



NEWSLETTER

Legal, Compliance and ESG

05 February 2020

Dear Readers,

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A. LEGAL AND REGULATORY UPDATES:

~ Anand Asawa, Suprabhat Pathak, Saurav Agarwal

I. Introduction of Legal Entity Identifier for Large Value Transactions in Centralised Payment Systems¹

RBI vide its notification dated January 05, 2021 has introduced the LEI system for all payment transactions of value ₹50 crore and above undertaken by entities (non-individuals) using Reserve Bank-run Centralised Payment Systems Viz. Real Time Gross Settlement (RTGS) and National Electronic Funds Transfer (NEFT).

The Legal Entity Identifier (LEI) is a 20-digit number used to uniquely identify parties to financial transactions worldwide. It was conceived as a key measure to improve the quality and accuracy of financial data systems for better risk management post the Global Financial Crisis. LEI has been introduced by the Reserve Bank in a phased manner for participants in the over the counter (OTC) derivative and non-derivative markets as also for large corporate borrowers.

1

https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=12010

In India, LEI can be obtained from Legal Entity Identifier India Ltd. (LEIL) (<https://www.ccilindia-lei.co.in>), which is also recognised as an issuer of LEI by the Reserve Bank under the Payment and Settlement Systems Act, 2007.

II. Clarification on Spending of CSR Funds for Awareness and Public Outreach on COVID-19 Vaccination Programme²

MCA vide its general circular dated January 13, 2021, in continuation to its general circular no. 10/ 2020 dated March 23, 2020 clarified that spending of CSR Funds for carrying out awareness programmes/ campaigns or public outreach campaigns on COVID-19 vaccination programme are eligible CSR activity under item no. i, ii and xii of schedule VII of the Companies Act, 2013 relating to promotion of health care and sanitization, promoting education and disaster management, respectively.

III. Key Updates Union Budget 2021³:

- Government to amend Insurance Act to allow higher FDI (From 49% to 74%)
- Consolidation in a single code (SEBI Act, Depositories Act, Securities Contracts Regulation Act, Government Securities Act)
- Decriminalisation of LLP Act
- Revision in the definition of small companies by increasing the threshold i.e., capitalization to not exceeding Rs 2 Cr. (earlier 50 lakhs) and turnover not exceeding Rs 20 Cr. (earlier 2 Cr.)
- Plans to further strengthen the NCLT framework and continue with the e-court system for faster resolution of bad debts. A separate framework for MSMEs will also be made by the government.
- Minimum wages to now apply to all categories of workers. Women to be allowed to work in all categories with adequate protection.
- Government announces multi-state co-operative for ease of doing business.
- Bad Bank: The Government will set up an Asset Reconstruction and Management Company for Stressed Assets to take over bad loans.
- FY21 fiscal deficit at 9.5% of GDP
- Direct tax:
 - Exemption to senior citizens from filing ITR (Pensioners above 75 years)
 - Time limit for reopening of assessment reduced from 6 to 3 years.
 - Dispute resolution committee for small taxpayers (Taxable income 50 Lakhs)
 - Faceless ITAT to be established on the lines of faceless assessment.
 - Dividend paid to InVITs and REITs shall be exempt from TDS.
 - Threshold limit for exemption from tax audit for digital transactions increased from Rs. 5 Crores to Rs. 10 Crores
 - Re-assessment can be done within 10 years if the income escaping assessment exceeds Rs. 50 lakhs and approval of PCIT is must.
 - Advance tax liability on the dividend to accrue only after declaration of the dividend.
 - Govt. to allow 'Notified Infrastructure Debt Funds' to issue tax efficient zero-coupon bonds to boost funding to infrastructure cos.
 - Government to notify rules to eliminate double tax for NRIs on foreign retirement funds.
 - Tax incentives to IFSC located in Gift City.
 - Exemption to start-up entities extended by one more year along with S. 80IAC deduction.
- Indirect tax:
 - More than 400 old exemptions under Customs would be reviewed.
 - From 1.10.2021 revised custom duty structure to be put in place
 - Customs duty rate on cotton increased from Nil to 10%
 - Govt. revokes ADD & CVD on certain steel products.
 - Import duty rates on Solar Inverter and Lantern are increased to boost domestic production.

