# Governance strategy under new amendments to the CSR provisions

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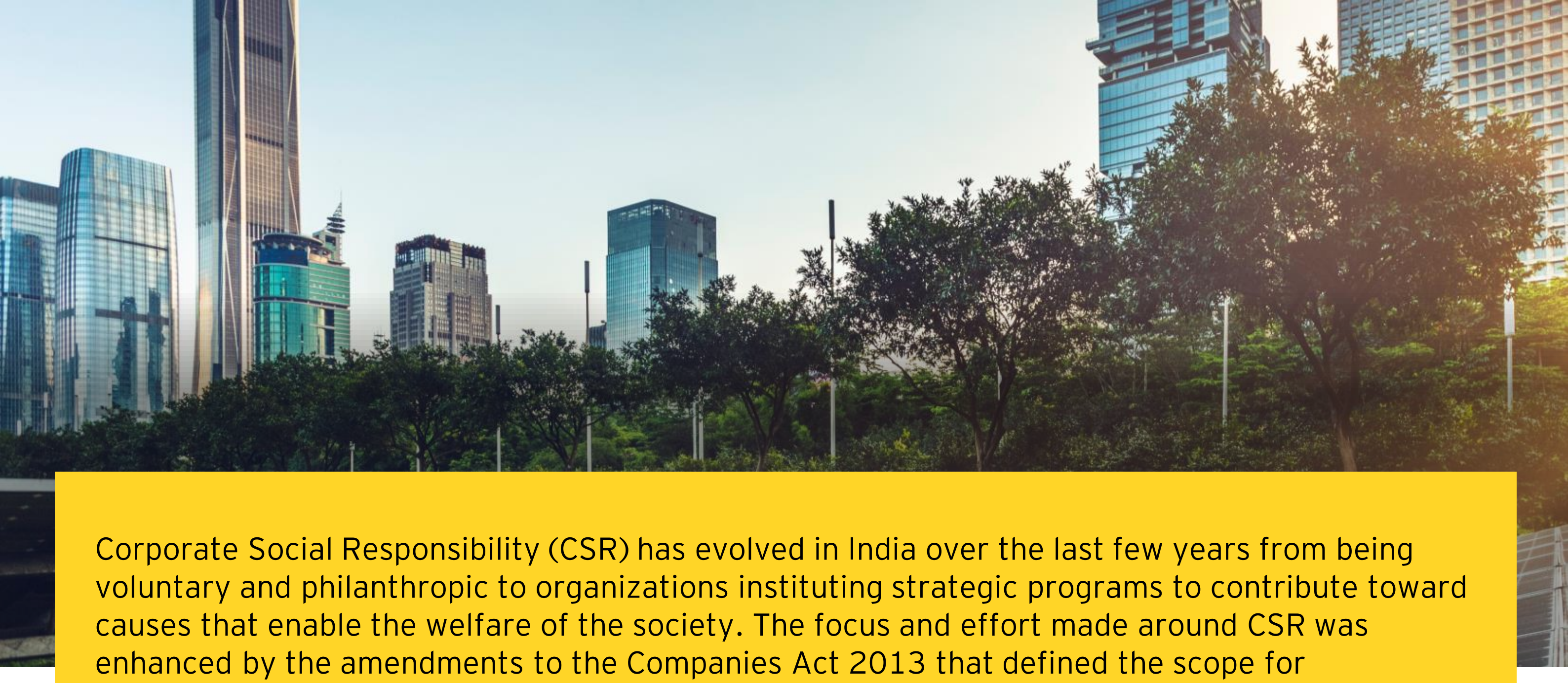

Corporate Social Responsibility (CSR) has evolved in India over the last few years from being voluntary and philanthropic to organizations instituting strategic programs to contribute toward causes that enable the welfare of the society. The focus and effort made around CSR was enhanced by the amendments to the Companies Act 2013 that defined the scope for organizations above a certain size and threshold. Key amendments included the introduction of Section 135 that outlines mandatory spends, a defined program and a dedicated committee to administer and monitor the program.

Several amendments to Section 135 of the Companies Act, 2013 and the Companies (Corporate Social Responsibility Policy) Rules, 2014 have been notified with effect from 22 January 2021.

- In summary, the Government's intent is to address a variety of areas such as the need for enhanced oversight, governance and compliance, greater transparency and potential abuse management

- In addition, it intends to create an enabling framework, mandate assessment of project impact, and prescribe treatment of unspent amounts or excess spend and penalties for non-compliance

# Key amendments impacting CSR frameworks

1. Negative list has been introduced in the CSR definition.

2. Board is obligated to ensure that disbursed funds are utilized as approved and monitor implementations (fund allocations and timelines) of ongoing projects.
   - Ongoing project is defined as a multi-year project that shall not extend beyond three years excluding the year of commencement.

3. CSR implementing non-governmental organizations (NGOs) are required to be registered for income tax and company law purposes.

4. Companies are required to mandatorily spend their CSR obligation.

5. Treatment of unspent CSR amount at financial year end is dependent upon whether the project is an ongoing project or not. Unspent amount towards an ongoing project has to be transferred to a separate bank account within 30 days from end of FY and utilized within a period of 3 financial years. Any unutilized amount at the end of 3rd FY must be transferred to a Schedule VII fund within 30 days from the financial year end. Unspent amounts must be transferred to a Schedule VII fund within six months from the financial year end.

6. There shall be penalty on a company and officers in default for failure to transfer unspent amounts as prescribed.

7. A company is prohibited from holding capital assets created/acquired through CSR funds.

8. Ongoing project is defined as a multi-year project that shall not extend beyond three years excluding the financial year of commencement.

9. Amount spent in excess of CSR obligation can be carried forward and set-off in next three financial years.

10. Companies are required to carry out impact assessment mandatorily for CSR projects meeting specified thresholds.

11. Reporting format for disclosures is revamped.

# Assessing the impact of CSR

Measuring performance and impact of CSR initiatives can be challenging as it is aimed at delivering long-term value for communities at large. With separate budgets being reserved for CSR and the amount of funding expected to augment with time, it is critical for organizations to build safeguards against misappropriation of fund and other vulnerabilities.

## Potential risks in CSR program implementation

- Risk of fictious expenditure
- Conflict of interest
- Risk of funding inflated projects
- Receiving funding from unscrupulous foreign sources
- Non-adherence to program delivery standards
- Ineffective or inefficient program development
- Diversion of funds
- Misappropriation of funds

# Action plan under the new amendments to CSR frameworks

**Organizations will have to focus on the following in the CSR program's life cycle to enhance governance and mitigate risks.**

### Governance structure and identification of implementing partners

- Governance structure
- Strategy and objective setting
- Policies and procedures
- Sustainable and safe culture
- Preparation of criteria for implementing agencies
- Identification of implementing agencies as per requirement

### On-boarding implementing partners

- Background, reputational and ethical track record of key personnel
- Market reputation and credential of partner
- Business history, activities and operations
- Regulatory and litigation history, if any
- Any allegations pertaining to illegal or unethical business practices

### Fund utilization review for CFO certification

- Assessing the existing control framework
- Funds are used for intended purposes as defined in the Memorandum of Understanding (MoU)
- Non-compliances with MoU
- Last mile delivery to the beneficiaries
- Risk of leakages
- Reputation risk

### Impact assessment

- Alignment with global standards
- Focused Group Discussions (FGDs) to be held with the communities
- Data collection tools
- Drawing the impact analysis
- Benchmarking against leading industry practices

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