

# LAW & POLICY UPDATE

CORPORATE & COMMERCIAL



## Companies CSR Amendment 2020

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Last year, in November 2019, a High- Level Committee (**HLC**) on Corporate Social Responsibility (**CSR**) was set up to review the CSR framework and make recommendations for developing a more robust and coherent CSR regulatory and policy framework and underlying ecosystem. The recommendations of HLC aim to facilitate the implementation of CSR in a more efficient, transparent, and competitive manner by removing difficulties and ambiguities, ensuring minimum regulations and maximum disclosures. Earlier this year, in March 2020, Ministry of Corporate Affairs (**MCA**) issued a circular, inviting comments from the public on draft Companies (CSR) Amendment Rules, 2020.

Recently, on August 24, 2020, MCA issued Companies (CSR Policy) Amendment Rules, 2020 (**CSR Rules**) and amended Schedule VII of the Companies Act, 2013 (**Act**) vide a circular and a notification, respectively. Prior to the issue of CSR Rules, activities undertaken by a company (even if such activities are in areas and subjects listed in Schedule VII) in pursuance of its normal course of business were excluded from the ambit of definition of 'CSR Policy'. However, CSR Rules provide an exception to the aforesaid rule for companies engaged in R&D of new vaccine, drugs and medical devices in their normal course of business.

Pursuant to the CSR Rules, companies that are engaged in R&D of new vaccine, drugs, and medical devices are permitted to undertake research and development activity of new vaccine, drugs and medical devices related to Covid-19 for financial years 2020-21, 2021-22 and 2022-23 subject to fulfilment of the following conditions:-

- Such research and development activities shall be undertaken in collaboration with any of the institutes or organizations mentioned in item (ix) of Schedule VII to the Act
- Details of such activity shall be disclosed separately in annual report on CSR included in board's report

Accordingly, proviso appearing in Rule 6 of Companies (CSR Policy) Rules, 2014 which states that CSR activities do not include activities undertaken in pursuance of normal course of business of a company, has now been deleted.

It would be important to note that only companies that are engaged in R&D of new vaccine, drugs, and medical devices can reap benefits of CSR Rules whereas all other companies who are engaged in other businesses pursuant to their normal course of business will still remain outside the ambit of the CSR Rules.

In alignment with the aforesaid exemption introduced in the definition of 'CSR Policy, CSR activities shall now be undertaken by companies, in accordance with its CSR Policy, as projects or programs or activities (either new or ongoing), including activities undertaken in pursuance of its normal course of business in the case of companies engaged in research and development of vaccines and drugs subject to the conditions mentioned above.

## Amendments to Schedule VII of the Act

Pursuant to the CSR Rules, contributions made by companies towards the following activities will now be counted as 'CSR':

- Incubators or research and development projects in the field of science, technology, engineering, and medical sector funded by the central or state government or any public sector entity; and
- Public funded universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Défense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).

This amendment is linked with amendment in definition of 'CSR Policy' under CSR Rules And appears to be a relaxation of a temporary nature which has been introduced as a means to encourage companies and businesses to contribute and engage in R&D of new vaccines drugs and medicines/medical devices for Covid-19, which is evident from the fact that such activities are permitted only until financial year 2022-23. While MCA invited public comments on draft Companies (CSR) Amendment Rules, 2020, CSR Rules issued by MCA do not seem to notify any of the other proposals which formed part of the draft or any of the recommendations of the HLC.

The intent of CSR Rules and subsequent amendment to Schedule VII of the Act appear to only align with various other measures and steps that are being taken by Government in relation to Covid-19 and will definitely boost contribution of businesses in aiding country's fight against Covid-19.

