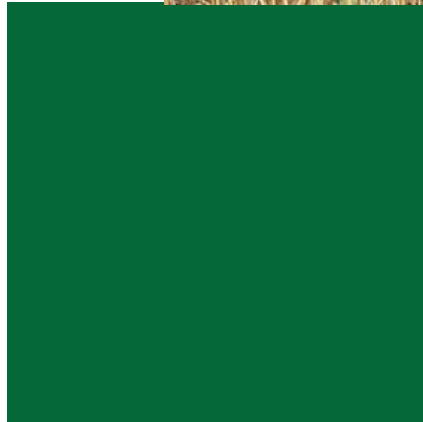




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# ANALYSIS OF THE RECENT AMENDMENTS UNDER THE COMPANIES ACT, 2013 & COMPANIES (CORPORATE SOCIAL RESPONSIBILITY POLICY) AMENDMENT RULES, 2021

30<sup>TH</sup> JANUARY 2021





# CONTEXTUAL BACKGROUND

## RECENT AMENDMENTS UNDER THE COMPANIES ACT, 2013

On 18<sup>th</sup> March 2020, the Ministry of Corporate Affairs invited public comments on the Draft Companies (Corporate Social Responsibility Policy) Amendment Rules 2020. The Draft rules projected the Government's shift from a 'comply or explain' stand towards 'comply or pay'. Based on the public feedback, the Government recently amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 and Section 135 of the Companies Act, 2013, effective 22<sup>nd</sup> January 2021 (Amendments).

Incorporating many recommendations put forth by the High-Level Committee on CSR 2018, the Amendments

- (a) implicitly highlight the Government's deeper intent to push corporates to be more strategically involved with the CSR initiatives and on an ongoing basis
- (b) explicitly lay out CSR functions and responsibilities of the corporates, and
- (c) implement the Government's intention to penalise corporates breaching CSR provisions through monetary penalties.

# MACRO TAKEAWAYS DRAWN FROM THE 2021 AMENDMENTS



## INCREASED GOVERNANCE

- **Expanded CSR Policy:** CSR policy has been redefined to include a more strategic and deeper statement laying out the approach, direction, and action plan to be undertaken by the company in meeting its CSR objectives. Many companies will have to revisit their CSR policy to ensure compliance with the revised definition.
- **Detailed Reporting:** Companies must now – (a) publish details of their CSR Committee and approved projects on its website, (b) in their annual reports, submit more detailed information on their CSR spends, including any capital assets acquired through CSR spends, furnish impact assessment reports (if any), etc.
- **Executive Liability:** The Amendments have made the CFO of the company responsible to certify disbursement and utilisation of CSR spends. This change further calls for an increased internal co-ordination and emphasises the need for robust coordination between the CSR Head, CFO, CA, and the CS of the company to ensure compliance and order in the house.

## RESPONSIBLE IMPLEMENTATION

- **Implementation Agency:** Though the type of Implementation agencies remains the same, the entities must be registered under section 12A and 80G of the Income Tax Act, 1961 and must obtain a unique CSR registration number from the MCA from 1<sup>st</sup> April 2021.
- **Restricted CSR Activities:** CSR activities have been redefined to ensure separation between the benefits and interests of the business and of the CSR projects undertaken by the company.
- **Impact Assessment:** Qualifying companies must now undertake impact assessment of their CSR projects and furnish the impact reports in their annual reports.

