

**Intensive Course on Companies Act,
2013**

**By
WIRC at Cuffe Parade - Colaba**

**2nd July, 2016 - Saturday
By CA Yagnesh Desai**

Agenda

Corporate Social Responsibilities
Related Party Transactions
Opportunities for CAs

Acronyms

- Corporate Social Responsibility = CSR
- Corporate Social Responsibility Committee = CSR Committee
- The Companies Act ,2013 = the Act
- Board's Report = BR
- Net Worth = NW

Agenda : Corporate Social Responsibility (CSR)

- **Applicability – Threshold**
- **How to measure various parameters**
- **What are the responsibilities ?**
- **How much to spend and on what ?**
- **What to disclose and where ?**

**Applicability : Governing Section 135
of the Act , read with Schedule VII to
the Act**

S 135. (1) Every company having

Thus CSR are requirements are applicable to all type of Companies regardless of private – public – listed – unlisted – Indian branches of foreign companies in India.

Criteria – threshold – any one of the followings.

Turnover of INR 1,000 crores or more

Net worth of INR 500 crores or more

Net Profit of INR 5 crores or more

o

When these are to complied with ?

S. 135 (1) "during any financial year shall" Meaning of "any financial year"

*"Any Financial year" referred U/s S 135(1) the Act read with Rule 3(2) of Companies CSR Rule, 2014 implies any of the three immediately preceding financial years" - **though not explicitly mentioned construed to be immediately preceding. * even 1 year old Company is covered. GS 21/2014 Dt 18.6.2014***

➤ S 139(5) mentions "the average net profits of the company made during the three immediately preceding financial years"

No need to recalculate for Financial Statements prepared under the Companies Act 1956.

Corporate Social Responsibility (CSR)

- Means and includes but is not limited to:
- (i) Projects or programs relating to activities specified in Schedule VII to the Act or
- (ii) Projects or programs relating to activities undertaken by the board of directors of a company (Board) in pursuance of recommendations of the CSR Committee of the Board as per declared CSR Policy of the company subject to the condition that such policy will cover subjects enumerated in Schedule VII of the Act .
- Excluding activities undertaken in pursuance of *normal course* of business of a company.

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Any adjustments to net Profits for measuring
CSR ? Yes

Net profits computed in terms of S198 and S 381
(1) (a) of the Act to be reduced by the followings :-

A. Profits from any overseas branch of the
company, including those branches that are
operated as a separate company . As a corollary, income earned
outside India shall be excluded for determining CSR spend in India.

B. Dividends received from other companies in
India which need to comply with the CSR
obligations would not be included in the
computation of net profits of a company for CSR

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What are the requirements of Section 135? CSR Committee

- The Companies covered are required to form a CSR Committee consisting of three or more directors with at least one independent director, except the followings:-
 - **Special Cases**
 - *an unlisted public company*
 - *a private company*
 - *a foreign company covered under these rules, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under clause (d) of sub-section (1) of section 380 of the Act and another person shall be nominated by the foreign company.*

What are the requirements of Section 135?

- The Company spends, in every financial year, at least two per cent. of the **average net profits** of the company made during the **three immediately preceding financial years**, in pursuance of its Corporate Social Responsibility Policy:
- *Explanation to S 139(5)*—For the purposes of this section “average net profit” shall be calculated in accordance with the provisions of section 198.

The Onus of the Board and the CSR Committee

Role of Board of Directors	Role of CSR committee
Form a CSR committee	Three or more directors with at least one independent director
Approve the CSR policy	Formulate and recommend a CSR policy to the board
Ensure implementation of the activities under CSR	Recommend activities and the amount of expenditure to be incurred
Ensure 2% of the Average Net Profit are spent	Monitor the CSR policy from time to time
Disclose reasons for not spending the amount (if applicable)	

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What are the activities permitted as per Schedule VII of the Companies Act 2013 ?

- As per the **notification released on 27.02.2014** consisting of Amendments in Schedule VII, following are the activities which are permitted to be undertaken for the purpose of CSR
- List of [activities](#)
- These must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.
- Salary paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure

Which activities are not covered ? 1

- Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.
- Expenditure incurred by Foreign Holding Company for CSR activities in India ?
- Only if, the CSR expenditures are routed through Indian Subsidiaries & if the Indian Subsidiary is required to do so as per Section 135 of the Act
- Contribution of any amount directly or indirectly to any political party under section 182 of the Act, shall not be considered as CSR activity.