²http://www.mca.gov.in/Ministry/pdf/CSR2021_13012021.pdf

³ <https://www.indiabudget.gov.in/>

IV. Commencement of Sections of the Companies (Amendment) Act, 2020⁴

MCA vide its notification dated January 22, 2021 has notified the commencement of following Sections of the Companies (Amendment) Act, 2020:

| Section no. as per the Companies (Amendment) Act, 2020 | Section no. as per the Companies Act, 2013 | Section Head |
|--|--|--|
| 2 | 2 (52) | Definition |
| 11 | 62 | Further issue of share capital |
| 18(C) | 89 (11) | Declaration in Respect of Beneficial Interest in any Share |
| 22(ii) | 117 | Resolutions and agreements to be filed |
| 25 | Insertion of new Section 129A | Periodic financial results |
| 27 | 135 | Corporate social responsibility |
| 53 | 379 | Application of Act to Foreign Companies |
| 55 | Insertion of new Section 393A | Exemption under Chapter XXII |
| 58-60 | 410, 418A, and 435 | Constitution of Appellate Tribunal, Staff of Tribunal and Appellate Tribunal and Establishment of Special Courts |
| 62 | 446B | Factors for determining level of punishment |
| 64 and 65 | 452 and 454 | Punishment for wrongful withholding of property and Adjudication of penalties |

Key Take Away: By 14 Sections of Amendment Act, 2020 notified w.e.f. January 22, 2021:

1. Section 2: Amendment in Definition of Listed Company:

Power has been given to the Central Government to exclude, in consultation with the Securities and Exchange Board, certain class of companies from the definition of “listed company”, mainly for listing of debt securities.

2. Section 62: Right issue of Shares:

The offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days “or such lesser number of days as may be prescribed” and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

3. Section 89(11): Declaration in respect of beneficial interest:

The Central Govt has been empowered to, exempt any class of persons from complying with the requirements of section 89 relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;

⁴ <http://ebook.mca.gov.in/Default.aspx?page=notification>

4. Section 117(3)(g): Resolution and agreement to be filled in form MGT-14:

Exemptions to certain classes of non-banking financial companies and housing finance companies from filing certain resolutions under section 117(3)(g) i.e., any resolution passed to grant loans, or give guarantee or provide security in respect of loans given etc.

5. Section 129A: New Section – Periodical Financial Result:

Power given to Central Government such class or classes of unlisted companies, as may be prescribed:

- To prepare the financial results of the company on such periodical basis and in such form as may be prescribed.
- To obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
- File a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.”.

Purpose/ Effect: Purpose of insertion of this section is to empower Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar within thirty days from the end of that period as specified in the rules.

6. Section 135: Corporate Social Responsibility:

In sub-section (5), after the second proviso, the following proviso shall be inserted, namely:

“Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed.”

Purpose/ Effect: Purpose to allow companies, which have spent an amount in excess of the requirement provided under the said sub-section, to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules.

7. Section 379: Application to act to foreign company:

Deletion of power of CG to exempt any class of foreign companies from any of the provisions of sections 380 to 386 and sections 392 and 393 – Section 379.

8. Section 393A: New Section – Exemptions under the Chapter:

Power of CG to exempt any class of Foreign Companies or Companies incorporated or to be incorporated outside India whether or not it has place of business in India from the applicability of the provisions of Chapter 22 of the Companies Act 2013

9. Section 410: Constitution of appellate tribunal:

NCLAT shall hear appeals against (i) Order of Tribunal; (ii) Order of NFRA; and (iii) also any direction, decision or order referred to in Section 53A of the Competition Act, 2002.

10. Section 418: Staff of tribunal and appellate tribunal:

Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider necessary,

- to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002; and

- under section 61 of the Insolvency and Bankruptcy Code, 2016.”

11. Section 435: Establishment of special court:

The Central Government may, for the purpose of providing speedy trial establish or designate as many Special Courts as may be necessary for Offences under this act except Punishment for Wrongful Withholding of Property of Company as per Section 452.

12. Section 446B: Lesser penalty of OPC or Small Company:

To extend applicability of section 446B, relating to, Lesser Penalties for small companies and one person companies, for all provisions of the Act which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups and its officer in default.

