

AMCHAM's recommendations on [Draft Companies \(Corporate Social Responsibility Policy\) Amendment Rules, 2020](#)

Relevant Rule	Sub Rule	Amendment	Recommendation (with justification)
2 (Definition)	1c	<p>“(c) Corporate Social Responsibility (CSR)” means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Act in accordance with the provisions contained in these Rules, but shall not include the following, namely-</p> <p>i) Activities undertaken in pursuance of normal course of business of the company.</p> <p>ii) Any activity undertaken by the company outside India.</p> <p>iii) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.</p> <p>iv) activities that significantly benefit the employees of the company and their families.</p> <p>Provided that in case of any activity having less than twenty five percent employees as its beneficiary, then such activity shall be deemed to be CSR activity under these rules.”;</p>	<ul style="list-style-type: none"> • More clarity is required on situations where employees are the beneficiary of a program or activity. For instance, if there is an educational training program for 75 underprivileged beneficiaries and 25 employees or potential employees, then is the overall cost of the program counted as CSR? • Companies should be allowed to offer/ use their own products/services for CSR activities at cost price to be offset against CSR spends. • We suggest a cap of 30% on the percentage of CSR funds that can be invested by the grantee in including products by corporates, especially where there is unique product or expertise possessed by the corporate and such product of expertise forms an integral part of the CSR intervention (eg, to set up a technology or digital platform to increase efficiency of intervention).
2 (Definition)	1 (e)	<p>“(e) "CSR Policy" means a statement containing the approach and direction given by the board of a company, as per recommendations of its CSR Committee, for selection, implementation and monitoring of activities to be undertaken in areas or subjects specified in Schedule VII of the Act.”</p>	<ul style="list-style-type: none"> • The frequency at which the companies can revise its CSR Policy in order to incorporate in its policy any fresh recommendations and new CSR focus areas, should be mentioned.

2 (Definition)	1 (f)	“(f) “International Organization” means an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply.”	<ul style="list-style-type: none"> • Government could publish a list of empanelled/approved international organisations so that companies can engage them if required, without seeking prior approval from Government. • The definition of 'international organisation' should be extended to include the list of agencies of the United Nations, and other international agencies and organisations notified by the Central Government to be not covered by the definition of 'foreign source', under section 2(1)(j)(ii) of the Foreign Contribution (Regulation) Act, 2010.
2 (Definition)	1(h)	(h) “Ongoing Projects” means a multi-year project undertaken by a Company in fulfillment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced and shall also include such projects that were initially not approved as a multi-year project but whose duration has been extended beyond a year by the Board based on reasonable justification.	<ul style="list-style-type: none"> • Behavioral change and educational programs require sustained intervention for meaningful impact to take place. Therefore, there should not be a 3-4-year time limit for programs. • The definition of ongoing projects to be extended to five years. Perhaps add definition for the following terms - 'Implementation' 'Implementation agency' • Clause to add further: <ul style="list-style-type: none"> - Ongoing projects on completion of three years excluding the FY in which it commenced can be extended for an additional three year period by the Board based on reasonable justification
4 (CSR Activities)	1	4. CSR Implementation - (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through:	<ul style="list-style-type: none"> • Public Charitable Trusts and Societies should not be excluded from CSR implementation.

