

CSR Law Amendments 2021:

What do they mean for Non-profit Organisations?

What are the amendments about?

On 18th 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 to a 'comply or pay' stand. 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 22nd 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 their 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.

What are the direct implications for non-profit organisations?

The amendments have opened up several opportunities for non-profits who are looking to undertake more strategic projects with corporates. At the same time, the amendments also have direct implications for non-profits from a compliance perspective. Following are some key changes that non-profits must note of as they seek to be CSR-compliant in light of the new amendments:

1. **Mandatory 80G and 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. These would need to be renewed every 5 years.
2. **Mandatory MCA registration:** Every CSR implementing agency must register itself with the Ministry of Corporate Affairs (MCA) and obtain a unique CSR Registration Number, for projects undertaken from 1 April 2021.
3. **Role of International Organisations:** UN agencies as notified under UN (Privileges & Immunities) Act, 1947 are permitted to be appointed for designing, monitoring and evaluation of CSR projects as well as capacity building for own CSR personnel (latter capped at 5% as admin expense).

What are some of the indirect implications for non-profit organisations?

1. **Audited financial reports:** The amendments have made the CFO of the company responsible to certify disbursement and utilisation of CSR spends. This change warrants the need for CSR implementing agencies to have audited financial utilisation reports at a project level in place.
2. **Impact evaluation reports:** The new amendments require select companies with a minimum total CSR budget and project budget to undertake impact assessment through an independent agency. Such a requirement warrants the need for CSR implementing agencies to bring in the required capabilities and partnerships to drive external impact assessment for qualifying projects.
3. **Robust systems and processes:** In order to provide the required evidence and information towards financial reporting and other compliance, CSR implementing agencies would need to have / develop strong systems and processes that enable documentation.

We have created a note that breaks down some of the key questions and implications of the recent amendments to the Companies Act 2013, some macro takeaways and what these amendments could mean for non-profits and companies. [Click here for the note.](#)

Interested in checking if your non-profit organisation is CSR-compliant?

We believe this is the good opportunity for all non-profit organisations to a) check their overall level of compliance with respect **to the older CSR provisions and the new CSR amendments**, and b) reflect on their institutional readiness for CSR funding.

Sattva and Dhvani Foundation are working to put together a **self-evaluation CSR-ready tool** to support you in this process. The tool, which will be launched later this month, will cover some of the following areas:

- **Statutory compliance** such as registrations and licences
- **Financial requirements** such as audit, budget, systems and processes
- **Program-level compliance** such as annual planning, financial reporting, and impact assessment
- **Market best practices** across leadership and vision, budgeting, volunteer system, monitoring and evaluation

About Dhvani Foundation

Dhwani Foundation has been at the forefront of promoting an effective, efficient, and credible social sector. They do this by supporting NGOs, foundations, governments and other stakeholders through capacity-building programmes, technology solutions, support services and strategic collaborations. Established in 2006, Dhvani Foundation has empowered hundreds of NGOs and other non-profits through its programmes. For more, visit: <https://www.dhwanifoundation.org/>