# WHAT THE AMENDMENTS MEAN FOR CORPORATES

## CSR POLICY

- Details of CSR philosophy, including guiding principles for selection, implementation & monitoring of activities, and annual action plan to be included in CSR policy

## ROLE OF BOARD & CFO

- Board to satisfy itself that the funds disbursed & utilised for purpose & in a manner approved by it
- Company's CFO (or equivalent) to certify that CSR funds have been disbursed & utilised as approved by the Board
- If CSR spend <INR 50L, the Board can function as CSR Committee

## DISCLOSURE

- Detailed annual disclosure including CSR committee composition, meetings, amounts transferred to the unspent CSR account & capital assets created
- Mandatory disclosure of CSR committee composition, CSR projects & CSR policy on the company website (if any)



## MANDATORY IMPACT ASSESSMENT

- For companies with min average CSR spend of INR 10Cr in immediately 3 preceding financial years
- For CSR projects with budget of >INR1Cr and have been completed atleast 1 year prior to undertaking the impact assessment
- Undertaken by independent agency with cost not exceeding 50L or 5% of CSR budget, whichever is lesser

## ADMIN OVERHEADS

- General management & administration expenses are covered within the 5% admin cost cap
- Project-related expenses of design, implementation, monitoring & evaluation are accounted for within the 95%

## PENALTY FOR NON-COMPLIANCE

- Monetary penalties for companies and defaulting officers for non-compliance of CSR expenditure & transfer of unspent amounts to the tune of 1cr or twice the unspent amount, whichever is lesser (for companies) and 2L or 1/10th of the unspent amount, whichever is lesser (defaulting officers)

# WHAT QUALIFY AS CSR SPENDS

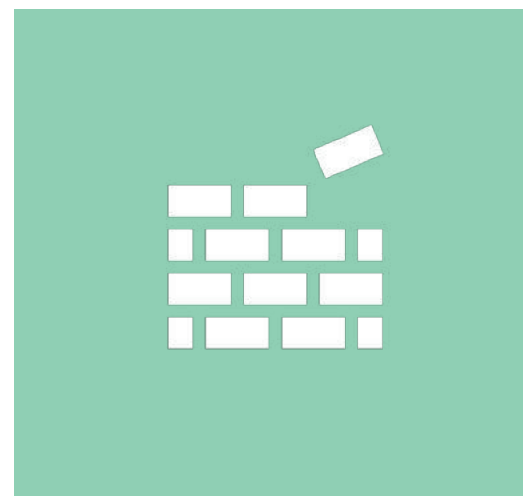
## COVID-RELATED R&D

- Company undertaking R&D into vaccine, medical devices & drugs related to COVID-19 can spend their CSR on such activities (despite coming under normal course of business) until FY23 if undertaken in collaboration with listed institutions and with separate disclosures in the annual report



## CAPITAL ASSETS

- Acquisition or creation of capital asset permitted using CSR funds, if it is not owned by the company and owned by implementing NGO or community or public authority
- For assets created prior to Amendments, companies to comply by 22<sup>nd</sup> July 2021



