MCA issues comprehensive CSR FAQs | IFSCA allows branches of Indian banks /financial institutions to offer financial products linked to Indian Rupees

MCA has issued a comprehensive set of seventy two (72) FAQs in supersession of its earlier FAQs and has also issued certain clarifications. The FAQs answer some important concerns including issues arising out of the amendments carried out on January 22, 2021. These include whether companies can undertake any CSR activity for the exclusive benefit of their employees, workers and their family members. The FAQs would provide much needed clarity to the stakeholders for their CSR activities.

In another move to boost businesses in International Financial Services Centre (**IFSC**), the International Financial Services Centre Authority (**IFSCA**) has permitted branches of Indian banks and branches of other Indian financial institutions operating in IFSC to offer financial products linked to Indian Rupees, subject to the directions issued by IFSCA in this regard.

Details below.

A. CSR FAQs

The FAQs are divided in chapters dealing with: (a) applicability of CSR, (b) CSR Framework, (c) CSR Expenditure, (d) CSR Activities, (e) CSR Implementation, (f) Ongoing Project, (g) Treatment of Unspent CSR Amount, (h) CSR Enforcement, (i) Impact Assessment, (j) CSR Reporting & Disclosure.

Some of the key questions relate to:

Whether the companies can undertake any CSR activity mentioned under Schedule VII of the Act for the exclusive benefit of their employees, workers and their family members?	**Rule 2(1)(d)(iv) of the Companies (CSR Policy) Rules, 2014 states that any activity benefitting employees of the company shall not be considered as eligible CSR activity. As per the rule, any activity designed exclusively for the benefit of employees shall be considered as an "activity benefitting employees" and will not qualify as permissible CSR expenditure. The spirit behind any CSR activity is to benefit the public at large and the activity should be nondiscriminatory to any class of beneficiaries. However, any activity which is not designed to benefit employees solely, but the public at large, and if the employees and their family members are incidental beneficiaries, then, such activity would not be considered as "activity benefitting employees" and will qualify as eligible CSR activity.**
Whether disbursal of funds by a company to the implementing agency for the implementation of projects will be considered as spend under section 135(5) and rules made there under?	Section 135(5) of the Act prescribes minimum spending obligation for the company. The company may fulfil its CSR spending obligation directly by itself or though engaging an implementing agency. The implementing agency acts on behalf of the company and mere disbursal of funds for implementation of a project does not amount to spending unless the implementing agency utilises the whole amount.
Should a company open a separate 'Unspent CSR Account' for each ongoing project?	No, a company can open a single special account, called 'Unspent Corporate Social Responsibility Account', for a financial year in any scheduled bank, to transfer the unspent amount w.r.t ongoing project(s) of that financial year. A company needs to open a separate 'Unspent CSR Account' for each financial year but not for each ongoing project.
Are administrative overheads applicable only for expenses incurred by the company, or can they be applied to expenses incurred by the implementing	Expenses incurred by implementing agencies on the management of CSR activities shall not amount to administrative overheads and cannot be claimed by the company.

agency as well?	
Whether contribution to the corpus of an entity is an admissible CSR expenditure?	No, the provision relating to contribution to corpus as admissible CSR expenditure has been amended and the contribution to corpus of any entity is not an admissible CSR expenditure w.e.f. 22nd January, 2021.
If a company spends more than the requirement provided under section 135, can that excess amount be set off against the mandatory 2% CSR expenditure in succeeding financial years?	Yes, the excess amount can be set off against the required 2% CSR expenditure up to the immediately succeeding three financial years subject to compliance with the conditions stipulated under rule 7(3) of the Companies (CSR Policy) Rules, 2014. This position is applicable from 22nd January, 2021 and has a prospective effect. Thus, no carry forward shall be allowed for the excess amount spent, if any, in financial years prior to FY 2020-21.
If a company cannot take the benefit of set off of excess amount spent in the previous financial year because of non-applicability of CSR provisions, will the excess amount lapse?	Yes, the law states that the excess CSR amount spent can be carried forward up to immediately succeeding three financial years; thus, in case any excess amount is left for set off, it will lapse at the end of the said period.
Whether CSR expenditure of a company can be claimed as a business expenditure?	No, the amount spent by a company towards CSR cannot be claimed as business expenditure. Explanation 2 to section 37(1) of the Income Tax Act, 1961 which was inserted through the Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

All FAQs are available in General Circular No. 14 /2021, dated August 25, 2021.

B. IFSCA permits branches of Indian banks/ financial institutions operating in IFSC to offer financial products linked to Indian Rupees

In another move to boost businesses in IFSC, the IFSCA has permitted branches of Indian banks and branches of other Indian financial institutions operating in IFSC to offer financial products linked to Indian Rupees, subject to the directions issued by IFSCA in this regard.

This move is based on the recent clarification provided by RBI with respect to Para A4.b of the Master Direction – Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad dated January 1, 2016 (**ODI Master Direction**) which prohibits an overseas entity, having direct or indirect equity participation by an Indian Party, from offering financial products linked to the Indian Rupee (e.g. non-deliverable trades involving foreign currency, rupee exchange rates, stock indices linked to Indian market, etc.) without the specific approval of RBI. RBI had clarified that the definition of term "overseas entity" used under the aforesaid para will not include branches of Indian banks and branches of other Indian financial institutions operating in the IFSC.

The aforementioned changes have been made vide IFSCA Circular dated August 25, 2021 (available here).

We hope you have found this information useful. For any queries/clarifications please write to us at insights@elp-in.com or write to our authors:

Manendra Singh, Associate Partner – Email – ManendraSingh@elp-in.com
Tanvi Goyal, Principal Associate – Email – TanviGoyal@elp-in.com
Aditi Ladha, Associate – Email - AditiLadha@elp-in.com