., unspent CSR Amount of ongoing project to “Unspent Corporate Social Responsibility Account”, such company will be liable to pay a fine ranging from INR 50,000 (Rupees Fifty Thousand Only) to INR 25,00,000/- (Rupees Twenty-Five Lakhs Only).

Additionally, every officer of the company that is in default shall be punished with imprisonment for a maximum period of 3 years OR with a fine ranging from INR 50,000/- to INR 5,00,000/-

#### ***The Bottom line:***

New companies may be brought into the CSR fray due to removal of the criterion on years of existence. The proposed provisions allow for multi-year projects up to 3 years and propose criminal penalisation for non-compliance.

These amendments have not yet been notified by the Central Government and have drawn significant flak from corporates. There is also eager anticipation for the Government’s decision on the recommendations of the High Level Committee on Corporate Social Responsibility headed by the MCA Secretary, Mr. Injeti Srinivas, published on 7 August 2019.