13. Section 452: Punishment for wrongful withholding of property:

Criminal offense shall not be ordered against any officer or employee of the Company for wrongful withholding of property of the Company if the court is satisfied that the company has not paid to that officer or employee any amount relating to provident fund, pension fund, gratuity fund or any other employees’ welfare fund maintained by the company or any compensation or liability for compensation under the Workmen’s Compensation Act, 1923 in respect of death or disablement-

14. Section 454: Adjudication of penalty:

A New provision added in Act as ease of doing business i.e., in case the default relates to non-compliance of sub-section (4) of section 92 (Annual Return -MGT-7) or sub-section (1) or sub-section (2) of section 137 (Financial Statement – AOC-4)

If such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

B. Discussion Paper on Revised Regulatory Framework for NBFCs- A Scale-Based Approach

In pursuance of the announcement made in the Statement on Developmental and Regulatory Policies dated December 04, 2020⁵, the Reserve Bank of India has on 22nd January 2021, released the Discussion Paper on Revised Regulatory Framework for NBFCs- A Scale-Based Approach⁶. Comments on the Discussion Paper are invited from NBFCs, market participants and other stakeholders within one month from this date.

The objective of discussion paper is to revisit the broad principles of the current regulatory framework and examine the need to develop a scale-based approach and recommend appropriate regulatory measures in support of a strong and resilient financial system.

Brief Proposals are as follows:

1. **Scale-based Framework:** Regulatory and supervisory framework of NBFCs shall be based on a four-layered structure – Base Layer, Middle Layer, Upper Layer and a possible Top Layer. NBFCs in lower layer will be known as NBFC-Base Layer (NBFC-BL). NBFCs in middle layer will be known as NBFC-Middle Layer (NBFC-ML). An NBFC in the Upper Layer will be known as NBFC-Upper Layer (NBFC-UL) and will invite a new regulatory superstructure. There is also a Top Layer, which will ideally remain empty unless supervisors take a view on specific NBFCs.
2. **Identifying NBFCs in Upper Layer:** a small set of NBFCs will be identified, which are significant from the point of view of systemic risk spill-overs and are therefore required to be subjected to tighter regulation. In order to identify such NBFCs in the Upper Layer, a range of parameters can be considered; viz., size, leverage, interconnectedness, substitutability, complexity, nature of activity of the NBFC, etc.
For identification of entities to be categorised as NBFC-UL, a parametric analysis will be carried out, comprising quantitative and qualitative parameters/ supervisory judgment. The quantitative parameters will have weightage of 70% whereas qualitative parameters/ supervisory inputs will have weightage of 30%.
Once an NBFC is identified as NBFC-UL, it will be subject to enhanced regulatory requirement at least for a period of four years from its last appearance in the category.
3. **Change in regulatory framework for NBFCs in base layer (NBFC-BL):** The Base Layer will consist of NBFCs currently classified as non-systemically important NBFCs (NBFC-ND) besides Type I NBFCs, NOFHC NBFC-P2P and NBFC-AA.
 - a. Increase of threshold for Systemic important NBFC: The current threshold for systemic importance is ₹ 500 crore. This threshold needs recalibration, taking into account increase in general price levels as well as increase in real GDP since 2014. Accordingly, the threshold is proposed to be revised to ₹1000 crore.
 - b. Raising the Net-Owned Fund: The minimum stipulated NOF for NBFCs will be revised from ₹2 crore to ₹20 crore.
 - c. The extant NPA classification norm of 180 days will be harmonized to 90 days.
 - d. The overall role and responsibilities of the Risk Management Committee will be prescribed for these NBFCs.
 - e. The Board will have adequate mix of experience and educational qualification among its members. At least one of the directors shall have experience in retail lending in a bank/ NBFC.
 - f. Disclosure requirements will be widened by including disclosures on types of exposure, related party transactions, customer complaints, etc.

