

ROADMAP SERIES: WHAT DO THESE CSR AMENDMENTS REALLY MEAN?

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Karthik started the session by explaining the proposed CSR draft amendment and its implications for the social sector.

- Definition of CSR

Karthik explained that the proposed amendments define Corporate Social Responsibility more inclusively, specifying particular exceptions. These exceptions are as follows:

- Activities undertaken in the normal course of business of the company
- Any activity undertaken by the company outside India
- Contribution of any amount directly or indirectly to any political party
- Activities that significantly benefit the employees of the company and their families

- Definition of CSR policy

CSR policy refers to a statement containing the approach and direction for selection, implementation, and monitoring of activities. The activities that can be undertaken as CSR are listed in [Schedule VII of the Companies Act, 2013](#).

- Change in CSR implementation

The proposed amendments put forth the following changes in CSR implementation:

- Exclusion of Trusts and Societies from implementing CSR projects
- Allowance of companies to use services of international organisations (so foreign donations are likely to be permitted)
- Self-satisfaction of Board necessary for CSR policy, with CFO signing off. However, there is no information on the format to be followed for such sign-off.
- The Board must now ensure that CSR activities are undertaken either by the company itself or through a Section 8 company or through any entity established under an Act of the Parliament or a State legislature.

- Companies are permitted to collaborate with other companies to undertake projects/programmes/CSR activities, provided they are in a position to report separately on such projects/programmes.
 - International organizations may be engaged by companies to design and monitor CSR programmes as per the company's policy, subject to prior approval of the central government.
 - A new form, CSR-1, has been added to the Annexure in the Old Rules. E-form CSR-1 relates to registration of entities for undertaking CSR activities. This means that, in order to be eligible to carry out CSR activities, organisations need to register with the government and receive approval.
- Need to formulate Annual Action Plan

The CSR committee must formulate an annual action plan to include:

- List of CSR projects and programs
- Manner of execution of projects
- Modes of utilisation of funds and implementation of the project
- Monitoring and reporting mechanisms
- Details regarding needs and impact assessments, if undertaken

- Regulations on CSR Expenditure

The proposed amendment dictates that corporate administrative expenses should not exceed 5% of the total CSR expenditure. In case impact assessments are undertaken, this limit is relaxed to 10%. Unspent CSR funds should be transferred to a dedicated account within 30 days of the end of the financial year and should be spent on CSR activities within a period of three financial years from the date of such transfer. Any unspent sum past this date should be transferred to a fund specified under Schedule VII within 30 days. Further, assets can be created out of CSR funds only if the assets are held by a Section 8 company or by a public authority.

- Regulations on CSR Reporting

Companies spending an average of Rs. 5 crores or more for CSR projects in the three immediately preceding financial years are obliged to carry out impact assessments and disclose the details in their Annual Reports on CSR. Companies are required to mandatorily disclose the composition of the CSR committee, the CSR policy and projects approved by the Board on their website for public viewing.

- National Unspent CSR Fund:

The new rules state that the central government shall establish a fund which shall be utilized for the purposes of undertaking CSR projects.

- Takeaways from Amendment

With the proposed amendments, the Ministry of Corporate Affairs is looking to make companies more accountable from the CSR standpoint and prevent the misuse of the CSR related funds. The main downside of the proposed amendment is that Trusts and Societies are excluded from the

purview of carrying out CSR activities on behalf of companies. Also there is a need to revisit the CSR activities that are undertaken currently by the companies to ensure compliance under the new rules, if passed.

- What can Trusts and Societies do?
 - Convert from Trusts and Societies a Section 8 Company (non-profit organisation) under the Companies Act
 - Adopt the startup model and convert to a social enterprise following start-up model, though this would require pursuing a startup certification
 - Pursue alternative sources of funding such as crowdfunding for the cause, philanthropists, establishing a business model for sustainable funding, founder grants.

Q&Aand clarifications:

- How can an NGO work within the administrative expenses limit?

The 5% administrative expense limitation does not apply for NGOs. The 5% limitation is for the administrative expenses of corporates with CSR budgets. The amended rule 4(6) of the CSR rule is a relief for companies undertaking CSR activities as there have been concerns expressed about utilization of the CSR fund that could be spent on administrative activities and capacity building in carrying CSR activities as per the Company's CSR Policy.

- With respect to NGOs, are there likely to be any changes as far as FCRA contributions are concerned?

As far as FCRA's are concerned, there will be some amount of impact on the FCRA inflows in the CSR funds.

- How will the proposed CSR amendments affect funding for Trusts/Societies?

Given that the proposed amendments exclude Trusts and Societies as possible implementation partners, these organisations may face reduced funding and will need to rethink funding strategies. They can pursue alternative sources of funding such as crowdfunding for the cause, philanthropists, establishing a business model for sustainable funding, founder grants.

- How difficult it is to register as a Section 8 company, in terms of fees, paperwork required, etc.?

The registration to Section 8 company is possible, but any further comments will require details on the individual organisation.