

Current Trends related to Corporate Social Responsibility, Related Party Transactions, Issues relating to Managerial Remuneration and Issue of Securities

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CURRENT TRENDS RELATED TO CORPORATE SOCIAL RESPONSIBILITY

Global Definition of CSR

CSR is “the *responsibility of enterprises* for their impacts on society”. To completely meet their social responsibility, enterprises “should have in place a process *to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy* in close collaboration with their stakeholders” .

[http://ec.europa.eu/enterprise/policies/sustainableCentre for Social Initiatives and Management 1/11/2014 business/corporate-social-responsibility/index](http://ec.europa.eu/enterprise/policies/sustainableCentre%20for%20Social%20Initiatives%20and%20Management%201/11/2014%20business/corporate-social-responsibility/index)

Applicability

Turnover

- Rs. 1000 crores or more

Net Worth

- Rs. 500 crores or more

Net Profit

- Rs. 5 crores or more

Requirement to spend *2% of the average net profit* of the immediately preceding three financial years.

Concerned Compliances

Establishment of CSR Committee

- Minimum 3 members
- At least one must be an independent director

CSR Committee to

- Develop and report on the CSR policy and associated initiatives to the board every year.
- Budget and monitor the CSR policy
- Report on the CSR policy and initiatives undertaken during the year as part of the report of the board, which is circulated along with the annual report and on company's website

Board to

- Oversee implementation of the policy
- Ensure that 2% is spent
- Provide justification in case of non-spend of 2%

Where to Spend?

Local Areas be preferred

Education

Hunger and Poverty

Gender Equality and Women Empowerment

Child Mortality

Healthcare and Sanitation including Swachh Bharat Kosh

Environmental Sustainability including Clean Ganga Fund

Vocational Skills including Paralympic sports

Contribution to PM Relief Fund or other Funds

Armed Forces Veterans, War Widows and their families

Technology Incubators located within Academic Institutions

Rural Development including Slum Development

**Not considered as CSR
Activities**

Projects that benefit the employees of the company

One off events such as marathons, scholarships, awards etc.

Expenses incurred for the fulfilment of any other Act/ Statute/ Regulations

Contribution of any amount directly/ indirectly to any political party

Activities in the normal course of business

Projects or programmes or activities undertaken outside India

How to Spend?

To be conducted as projects, only within India;

Preference be given to local area where business is established

Implementation

Directly by the Company.

Through registered organizations having at least 3 years experience in similar programmes.

Through registered organizations promoted by the company. 3 years criteria not to apply.

Through collaboration with other companies.

Contents of CSR Report

Brief outline of CSR Policy and reference to web-link

Composition of CSR Committee

Average Net Profit in relation to the FYs

Prescribed CSR Expenditure

Amount spent and manner in which spent

Reason for Non-Spending

Responsibility Statement of CSR Committee

Penal Provisions	For not disclosing details on CSR Policy in Board's Report u/S 134(3)(o)	Company	Fine of not less than Rs. 50,000 and upto Rs. 25,00,000
		Officer in Default	Imprisonment for a term which may extend to 3 years Fine of not less than Rs. 50,000 and upto Rs. 5,00,000 Both

Penal
Provisions

For
repeated
default
u/S 451

Company
and *every*
officer
thereof

Twice the
amount of fine
for such offence

Imprisonment
as provided

WHAT WENT WRONG????

Home > India > CSR: 4,195 companies spend nothing; show cause notices to 496 firms

CSR: 4,195 companies spend nothing; show cause notices to 496 firms

The reasons for not spending included companies not finding suitable implementing agency, delay in formation of CSR committee and inability to formulate a well conceived CSR policy.

3
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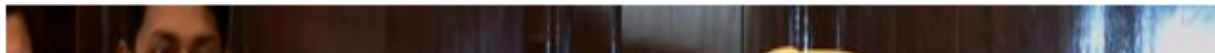


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BUSINESS

One in Three BSE 100 Firms Falls Short in Mandatory CSR Spending

Corporate affairs ministry is sending notices seeking details of fund disbursal.



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160 companies to face penal action for CSR violations

The corporate affairs ministry, which is keeping a close tab on companies' compliance with the CSR provisions, had served show-cause notices to 1,018 defaulting entities.

PTI | October 08, 2017, 14:54 IST



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NOW WHAT????

RELATED PARTY TRANSACTIONS

Monday, June 25, 2018

Intensive Workshop of Companies Act
Organized by WIRC of ICAI

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Key Issues

(Also Addressed in Amendment Act of 2017)

Company vs. Body Corporate

Investor in Associate Company

Voting Rights

Approval of Related Party Transactions

Audit Committee Pre-Approval

Company vs. Body Corporate

The word "company" includes holding, subsidiary, associate. Foreign company is not a company under CA 2013.

Under Amendment Act of 2017, "A *Body corporate* (Foreign company) *which is a holding/subsidiary/ associate/fellow subsidiary of an Indian company* will be treated as related party." Here company includes "body corporate".

Investor in Associate Company

- An investing company or a venturer shall also become a related party as per the new list.
- *Explanation.*-For the purpose of this clause, “the investing company or the venturer of a company” means a *body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.*

Voting Rights

Second proviso to section 188(1) of the Act, 2013 restricts such member of the company to vote on any resolution placed before the members to which he is a related party under section 188.

The change pertains to incorporating the *restriction under section 188 for the party to the contract to abstain from voting.*

Section 47 aligned with Section 188.

Approval of Related Party Transactions

Section 188 of the Act requires RPTs to be approved by an ordinary resolution of disinterested shareholders, if they do not meet the prescribed exemption criteria.