⁵ https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=50748

⁶ <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=20316>

4. Change in regulatory framework for NBFCs in Middle layer (NBFC-ML):

- a. Introduction of Internal Capital Adequacy Assessment Process (ICAAP).
- b. Rotation of Auditors: after completion of continuous audit tenure of three years, the statutory auditors shall not be eligible for re-appointment of the same NBFC for a period of six years.
- c. Chief Compliance Officer: to ensure an effective compliance culture, independent corporate compliance function and a strong compliance risk management programme, a functionally independent Chief Compliance Officer should be appointed, who should be sufficiently senior in the organization hierarchy.
- d. KMPs: Key managerial personnel (whole time employee in the nature of CEO, CFO, CS and WTD) will not hold any office (including directorships) in any other NBFC-ML or NBFC-UL. An independent director shall not be on the board of more than two NBFCs (NBFC-ML and NBFC-UL) in total.
- e. Additional Disclosure Requirements: Additional disclosures which are proposed to be made applicable to NBFC-ML are: (i) Corporate Governance report; (ii) Disclosure on modified (i.e., non-clean) opinion expressed by auditors, its impact on various financial items and views of management on audit qualifications. (iii) Items of income and expenditure of exceptional nature. (iv) Breach in terms of covenants, incidence/s of default (v) Divergence in asset classification and provisioning based on inspection findings.
- f. Corporate Governance: Governance requirements which are proposed to be made applicable to NBFC-ML are: (i) Compliance certificates by Chief Executive Officer and Chief Financial Officer covering various aspects including financial statements, absence of fraudulent/ illegal transactions, submissions to auditors, etc. (ii) Requirements for Secretarial Audit. (iii) Obligations of independent directors, senior management, key management personnel, directors and promoters (iv) Limits on directorships/ membership of committees of listed entities (v) Role of various committees (Audit Committee, Nomination and Remuneration Committee, Stakeholder's relationship, Risk Management) and review of information by Audit Committee (vi) Vigil mechanism and requirements pertaining to related party transactions. (vii) Corporate Governance requirements for subsidiaries of listed entities.
- g. Sectoral Exposure: NBFC's Board to decide internal limits on sensitive sector exposures.
- h. Regulatory Restrictions on lending: - Regulatory restrictions on loans and advances to be imposed on NBFCs-ML: (i) to provide loans to companies for buy-back of shares/securities. (ii) granting loans and advances to directors, their relatives and to entities where directors or their relatives have major shareholding (10% or more of the paid-up share capital). (iii) granting loans and advances to officers and relatives of senior officers. (iv) to extend finance for setting up of new units consuming/producing the Ozone Depleting Substances⁷ (ODS). (v) While appraising loan proposals involving real estate, NBFCs to ensure that the borrowers have obtained prior permission from government / local governments / other statutory authorities for the project, wherever required.

Apart from these, there are regulatory framework changes proposed for NBFC-UL and NBFCs top layer. Please refer the attached paper⁷ for more details.

⁷ <https://www.rbi.org.in/Scripts/PublicationsView.aspx?id=20316>

C. CASE STUDIES:

~ Su Prabhat Pathak

1. **Validity of an Arbitration Agreement in An Unstamped Agreement⁸:**

Recently, a three-judge bench of the Supreme Court in *M/s N.N. Global Mercantile Pvt. Ltd. v. M/s Indo Unique Flame Ltd. & Others* held that non-stamping/insufficient stamping is curable. Further, since the arbitration agreement is: (a) an independent agreement, and (b) not chargeable as per the stamping statutes, the non-payment of duty on the contract did not prevent the parties from relying upon the arbitration agreement contained in the contract.

The Supreme Court over-ruled its previous judgment in *SMS Tea Estates Pvt. Ltd. v. M/s. Chandmari Tea Co. Pvt. Ltd.* (“SMS Tea”) and disagreed with the findings in *Garware Wall Ropes Limited v. Coastal Marine Constructions and Engineering Limited* (“Garware”). However, since this judgment had recently been approved by a co-ordinate bench of the Supreme Court, the Supreme Court referred the issue to be authoritatively settled by a five-judge constitution bench of the Supreme Court.

Analysis

The Supreme Court reiterated the well-settled position that an arbitration agreement is a distinct and separate agreement, independent from the underlying substantive commercial contract. The Court stated that this is based on the premise that when parties enter into a commercial contract containing an arbitration clause, they enter into two separate agreements viz. (i) the substantive contract which contains the rights and obligations of the parties arising from the commercial transaction; and (ii) the arbitration agreement which contains the binding obligation of the parties to resolve their disputes through the mode of arbitration. The Court noted that the concepts of separability (i.e. the invalidity, ineffectiveness or termination of the substantive contract would not affect the arbitration agreement, unless the same is directly impeached as being void ab initio) and kompetenz - kompetenze (i.e. the arbitral tribunal has the competence to determine and rule on its own jurisdiction, including in relation to the existence, validity and scope of the arbitration agreement) are the foundation of the autonomy of an arbitration agreement.

Analysing the statutory scheme of the Stamp Act, the Court emphasised that the Stamp Act is a fiscal measure enacted to secure the revenue of the State on certain classes of instruments (specified in Schedule I thereto). It observed that under the Stamp Act, the substantive contract would not be admissible in evidence, and could not be acted upon, for any purpose, in the event of non-payment of stamp duty. However, this was a deficiency curable on the payment of the requisite stamp duty and endorsement by the concerned Collector and would not invalidate the main contract.

