

# *RECENT AMENDMENTS IN COMPANIES ACT, 2013*

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# Disclaimer

- This is a knowledge sharing seminar wherein I am sharing my understanding, experience and interpretation of law. This doesn't express the opinion of my organization or the ICSI.





# What changed recently....

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Schedule V

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CARO

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Accounts

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Audit

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Corporate Social Responsibility



# Schedule V....

Relevance

Fine vs penalty

Inadequate profit

Professional  
Director

Non-Executive  
Director  
(Independent  
Director)

Inadequate  
Profit



# *Inadequate Profit.....*

- Net Profit of Rs. 100 crore.
- A Limited has one Managing Director drawing remuneration of Rs. 5/ 10/ 15 crore
- Adequate Profit?

- Net Profit of Rs. 100 crore.
- A Limited has one Managing Director drawing remuneration of Rs. 5 crore
- Next year profits reduced to Rs. 50 crore
- Adequate Profit?

# *Inadequate Profit.....*

Sl.No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

# *Schedule V.....*

- Adequacy of Profit, Inadequacy of Profit or No Profit;
- Whether a Public Company can give remuneration to NED in case of Loss or Inadequate Profit?
- Whether a Company can pay more than 5% or 10% of Net Profit subject to the overall limit of 11% to its WTD/ MD/ MGR as the case may be, by passing a shareholders' resolution in General Meeting & without the CG Approval?
- Whether a Company can pay more than 1% or 3% of Net Profit to its Non-Executive Director (Including Independent Director) as the case may be, by passing a shareholder's resolution in General Meeting & without the CG Approval?
- Whether single approval would be sufficient for payment of remuneration to all NED's and ID's or separate approval required for each such director?
- Whether Remuneration Policy needs to be amended?
- Whether a Company can pass a resolution giving effect of change in terms of remuneration from retrospective date?





CARO

# CARO.....

- Whether the company is maintaining proper records showing full particulars of intangible assets;
- Whether the company has revalued its Property, Plant and Equipment (including Right of Use assets) or intangible assets or both during the year and, if so, whether the revaluation is based on the valuation by a Registered Valuer; specify the amount of change, if change is 10% or more in the aggregate of the net carrying value of each class of Property, Plant and Equipment or intangible assets;
- Whether any proceedings have been initiated or are pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988 (45 of 1988) and rules made thereunder, if so, whether the company has appropriately disclosed the details in its financial statements;

# CARO.....

- Whether during any point of time of the year, the company has been sanctioned working capital limits in excess of five crore rupees, in aggregate, from banks or financial institutions on the basis of security of current assets; whether the quarterly returns or statements filed by the company with such banks or financial institutions are in agreement with the books of account of the Company, if not, give details;
- Whether during the year the company has made **investments in, provided any guarantee or security** or granted any loans or advances in the nature of loans, secured or unsecured, to companies, firms, Limited Liability Partnerships or any other parties, if so,-
- Whether during the year the company has provided loans or provided advances in the nature of loans, or stood guarantee, or provided security to any other entity [not applicable to companies whose principal business is to give loans], if so, indicate-

# CARO.....

- The aggregate amount during the year, and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security
  - to subsidiaries, joint ventures and associates;
  - parties other than subsidiaries, joint ventures and associates;
- Whether the **investments made, guarantees provided, security given** and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest;
- Whether any loan or advance in the nature of loan granted which has fallen due during the year, has been renewed or extended or fresh loans granted to settle the overdues of existing loans given to the same parties, if so, specify the aggregate amount of such dues renewed or extended or settled by fresh loans and the percentage of the aggregate to the total loans or advances in the nature of loans granted during the year [not applicable to companies whose principal business is to give loans].

# CARO.....

- Whether the company has granted any loans or advances in the nature of loans either repayable on demand or without specifying any terms or period of repayment, if so, specify the aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in Section 2(76) of the Companies Act, 2013;
- Whether any transactions not recorded in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income Tax Act, 1961, if so, whether the previously unrecorded income has been properly recorded in the books of account during the year;
- Whether the company is a declared wilful defaulter by any bank or financial institution or other lender;

# CARO.....

- Whether funds raised on short term basis have been utilised for long term purposes, if yes, the nature and amount to be indicated;
- Whether the company has taken any funds from any entity or person on account of or to meet the obligations of its subsidiaries, associates or joint ventures, if so, details thereof with nature of such transactions and the amount in each case;
- Whether the company has raised loans during the year on the pledge of securities held in its subsidiaries, joint ventures or associate companies, if so, give details thereof and also report if the company has defaulted in repayment of such loans raised;
- Whether any report Section 143(12) of the Companies Act, 2013 has been filed by the auditors in Form ADT-4 as prescribed under Rule 13 of Companies (Audit and Auditors) Rules, 2014 with the Central Government;