As per Amendment Act, *the requirement of related party to abstain from voting will not apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.*

Audit Committee – Pre Approval

In case *Audit Committee does not approve* a Related Party Transaction (RPT) (other than those transactions referred in section 188 of 2013 Act), *it shall make its recommendations to the Board.*

Audit Committee may ratify RPT not exceeding ` 10 million entered into by a director or officer of the Company without its approval. Such *ratification should be done within 3 months of entering into RPT* and if such RPT is not ratified by Audit Committee, then such *RPT shall be voidable at an option of the Audit Committee. Further, such director shall also indemnify the Company for any loss arising from such RPT.*

Audit Committee – Pre Approval

RPT (other than those transactions which are prescribed under section 188 of 2013 Act) *between a holding company and its Wholly-Owned Subsidiary (WOS) will not require approval* of the Audit Committee.

However, if these transactions requires board approval u/s 188, then will also require approval of Audit Committee.

RPT – Voidable at the option of the Board

Under Companies Act, 1956:

“Where any contract or arrangement is entered into by a director or any employee without obtaining the consent of the board and/or approval in general meeting within 3 months, then such contract will be voidable at the option of the board.”

Amendment Act of 2017 states that *apart from being voidable at the option of the board, the contract would also be voidable at the option of the shareholders.*

ISSUES RELATING TO MANAGERIAL REMUNERATION

Key Issues

(Also Addressed in Amendment Act of 2017)

Limit on Managerial Remuneration

Calculation of Profits on Managerial Remuneration

Managerial Remuneration in case of absence/inadequacy of profits

Refund of excess remuneration

Auditor Reporting

Limit on Managerial Remuneration

Approval of the Government is now not required for making *payment of remuneration exceeding 11% of the net profits* of the Company or exceeding the individual limits prescribed in case of executive or non-executive directors and the remuneration exceeding the aforesaid limits *can be paid by passing special resolution in general meeting*.

In case of default in payment of dues by a Company, remuneration to directors, managing director, whole time director and manager can be paid only with the prior approval of concerned bank or public financial institution or the nonconvertible debenture holders or other secured creditor, as the case may be.

Calculation of Profits on Managerial Remuneration

For the purpose of *calculation of profits for determination of managerial remuneration and CSR under section 198*, following changes are made:

1. Profits by way of premium on shares or debentures of the Company which are issued or sold by an investment company shall be allowed as credit to the profit and loss account;
2. Credit shall not be given for any unrealized gains, notional gains or revaluation of assets;
3. The loss in any year included in calculation of profits, in so far as such loss has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained, shall be allowed as a deduction.

Managerial Remuneration in case of absence/inadequacy of profits

Powers of Government to approve payment of higher managerial remuneration than prescribed under Schedule V of the 2013 Act is removed. *In case of loss or inadequacy of profits, remuneration can only be paid in accordance with Schedule V of the 2013 Act.*

Refund of excess remuneration

Powers of the Government to approve waiver of excess remuneration paid to directors is removed. *Director to refund excess remuneration received within 2 years or such lesser period as may be allowed by the Company and until such sum is refunded, the director shall hold it in trust for the Company.*

The *shareholders may waive recovery of excess managerial remuneration by passing a special resolution within 2 years* from the date the sum becomes refundable. In case of default in payment of dues by the Company, such waiver is conditional on receipt of prior approval from the concerned bank or public financial institution or the non-convertible debenture holders or other secured creditor, as the case may be.

Auditor Reporting

Currently, CARO 2015 requires auditors to comment whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with schedule V to the 2013 Companies Act.

As per Amendment Act,

Auditor to state in his report under section 143 whether:

1. Remuneration paid is as per section 197;
2. Remuneration paid to any director is in excess of limits under section 197;
3. Other details as may be prescribed

ISSUANCE OF SECURITIES

Key Issues

(Also Addressed in Amendment Act of 2017)

Matters to be stated in prospectus

Civil-liability for mis-statements in prospectus

Process of private placement

Issue of shares at discount

Mode of delivery of offer letter for right issue

Valuation under section 62(1)(c)

Matters to be stated in prospectus

Every prospectus issued by a public company shall state *such information and set out reports on financial information* as may be specified by Securities and Exchange Board of India (SEBI) in consultation with the Government.

Civil-liability for mis-statements in prospectus

Shield is provided to the persons from civil-liability for mis-statement in prospectus if he proves the following:

- every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a *correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from the report or valuation;*

Civil-liability for mis-statements in prospectus

- he had *reasonable ground to believe* and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it;
- the *said person had given the consent required* by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

Process of private placement

- The group of *persons* whom the offer is to be made is *to be identified* by the Board.
- Private Placement offer and application *shall not carry right of renunciation*.
- Requirement to file Form GNL-2 has been discontinued;
- Companies *cannot use funds till return of allotment has been filed with ROC within 15 days* from the date of allotment. Separate penalty provided for default in filing of return of allotment.
- Companies can simultaneously take up more than one issue of securities.

Issue of shares at discount

Company may issue shares at a discount *to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme* in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

Issue of sweat equity shares

Removal of the restriction to issue sweat equity shares before expiry of 1 year from the commencement of business. Now they *can be issued any time.*

Mode of delivery of offer letter for right issue

Addition to the mode of delivery of offer letter under section 62(1)(a)(i) being *any other mode having proof of delivery.*

Valuation under section 62(1)(c)

Report of registered valuer under section 62(1)(c) shall now be subject to compliance of Chapter III of the Act and any other conditions as may be prescribed.

Thank You!

CS Reema Jain