The Court further observed that the arbitration agreement, being separate and distinct from the underlying commercial contract, would survive independent of the substantive contract. Further, the Stamp Act did not categorise an arbitration agreement as an instrument chargeable to stamp-duty. Accordingly, the Court held that there would be no legal impediment to the enforceability of the arbitration agreement, pending payment of stamp duty on the substantive contract. It, however, cautioned that the adjudication of the rights and obligations under the Work Order or the substantive commercial contract would not proceed before the parties complied with the mandatory provisions of the Stamp Act.

In particular, the Court over-ruled the finding of a two-judge bench in *SMS Tea* to the extent it ruled (i) that an arbitration agreement in an unstamped commercial contract cannot be acted upon or is rendered un-enforceable in law; and (ii) that an arbitration agreement would be invalid where the

⁸ https://main.sci.gov.in/supremecourt/2020/23926/23926_2020_38_1502_25365_Judgement_11-Jan-2021.pdf

contract or instrument is voidable at the option of a party, such as u/S. 19 of the Indian Contract Act, 1872.

Further, the Court also made observations regarding the authority, which would exercise the power of impounding an instrument under the relevant stamp act in cases where the substantive contract contained an arbitration. Considering the three different modes of reference of disputes to arbitration, the Court iterated that:

- in cases where the parties appoint the arbitrator consensually in accordance with the terms of the arbitration agreement, or by an arbitral institution, without the intervention of the Court, then, the arbitrator / tribunal is obligated by Section 33 of the Indian Stamp Act, 1899 (or the applicable State act) to impound the instrument, and direct the parties to pay the requisite stamp duty (and penalty, if any), and obtain an endorsement from the concerned Collector;
- In cases where the parties fail to make the appointment in accordance with the arbitration agreement and an application is filed under Section 11 of the Arbitration Act before the Court to invoke the default power for making the appointment, the High Court, or the Supreme Court, as the case may be, while exercising its jurisdiction, would impound the substantive contract which is either unstamped or inadequately stamped, and direct the parties to cure the defect before the arbitrator / tribunal adjudicates upon the contract;
- In cases where an application is filed under Section 8 of the Arbitration Act before a judicial authority for reference of disputes to arbitration, the judicial authority would make the reference to arbitration (since the subject matter of the contract is covered by an arbitration agreement). However, in the meanwhile, the parties would be directed to have the substantive contract stamped in accordance with the provisions of the relevant stamp Act, so that the rights and obligations emanating from the substantive contract can be adjudicated upon.

The Court further observed in cases where an application is filed under Section 9 of the Arbitration Act for an urgent interim relief, the situation is slightly different. In such cases, even if the Court is informed that the substantive contract is not duly stamped, it would grant ad-interim relief to safeguard the subject-matter of the arbitration. However, the substantive contract would then be impounded, and the concerned party would be directed to take the necessary steps for payment of the requisite stamp duty in accordance with the provisions of the relevant stamp act, within a time-bound period. The Court further clarified that the payment of stamp duty on the substantive contract, as assessed by the Collector, would be subject to the right of revision / appeal available under the relevant stamp act.

Accordingly, with regards to the unstamped Work Order, the Court directed the same to be impounded and forwarded to the concerned Collector in Maharashtra for payment of the requisite stamp duty by the parties.

2. **Acceptance of a contract after putting in a new condition is no acceptance but only a counter-proposal⁹**

The division bench of the Supreme court in M/s. Padia Timber Company(P) Ltd. vs. Board of Trustees of Visakhapatnam Port Trust has clarified that acceptance of a contract with a variation is no acceptance but is simply a 'counter-proposal' which must be accepted fully by the original proposer before a contract can be said to have concluded between the parties.

The Hon'ble Court observed that "It is a cardinal principle of the law of contract that the offer and acceptance of an offer must be absolute when the acceptor puts in a new condition while accepting the contract already signed by the proposer, the contract is not complete until the proposer accepts that condition,"

⁹ https://main.sci.gov.in/supremecourt/2007/5298/5298_2007_35_1501_25342_Judgement_05-Jan-2021.pdf

D. ESG: CORPORATE SOCIAL RESPONSIBILITY UNDER COMPANIES ACT, 2013

1. History of CSR Provisions:

In line with the national endeavour of inclusive growth, Corporate Social Responsibility (CSR) was conceived in corporate business for integrating social, environmental and human development concerns. Timeline towards mainstreaming the concept of Business Responsibilities is as under:

2007: Adoption of Inclusive Growth-11th Five Year Plan

2009: Voluntary guidelines on CSR, 2009

2010: Parliamentary Standing Committee on Finance - 21st Report on Companies Bill, 2009

2011: National Voluntary Guidelines (NVGs) on Social, Environmental and Economic Responsibilities of Business, 2011

2012: Business Responsibility Reporting

2014: Mandatory provision of CSR in Section 135 of the Companies Act 2013 w.e.f., 1st April 2014.

