Comments on draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020

I. Definitions

We propose the following change to Rule (2) Clause (h)

Three years to be replaced by **five-years**.

The Clause would then read as follows:

(h) "Ongoing Projects" means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding **five years** excluding the financial year in which it was commenced, and shall also include such projects that were initially not approved as a multi-year project but whose duration has been extended beyond a year by the Board based on reasonable justification.

Reason for the proposed modification

1. The recommendation for three-year projects is welcome. However, this may not be enough to ensure efficient implementation and impact.
2. Some projects may require a five-year commitment to deliver better outcomes. To ensure self-sustainability of the projects, a five-year period would be more suitable.
3. Limiting ongoing projects to three years may discourage companies from taking on projects that are high-risk or require long-term investment to achieve goals - particularly those in the areas of urban/informal/rural habitat improvement. For such projects, we are unlikely to see outcomes so quickly.
4. A mid-course review, after two years, could be used by companies to review the tenure of the project. The project can be wrapped up in three years if the company does not feel that an extension to five years will be suitable.

II. CSR Activities

We suggest modifications to the proposed Rule (4), Clause (1) in the following manner:

"CSR Implementation" - (1) The Board shall ensure that the CSR activities are undertaken by the company itself or through:

(a) a company established under section 8 of the Act, **or a registered trust or a registered society.**

(b) any entity established under an Act of Parliament or a State legislature **or any entity registered under an Act of Parliament or a state legislature including a registered trust or a registered society:**

Reasons for the proposed modification

1. The changes to Rule (4), Clause (1) in the Draft Amendment 2020 would eliminate the role of Non-Profit Organisations as implementing agencies on CSR projects. The exclusion of these organisations as implementing agencies will be a setback to not only Companies and Non-profit organisations but also the end beneficiaries.
2. NGOs play an important role in implementing CSR projects. A report by the High-Level Committee constituted by the Ministry of Corporate Affairs, estimates that 52% (INR 6,881.64 Crores) of CSR expenditures were made through these implementing agencies in FY 2018-19. And 29% (12,943) of CSR projects were undertaken by Companies through other implementing agencies, making this the second most used method of CSR project implementation in FY 2018-19.

3. NGOs are service-oriented – they are constituted with the purpose of serving society. They have a distinctive characteristic and a commitment to a cause/ideal, which makes them work towards better outcomes for society. Their hands-on experience and knowledge about the challenges and needs of the communities make them important partners for the implementation of CSR projects.
4. Their connection with communities at the local level and know-how about reaching the poor and ensuring last-mile connectivity is essential to ensure that beneficiaries gain from the CSR mandate.
5. Development is becoming increasingly controlled by political and economic considerations, and is often shaped by consultants and contractors. There is a need for a people perspective and people's voice. NGOs have the potential to play this role and fill that gap. CSR projects are a good incubation platform to prepare such role players.
6. India is replete with stories of innovations by NGOs. Each development sector has its own NGO heroes be that, in water, environment, health, sanitation, agriculture, shelter, slum or in community development. Their contribution has been systemic and has influenced attitude, approach, policy and program design. Engaging NGOs is therefore an investment in innovations.
7. NGO intermediaries are also less expensive, usually with a nonprofessional level salary structure, a tradition of service (Seva), a culture of commitment and a different value system. The induction of professionals has substantially improved their performance and is helping them bring in discipline and a better understanding of technology and business practices.
8. The increasing importance of achieving the Sustainable Development Goals (SDGs) has prompted companies to link CSR activities to SDGs. The localisation of SDGs is only possible through the involvement/engagement of NGOs, these organisations have an in-depth understanding of ground-level realities and will play an important role in ensuring that progress is made towards achieving these goals.

III. Capacity Building

We propose retention of Rule (4) Clause (6), of The Companies (Corporate Social Responsibility Policy) Rules, 2014 and its modification in the following manner:

(6) Companies **should** build CSR capacities of their personnel as well as those of their Implementing agencies but such expenditure [**excluding** expenditure on administrative overheads,] shall not exceed five percent of total CSR expenditure of the company in one financial year.

Reasons for the proposed change

1. Capacity building of NGOs is needed to ensure more efficient use of CSR funds and better outcomes/utilisations of this investment.
2. Efficient organisations that develop through increased capacities would have a better understanding of issues, resulting in the generation of improved insights and solutions.
3. Non-profit organisations partnering on CSR projects have expressed a need for including capacity-building under CSR obligations. A survey by ATE Chandra and
4. Samhita Social Ventures of 320 NGOs finds that 82% support the inclusion of capacity building to Schedule VII (https://idronline.org/what-do-nonprofits-think-of-csr/).
5. There will be significant gains in employment opportunities for young professionals that would arise from better equipped CSR personnel and implementing agencies, besides enhanced implementation capabilities of these agencies.

6. Capacity building needs to be seen in the context of (a) an opportunity to work and serve through the project (b) systematic effort at capacity building for specific tasks and role-playing, and (c) leadership potential expansion.

IV. CSR Expenditure

We suggest the modifications to the proposed Rule (7), Clause (1) in the following manner:

"CSR Expenditure": (1) The board shall ensure that the administrative overheads incurred in pursuance of sub-section (4) (b) of section 135 of the Act shall be between five **and ten percent but not exceeding ten percent** of total CSR expenditure of the company for the financial year for all companies including companies undertaking impact assessment, in pursuance of sub-rule (3) of Rule 8.

For CSR projects being undertaken in difficult and inaccessible areas/terrains administrative overheads incurred can go up to **twelve percent but should not exceed twelve percent**.

Reasons for proposed suggestions

1. Administrative overheads are an important part of the expenditure that companies incur as part of their CSR projects. However, five percent may not be sufficient to cover overheads like travel, office costs, personnel costs etc. We believe that this should be between five and ten percent, not exceeding ten percent for all companies.
2. As early as 2015, several companies sought a reconsideration of the five percent allocated towards admin expenses/overheads. They stated that this amount was inadequate for developing the capacities of their personnel or those of their implementing agencies (https://www.livemint.com/Companies/phxJ3UUXrnrZrOf3md5pYN/Companies-feel-CSR-cap-counterproductive.html).
3. The inclusion of capacity building, organising of training, workshops and staff salaries, under this head makes it difficult for all these costs to be met within the five percent allocation, hence the limit needs to be raised.
4. Additionally, the management of projects in difficult areas/terrains may need an additional provision of twelve percent to ensure effective implementation of CSR projects.