		<p>(a) a company established under section 8 of the Act, or</p> <p>(b) any entity established under an Act of Parliament or a State legislature.</p> <p>Provided that such company/entity , covered under clause (a) or (b), shall register itself with the central government for undertaking any CSR activity by filing the form CSR-1 with the Registrar along with prescribed fee.</p> <p>Provided further that the provisions of this sub-rule shall not affect the CSR projects or programmes that were approved prior to the commencement of the Companies (CSR Policy) Amendment Rules, 2020.</p>	<p>Most non-profits in India are registered as trusts and societies. If excluded, it will be a setback in collective efforts to eradicate poverty and uplift the standard of living as non-profit sector in India mainly comprises trusts and societies, who are helping millions of people across the country.</p> <ul style="list-style-type: none"> Clarification whether filing of Form CSR-1 is a one time filing required for companies / entities mentioned under 1(a) & (b) in order to register themselves with CG for undertaking any CSR activity. If not, request that it is made clear if this form needs to be filed for projects / programmes which are on-going and get approved in phased manner.
4 (CSR Activities)	Sub-rule 2	A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.	<ul style="list-style-type: none"> Clearly mention that a corporate foundation (Section 8) company be allowed to undertake CSR for multiple related companies that qualify for doing CSR under the Act.
4 (CSR Activities)	Sub-rule 4	(4) Board of a company shall satisfy itself that the funds so disbursed have been utilized for the purpose and in the manner as approved by it and Chief financial Officer or the person responsible for financial management shall certify to the effect.	<ul style="list-style-type: none"> With regard to point 4 on certification by the CFO or the person responsible for financial management, suggest adding CSR Committee instead of CFO / person from financial management. Not all companies have designated CFOs and therefore, this certification can be obtained from the CSR Committee.
5 (CSR Committee)	Sub-rule 2	(2) The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following: (a) the list of CSR projects or	<ul style="list-style-type: none"> Since the Committee may not have an oversight on the projects at the beginning of the year, the action plan should include the areas or subjects

		programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; (b) the manner of execution of such projects or programmes as specified in sub-rule (1) of Rule 4; (c) the modalities of utilization of funds and implementation schedules for the projects or programmes; and (d) monitoring and reporting mechanism for the projects or programmes. (e) Details of need and impact assessment, if any, undertaken by the company	specified in Schedule VII of the Act, the company plans to undertake. The Committee should be authorised to implement the CSR projects in terms of CSR Policy approved by the Board.
7 (CSR Expenditure)	Sub-rule 1	CSR Expenditure: (1) The board shall ensure that the administrative overheads incurred in pursuance of sub-section (4) (b) of section 135 of the Act shall not exceed five percent of total CSR expenditure of the company for the financial year. Provided that a company undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8, may incur administrative overheads not exceeding ten percent of total CSR expenditure for that financial year.	<ul style="list-style-type: none"> • Increase the admin expenditure limit to 10% to ensure better monitoring and evaluation.
7 (CSR Expenditure)	Sub-rule 2	(2) Any surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and action plan of the company	<ul style="list-style-type: none"> • This increases administrative hassles with companies already required to create separate accounts for payment of dividends, etc. • Clearly mention that unspent CSR funds be allowed to be transferred to a Section 8 corporate foundation, which will undertake CSR on behalf of the company/related companies and ensure compliances.
7 (CSR Expenditure)	Sub-rule 3	The CSR amount may be spent by a company for creation or acquisition of assets which shall only be held by a company established under section 8 of the Act having charitable objects or a public authority	<ul style="list-style-type: none"> • The proposed Rules do not clearly specify that CSR funds can be expended towards corpus unlike the existing Rules. Let CSR funds be allowed to be contributed to a corpus fund in support of an NGO partner to help build capacity and/or ensure program sustainability.

			<ul style="list-style-type: none"> • Apart from the Section 8 Companies, even the Trusts & Societies formed with Charitable Objectives should be permitted to hold the assets created/acquired.
7 (CSR Expenditure)	Sub-rule 4	(4) Unspent balance, if any, towards fulfilment of CSR obligation at the time of commencement of these Rules shall be transferred within a period of thirty days from the end of Financial Year 2020-21 to special account viz., 'Unspent Corporate Social Responsibility Account' opened by the company and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.	<ul style="list-style-type: none"> • Clearly mention that unspent balance be allowed to be transferred to a Section 8 corporate foundation, which will undertake CSR on behalf of the company/related companies and ensure compliances.
9 (Display of CSR Activities on Website)		Display of CSR activities on its website: The Board of Directors of the company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website for public viewing, as per the particulars specified in the Annexure.	<ul style="list-style-type: none"> • Recommend that mandatory display of CSR details in company website to be changed as optional for unlisted companies. Many unlisted companies do not have their own websites. Subsidiaries of the MNC companies are using the website of the parent Company at group level. Hence, this clause to be relaxed for unlisted companies.