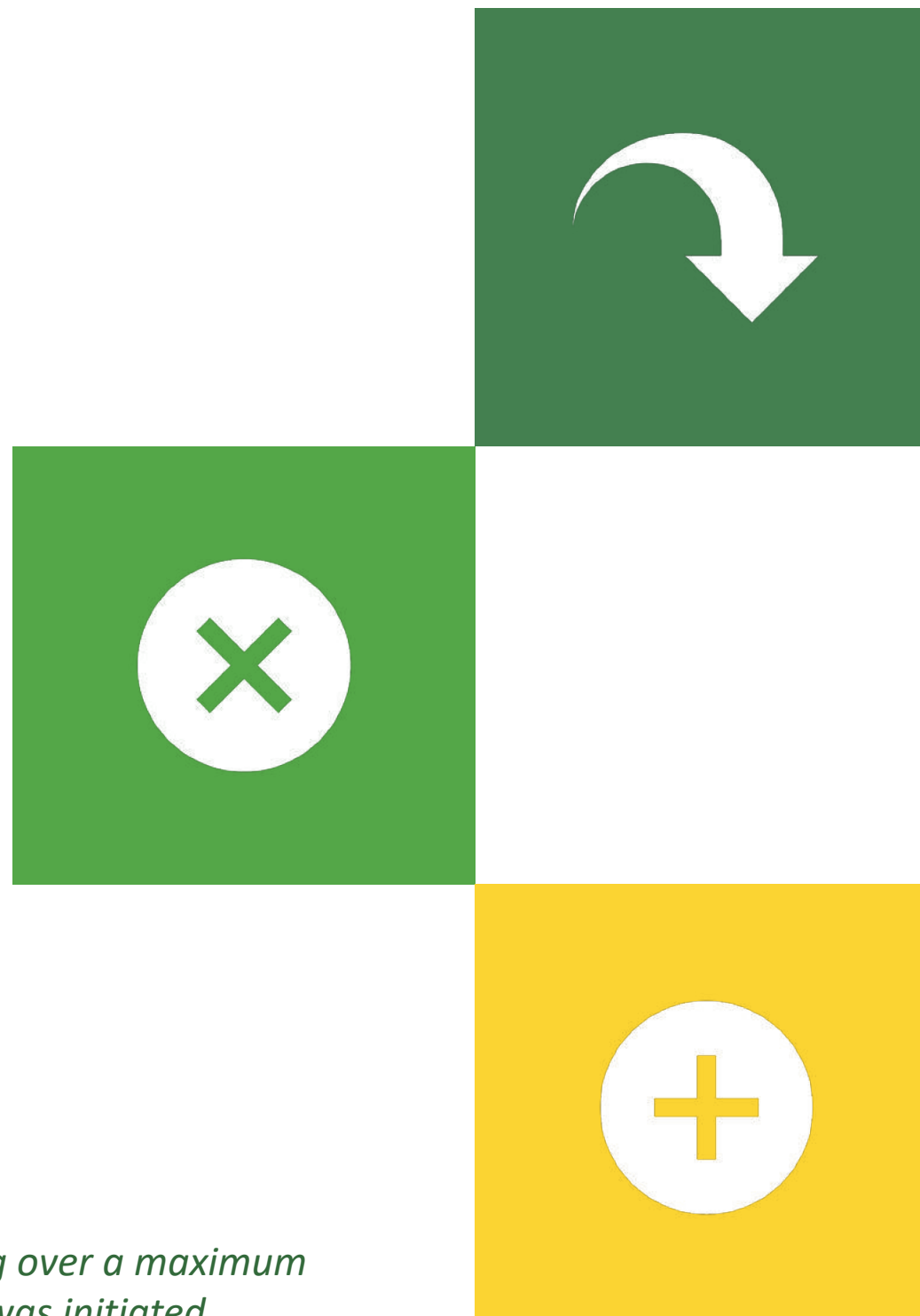
## EXCLUDED ACTIVITIES

- Normal course of business of a company
- Those benefitting only its employees
- Political contributions
- Sponsorship activities for deriving marketing benefits for its products or services
- Fulfilment of statutory obligations
- Activities undertaken outside India (except for training sports personnel representing State/National level)

# WHAT THE AMENDMENTS MEAN FOR UNSPENT / SURPLUS / EXCESS CSR SPENDS

## TREATMENT OF UNSPENT CSR AMOUNTS

- Any unspent amount of an ongoing project\* of a particular FY should be transferred **within 30 days** of the end of the FY to a designated “Unspent Corporate Social Responsibility Account” opened by the company
- The funds in the Unspent CSR Account need to be **spent within 3 years**. If unspent, then the funds must be transferred to any fund mentioned in Schedule VII of the Companies Act (such as PM Relief Fund, PMCARES, Clean Ganga Fund, etc.)
- Unspent funds not related to an ongoing project (unallocated) at the end of the FY must be transferred **within six months** of the end of a FY to a fund mentioned in Schedule VII of the Act



## TREATMENT OF SURPLUS

- Any surplus arising out of CSR activities must either be
  - Spent on same project that gave rise to surplus
  - Transferred to Unspent CSR Account
  - Transferred to a fund mentioned in Schedule VII of the Act