Which activities are not covered ? – 2

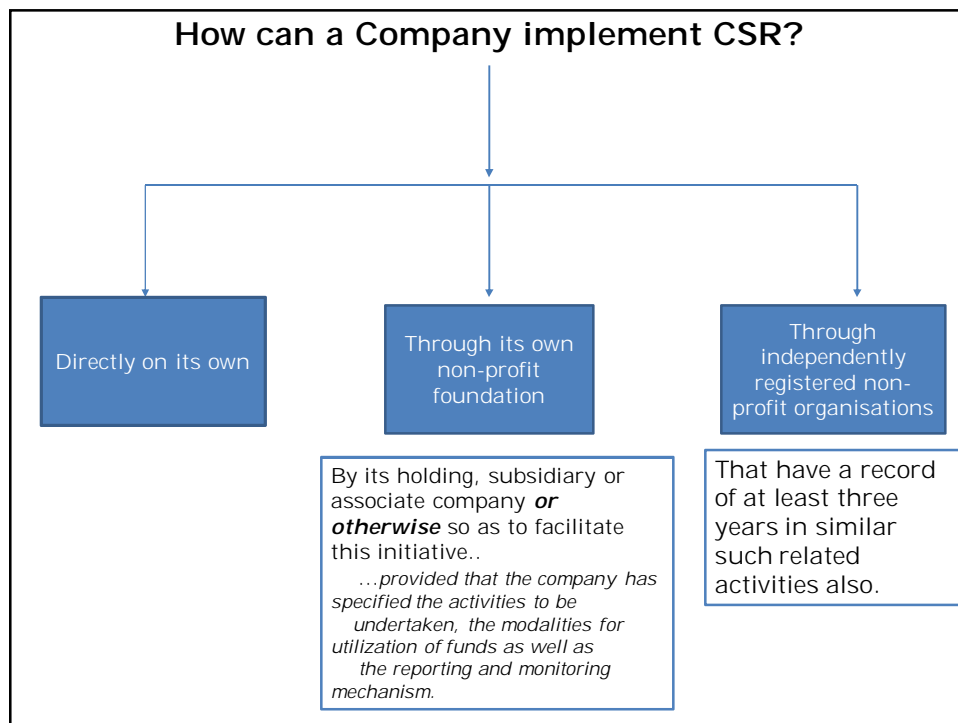
- CSR projects or programs or activities that benefit only the employees of the company and their families shall not be considered as CSR.
- Programme or activities that are for the benefit of all, but, which also includes some employees or their families will still be considered as CSR as long as such benefits are not exclusively for the benefit of such employees.
- Example recreational facilities provided for employees and their families in the employee quarters shall not be considered as CSR.
- Spending in Technical and Vocational Training for skill building based on training cum apprenticeship results in enhancing the employability of such trainees.
- Cost of such expenses such as stipend, faculty, infrastructure costs etc will be included as CSR activities.
- It will not deprive the company which is providing such training to hire a trainee from that pool of talent. However, if such a training is provided to existing employees then it shall not qualify as CSR

Which activities are not considered as CSR ?

- Programmes or projects or activities that are carried out as a pre-condition for setting up a business or as part of a contractual obligation undertaken by the company or in accordance with any other law.
- Such would be considered to be the activities undertaken in the 'normal course of business' of the company and, therefore, would not be considered CSR activities

CSR activities – as a programme

- CSR activities should be undertaken by the companies in project/programme mode
- and
- not as One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure



How can a Company implement CSR?

- Collaborating or pooling their resources with other companies
- Only CSR activities undertaken in **India** will be taken into consideration.
- Activities meant exclusively for employees and their families will not be considered as a part of CSR.
- Preference would need to be given to local areas and the areas around where the company operates.

CSR –Rules amended- 12 Sep 2014-Notification

- The Companies (Corporate Social Responsibility Policy) Rules, 2014- Rule 4 (6) –amended as follows:-
 - Companies may build CSR capacities of their own personnel as well as those of their Implementing agencies through Institutions with established track records of at least three financial years but such expenditure [including expenditure on administration overheads,] shall not exceed 5 % of total CSR expenditure of the company in one FY

What if spend in excess ?