# Accounts & Audit

# Accounts.....

- Disclosure of shareholding of Promoters and changes during the year;
- Trade Payables (MSME/ Others/ Disputed-MSME/ Disputed-others) ageing schedule with age less than 1 year, 1-2 years, 2-3 years & more than 3 years;
- Reconciliation of the gross and net carrying amounts of each class of assets – Tangible and Intangible (Addition/ Disposal/ acquisition thru combination/ revaluation (>10%);
- Trade Receivables (Undisputed – considered good/ doubtful and Disputed– considered good/ doubtful) ageing schedule with age less than 6 months, 6-12 months, 1-2 years, 2-3 years & more than 3 years;
- In case borrowed funds (banks/ FIs) have been used for purpose other than the objects;
- Detailed disclosure regarding title deeds of Immovable Property not held in name of the company and where jointly held with others;
- Loans or Advances granted to promoters, directors, KMPs and the related parties (repayable on demand/ without any term) in the format;



# Accounts.....

- Disclosure regarding Intangible/ CWIP (projects in progress/ temporary suspended) ageing less than 1 year, 1-2 years, 2-3 years & more than 3 years;
- Disclosure regarding projects under CWIP to be completed in less than 1 year, 1-2 years, 2-3 years & more than 3 years ;
- Details of Benami Property held;
- Reconciliation and reasons of material discrepancies, in quarterly statements submitted to bank and books of accounts;
- Disclosure where a company is a declared wilful defaulter by any bank or financial Institution;
- Relationship with Struck off Companies (investment in or by/ receivable/ payable);
- Pending registration of charges or satisfaction with Registrar of Companies;
- Compliance with number of layers of companies;
- Disclosure of 11 Ratios and change more than 25%;
- Compliance with approved Scheme(s) of Arrangements;

# Accounts.....

- Utilisation of Borrowed funds and share premium – quite draconian;
- Details of transaction not recorded in the books that has been surrendered or disclosed as income in the tax assessments;
- Disclosure regarding Corporate Social Responsibility;
- Details of Crypto Currency or Virtual Currency;
- every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled;
- the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year;
- details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

# *Accounts.....*

- Whether there has been any default in payment of interest on deposits or repayment thereof for any period and if so, the details thereof;
- Whether the company has an internal audit system commensurate with the size and nature of its business;
- Whether the reports of the Internal Auditors for the period under audit were considered by the statutory auditor;
- Whether there has been any resignation of the statutory auditors during the year, if so, whether the auditor has taken into consideration the issues, objections or concerns raised by the outgoing auditors;
- Whether, in respect of other than ongoing projects, the company has transferred unspent amount to a Fund specified in Schedule VII to the Companies Act within a period of six months of the expiry of the financial year in compliance with second proviso to sub-section (5) of section 135 of the said Act;

# *Audit.....*

- Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;
- Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

# *Audit.....*

- Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.
- Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.
- Whether the company, in respect of financial years commencing on or after the 1st April, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

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# Corporate Social Responsibility

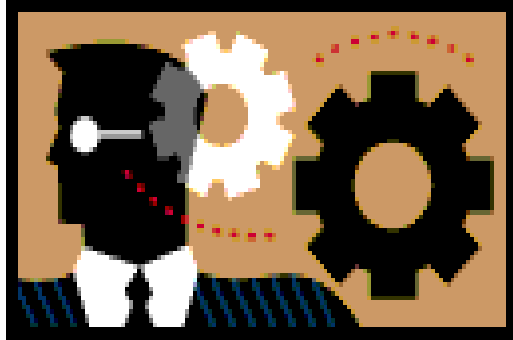
# CSR.....

- CSR has been made mandatory from voluntary;
- Clarity on undertaking long-term projects ('Ongoing/ Multiyear Projects');
- Setting-off excess spending on CSR activities in the succeeding three financial years subject to certain prescribed conditions;
- Implementation agencies/ partners registered under Section 12A and 80G of the Income-tax Act, 1961 can only undertake CSR activities;
- Implementation agencies/ partners intending to undertake CSR activities to be registered with the MCA w.e.f. 1<sup>st</sup> April, 2021;
- Every company having average CSR obligation of ₹ 10 crore or more, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of ₹ 1 crore or more, and which have been completed not less than one year before undertaking the impact study.

# CSR.....

- Enhanced obligations of the Board, CSR Committee & CFO;
- Transfer of unspent CSR amount (other than Ongoing Project') to a Fund under Schedule VII of the Act within a period of six months from the end of the financial year;
- Transfer of unspent CSR amount to a separate bank account in respect of 'Ongoing/ Multi Year Project' within a period of 30 days from the end of the financial year. In case, the said amount remains unspent during the succeeding three financial years from the date of such transfer, the Company shall transfer the same to a Fund under Schedule VII of the Act within a period of 30 days from the date of completion of the third financial year;
- Amendment in CSR Policy and framing of Annual Action Plan; and
- Enhanced annual disclosures in Annexure-II.





Q & A