## SET-OFF OF EXCESS CSR SPENDS

- If a company spends more than 2% mandated CSR expenditure, the amount can be set-off over the next 3 financial years after the Board passes as resolution to that effect

*\*An “ongoing project” has been defined as a CSR project extending over a maximum period of 4 financial years, including the financial year in which it was initiated.*

# WHAT THE AMENDMENTS MEAN FOR IMPLEMENTING AGENCIES & NGOS

## ELIGIBLE IMPLEMENTING AGENCIES

- A Section 8 company, a registered public trust or a registered society, registered under Section 12A and 80G of the Income Tax Act, 1961 established by the **company undertaking CSR activities, either singly or along with any other company;** or
- A Section 8 company, a registered public trust or a registered society, registered under Section 12A and 80G of the Income Tax Act, 1961 and that does not fall within any of the other three categories, but such entity has to have an **established track record of at least three years** in undertaking similar programs or projects; or
- A Section 8 company, a registered trust or a registered society established by the **Central or State Government;** or
- Any entity established under an **Act of Parliament or a State legislature.**

*In the draft Amendments proposed in March 2020, it was proposed that only Section 8 Companies were to be designated as CSR implementation agencies. This proposal has been dropped.*



## MANDATORY 80G & 12A

- Not-for profit entities established by the corporate (singly or jointly with others) or independently established entities are mandatorily required to have their registrations under Section 12A and Section 80G of the Income Tax Act

## MANDATORY REGISTRATION

- Every CSR implementing agency must register itself with the MCA and obtain a unique CSR Registration Number, for projects undertaken from 1<sup>st</sup> April 2021

## INTERNATIONAL ORGANISATIONS\*

- International Organisations (UN agencies as notified under UN (Privileges & Immunities) Act, 1947) are permitted to be appointed by companies for designing, monitoring and evaluation of CSR projects as well as capacity building for companies' own CSR personnel (latter capped at 5% as admin overheads)

*\*International Organisations are not permitted to act as implementing agencies unless they are registered as a Trust, Society or Section 8 company in India*

# WHAT THE NEXT STEPS ARE FOR CORPORATES

## INTERNAL COMPLIANCE

- **Formulate annual action plan for FY22** to present to the Board which includes:
  - list of CSR projects (or programmes) that are approved
  - the manner of execution of such projects (implementing agency details)
  - the modalities of utilisation of funds and implementation schedules for the projects;
  - monitoring and reporting mechanism for the projects; and
  - details of need and impact assessment, if any, for the projects undertaken by the company
- **Revise CSR policy** with further details of guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan
- **Disclosure** of CSR committee composition, CSR projects & CSR policy on the **company website**, if any
- **Certification of CSR spends by CFO** or equivalent
- Opening of **designated “Unspent Corporate Social Responsibility Account”** by the company by 30<sup>th</sup> April 2021, in case of any unspent CSR funds
- **Detailed annual report format (Annexure II)** to be followed from FY22



## PROJECTS & IMPLEMENTING AGENCIES

- Check for **80G and 12A compliance of all implementing partners\***
- Assess need for **impact assessment of past projects** (with budget of over INR 1cr) that were completed at least a year ago for corporates with CSR budgets of INR 10cr or above average over past 3 FY
- **Transfer of capital assets**, if created, in the past to implementing NGO / community / public authority by 22<sup>nd</sup> July 2021
- Apply for **CSR Registration Number** (applicable from 1<sup>st</sup> April 2021) in case of Corporate **CSR Foundations**
- Check for **CSR Registration Numbers for implementing agencies** for CSR projects approved from FY22

*\*It is recommended to check for recent changes to 80G (amended in Finance Act 2020 to be valid only for 5 years and not perpetuity as earlier) and 12A (process has been amended to be re-registered under Section 12AB)*





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**THANK YOU**

**FOR ANY QUERIES, PLEASE REACH OUT TO  
[IMPACT@SATTVA.CO.IN](mailto:IMPACT@SATTVA.CO.IN)**