- Excess can not carried forward and off set against future liability.
- Nonetheless the company is entitled to disclose in their Annual Reports of subsequent years any such excess spending of previous years while giving reasons for not spending in those later years.

Short fall

- How to deal with shortfall ?
- Any shortfall in spending in CSR shall be explained in the financial statements and the Board of Directors shall state the amount unspent and reasons for not spending that amount.
- Is there a need to provide for short fall ?
- Can a company provide for CSR activities ?

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CSR Reporting

- (1) The Board's Report shall include an annual report on CSR containing particulars specified in Annexure 2
- (2) In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

CSR and Schedule III

- Item 5 (a) of the General Instructions for Preparation of Statement of Profit and Loss under Schedule III to the Companies Act, 2013, requires the amount of expenditure incurred on 'Corporate Social Responsibility Activities' shall be disclosed by way of a :-
- a note to the statement of profit and loss.
- the note should also disclose the details with regard to the expenditure incurred in construction of a capital asset under a CSR project.

Disclosure in Financial Statements

- As a separate line item or or under natural heads of expenses in the statement of profit and loss with disclosure of the break-up and the total amount spent on CSR activities during the year.

Disclosure Requirements in Board's Report

- Composition of CSR Committee
- Meetings and attendance of the committee members
- Role of the Committee
- CSR Policy formulated by them
- Re CSR Amount
 - Amount to be spent for the financial year
 - Any amount unspent, with reasons S 134(3)(o)
 - Manner in which the amount spent during the financial year. ..Continued

Disclosure Requirements in Board's Report...Continued

- A responsibility statement of the CSR committee , that the implementation and monitoring of CSR policy is in compliance with CSR objectives and policy of the Company.

Display of CSR activities on its website

- The Board of Directors of the company shall, after taking into account the recommendations of CSR Committee, approve the CSR Policy for the company and disclose contents of such policy in its report and the same shall be displayed on the company's website, ***if any***, as per the particulars specified in the Annexure.

What if not reported by the board ?

- If not compliance with S 134(3)(o) ..penalty U/s 134(8) , minimum Rs 50,000 to Rs 25,00,000...
- And now a million dollar question ..
- There is no specific penalty for not spending mandatory limit...
- Absent specific penalty , general penal clause S 450 will be applicable.

CSR and Taxable Income

- Can Amount spent on CSR activities be claimed as deductible expenses to arrive at taxable income ?
- Can deduction Chapter VIA Section 80 G be claimed of the amount contributed to charitable trusts ?
- Which are the other provisions under which the deduction for CSR activities be claimed ?
- Amount spent on capital assets under CSR.

When can the Company stop complying with Section 135?

- Once covered under CSR provisions, companies will need to have 3 consecutive years, where the provisions do not apply to them, before they can stop complying with the requirements relating to CSR.

CSR Saga			
Sr No	Financial Year	Net Profit in Cr	Covered ?
	12011-12	4.00	
	22012-13	5.50	
	32013-14	3.00	
	2014-15	2.50	Yes
	52015-16	4.00	Yes
	62016-17	5.50	No
	72017-18	6.00	Yes

Related Party Transactions

Related Party Transactions – Snap Shot

Section - Rule	Description
S 188	Related Party Transactions ..
Rule 15	Contract or arrangement with a related party
S 184	Disclosure of Interest by Directors
Rule 16	Register of contracts or arrangements in which directors are interested
S 2 (76)/(77)	Related Party / Relative
General Circular 30 . Dt 17.7.2014	Clarification concerning related party Transactions
Circular Dated 14.8.2014	Changes in limits of Transactions
Section 16 of CA Amendment Act, 2015	Requirement of resolution shall not be applicable to transactions entered into between a holding company and its wholly owned subsidiary vide notification date 29.5.2015. Not just to Private Companies.