2017: The Companies (Amendment) Act, 2017

2020: The Companies (Amendment) Act, 2020

2021: Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021

Section 135 of the Companies Act 2013 along with Companies (Corporate Social Responsibility Policy) Rules, 2014 are governing provisions of the CSR.

2. Applicability:

The following class of companies shall constitute a CSR Committee-

- Net worth of Rs 500 crores or more; or
- Turnover of Rs. 1000 crores or more; or
- Net Profit of Rs. 5 crores or more, during the immediately preceding financial year.

Composition of committee:

- Three or more directors, out of which at least one director shall be an independent director.
- Where company is not required to appoint an independent director, it shall have in its CSR Committee two or more directors.

Board report shall disclose the composition of CSR committee.

3. CSR Expenditure

At least two per cent. of the average net profits made during the three immediately preceding financial years, OR

Where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years.

4. The Companies (Amendment) Act, 2020:

The following amendments in Section 135 had been notified by Ministry of Corporate Affairs (MCA) vide its notification dated January 22, 2021:

- Section 135(5) – Allowed the Set off for excess amount, spent pursuant to CSR obligation and the provisions for the same has been notified in Rule 7 of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021
- Section 135(7) – The penalty provision for non-compliance of sub-section (5) or sub-section (6) of section 135 has been notified.
- Section 135(9) - Constitution of the CSR Committee is not required if amount to be spent does not exceed fifty lakh rupees and the functions of such Committee shall be discharged by the Board of Directors.

5. Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021(Amendment Rule)
MCA vide its notification dated January 22, 2021 has amended the Companies (Corporate Social Responsibility Policy) Rules, 2014 by notifying the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021. Key highlights of this amendment are:

| | |
|---------------------------|--|
| Definitions | <p>Following new definitions have been added to the rules:</p> <ul style="list-style-type: none"> i. Administrative overheads ii. International organization iii. Ongoing project iv. Public authority v. Section <p>Following definitions have been amended:</p> <ul style="list-style-type: none"> i. Corporate Social Responsibility (CSR) ii. Net profit iii. CSR Policy |
| CSR Implementation | <p>The Board to ensure that CSR activities are undertaken by the company either itself or through-</p> <ul style="list-style-type: none"> ii. Section 8 company iii. A registered public trust iv. A registered society, registered under section 12A and 80 G of the Income Tax Act v. Any entity established under an Act of Parliament or a State legislature; <p>Bodies at point no. i, ii and iii may be established by either of the following:</p> <ul style="list-style-type: none"> i. By the company, either singly or along with any other company ii. By the Central Government or State Government iii. Having an established track record of at least three years in undertaking similar activities. <p>Every entity covered above which intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 01st day of April 2021. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.</p> <p>The Board of a company shall ensure that the funds disbursed for CSR have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.</p> |
| CSR Committees | <p>The CSR Committee has been entrusted to formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy including:</p> <ul style="list-style-type: none"> a. The list of CSR projects or 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 utilisation of funds and implementation schedules for the projects or programmes; d. Monitoring and reporting mechanism for the projects or programmes; and e. Details of need and impact assessment, if any, for the projects undertaken by the company: <p>The Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.</p> |
| CSR Expenditure | <p>Administrative overheads not to exceed five percent of total CSR expenditure of the company for the financial year.</p> <p>Any surplus arising out of the CSR 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 annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.</p> |

| | |
|---|---|
| | <p>Where a company spends an amount in excess of the requirement provided such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –</p> <p>(i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.</p> <p>(ii) the Board of the company shall pass a resolution to that effect.</p> |
| CSR Expenditure | <p>Capital Asset:</p> <p>The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –</p> <ol style="list-style-type: none"> a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or a public authority: <p>Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.</p> |
| CSR Reporting | <p>The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR as per the format provided.</p> <p>In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR Impact Assessment.</p> <p>Every company having average CSR obligation of ten crore rupees or more in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.</p> <p>A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less</p> |
| Display of CSR activities on its website | <p>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, if any, for public access</p> |
| Transfer of unspent CSR amount | <p>Until a fund is specified in Schedule VII for the purposes of subsection (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act</p> |