

Comments invited from the public

We are a charitable trust and we register the following comments on the proposed amendment to the CSR Rules under the Companies Act, 2013.

1. It is not clear if charitable trusts and societies would be considered as entities established under an Act of parliament or state legislature, after the amendment.

The following table captures the pre and post amendment provisions regarding applicability as per Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014

	Existing	Proposed
	<p>“(2) The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through</p> <p>(a) a company established under section 8 of the Act or a registered trust or a registered society, established by the company, either singly or along with any other company, or</p> <p>(b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government or any entity established under an Act of Parliament or a State legislature:</p> <p>Provided that- if, the Board of a company decides to undertake its CSR activities through a company established under section 8 of the Act or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years in undertaking similar</p>	<p>(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through:</p> <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 e-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)</p>

	<p>programs or projects; and the company has specified the projects or programs to be undertaken, the modalities of utilisation of funds of such projects and programs and the monitoring and reporting mechanism”.</p>	<p>Amendment Rules, 2020.</p>

2. There has been a doubt raised with respect to the understanding of the amendment. It is opined that deletion of the text “or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years” would make such and trusts and societies not eligible to access CSR funds. This point needs clarification. If Societies and Trusts are not eligible to access CSR funds any more, there will be serious damages to the NGO sector which has been one of the primary pillars of voluntary/charitable services to society:
- a. We like to bring to your attention the fact that nearly than 3 million NGOs are functioning in the country as Trusts and Societies. Some of them operate in remote rural and tribal areas to develop the people in those regions.
 - b. There are Trusts and Soccities which have been the social arms of several companies in India for years. They have done this with the main intention of giving their charitable activities a special focus. The TATAS, Birlas, Mahindra, Bajaj, Reliance are some of the well-known companies that have done this.
 - c. The Corporate Social Responsibility was introduced by the Government only in 2013. Much before that Indian businessmen and many others with good hearts have been contributing a society in myriad ways. These people have formed Trusts and Societies mainly to make sure their social responsibility of business receives sufficient attention. If this amendment excludes such trusts and societies, several of their activities, and the very institutions which are supported by many companies over many years will be greatly impacted. As the activities suffer, their beneficiaries in turn also suffer. Several institutions will go through a tremendous shrinking process and the purpose for which they came into being will be severely defeated. The small and the medium sized NGOs that rely on CSR funds will actually fold up. This will again impact social entrepreneurship, social capital and social impact of these organizations and their beneficiaries.

3. The Government has already put in place several regulatory/ statutory mechanisms to monitor the functioning of the NGOs. The IT department, the FCRA and the Government departments that aid NGOs funds and others have instituted several checking mechanisms to ensure the NGOs work within a regulatory framework. Now, we come to know that under this amendment as beneficiaries of CSR funding we are also expected to register ourselves with Ministry of Corporate Affairs and file annual returns.

The NGOs especially small and medium ones don't have adequate capability to be meeting this demand for multiple returns to be filed. The demand for compliance by multiple agencies takes away top management time in these organizations that should be spent on worthwhile project activities to create better impact.

4. The amendment also insists that the companies do an impact study if their CSR funding have indeed crossed Rs.5 crores in the preceding 3 years and publish it in their annual report. If a company chooses to support multiple projects with their funds, organizing the study would be a big task. What is the purpose of this impact study? Work in remote regions and challenging projects may take years to make an impact. These studies must be based on the challenging nature of projects and should not be based on the amount of funding.
5. We do not have any other adverse remarks in other amendments being proposed.

We request to you to

- a. Continue the availability of funds to “or a registered trust or a registered society, other than those specified in this sub-rule, such company or trust or society shall have an established track record of three years” or clarify the position of charitable Trusts and with respect to their eligibility to receive CSR funds
- b. Review the need for e-CSR 1 which appears to be more for a section 8 company than for a Trust or Society
- c. Review the need for impact assessment in case of CSR contribution of Rs. 5 crores or more in the preceding three financial years.