Definition of related party- 2(76)(viii) will not apply to private company

- “related party”, with reference to a company, means—
- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative * is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;

Definition of related party- 2(76)(viii) will not apply to private company

- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:
- Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- **(viii) any company which is—**
- **(A) a holding, subsidiary or an associate company of such company; or (B) a subsidiary of a holding company to which it is also a subsidiary;**
- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Who is relative ? S 2 (77)

- Members of a Hindu Undivided Family;
- Husband and wife; or
- Father: Provided that the term "Father" includes step-father.
- Mother: Provided that the term "Mother" includes the step-mother.
- Son: Provided that the term "Son" includes the step-son.
- Son's wife.
- Daughter.
- Daughter's husband.
- Brother: Provided that the term "Brother" includes the step-brother;
- Sister: Provided that the term "Sister" includes the step-sister.

Related party Transactions - Sec 188(1) read with Rule 15 (3) – Private Companies Exempted vide Notification dated 5.6.2015 *

Consent of the Board Resolution for

Contract or arrangement with **a related party** with respect to—

- (a) sale, purchase or supply of any goods or materials;
- (b) selling or otherwise disposing of, or buying, property of any kind;
- (c) leasing of property of any kind;
- (d) availing or rendering of any services;
- (e) appointment of any agent for purchase or sale of goods, materials, services or property;
- (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- (g) underwriting the subscription of any securities or derivatives thereof, of the company

Mark the difference between S 185 – which exempt only select private companies as against S 188 which gives blanket exemption.

I. Approvals

- A. Prior approval by **resolution** * by the Company on meeting **following threshold** S 188 Proviso 1 read with rule 15(3). Refer to the [Related Party Table.xlsx](#) table
- Paid-up share capital- of ten crore rupees or more – Any related party – Any transaction , or
 - Various Transactions – different threshold Limits
- B. In other cases only **Board's** Approval is required.
- C. **No Approvals for transactions in ordinary course of business and at arms length are excluded from the purview of S 188.**
- D. For Private Companies . no approval for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated – Vide Notification 29.05.2015

Miscellanea

I Who can not vote ?

- If member is a related party he shall not vote on such special resolution , exception, general circular 30 .dt 17.7.2014, specifically interested party. – **Relaxation for member of private company. Vide Notification dt 5.6.2015**
- Interested director not to be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement- . Who is interested director ?

II. Disclosure by interested director –

- **S 184(2) : Disclosure by a director at the meeting of the Board, this not applicable to private company vide notification dated 5.6.2015**

What if director becomes interested after the contract/arrangement is entered into ?

- [Discuss](#) 174 (3) – Quorum – the recent exemption will remove the hardship of private companies.

Clarification in July 2014- General Circular 30/2014 Dt 17.7.2014

Compromises – Arrangements and Amalgamations

It is clarified that transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 1956/Companies Act, 2013, will not attract the requirements of section 188 of the Companies Act, 2013.

Requirement of fresh approvals for past contracts under Section 188. :-

Contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which already came into effect before the commencement of Section 188 of the Companies Act, 2013, will not require fresh approval under the said section 188 till the expiry of the original term of such contracts.

Thus, if any modification in such contract is made on or after 1st April, 2014, the requirements under section 188 will have to be complied with.

Violation - Transaction

- **Query** :What if the director has not disclosed his interest or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement ?
- Section 184(3) – Voidable at the option of the Company.
- **Query** :What if any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting ? S 188(3)
- If not ratified by the Board or the Company within three months - the contract or the arrangement becomes voidable at the option of the Company. Directors concerned shall indemnify the company against any loss incurred by it. Without prejudice to Company's right for action against the director or employee.

Violation - Penalty

Director or employee of a company, who violates provisions of S. 188 shall be punishable with :

In case of listed Company :

Maximum Imprisonment for one year or

Minimum Fine of Rs. 25,000 and maximum of Rs. 5,00,000

In case of any other Company :

Minimum Fine of Rs. 25,000 and maximum of Rs. 5,00,000

Caveat – default U/s 188 attracts disqualification

“S 164 (1) (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years.”

RTP Disclosures

I . Disclosures

- Board Report – [Annexure 2](#)
- Notes to Accounts as per AS 18
- RC 49

II. Auditor to consider SA 550

III. Income Tax Section 40(A)(2) – 3 CD item No.23

Opportunities

- National Tribunal
- Consultancy – Company Law
- Consultancy – Accounting Standards
- Valuation

Q & A

Thank You

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