



# Amita Desai And Co.

9th May 2021- ICAI- Khar CPE Study Circle Mumbai

## Company Secretaries

Amita Desai & Co., Company Secretaries 9<sup>th</sup> May 2021





**Recent  
Amendment**

in the  
**Companies Act  
2013**

AMITA DESAI & CO.  
Company Secretaries  
ICAI Khar CPE Study Circle

**9 May, 2021**



# Recent Changes

- Changes due to Pandemic- Relaxation by MCA, SEBI and RB
- Board Meetings
- Shareholders Meeting
- Remuneration to NED and ID
- CSR and more Disclosures
- CARO 2020
- Schedule III to CA 2013
- NFRA List of companies and Auditors
- New Def of MSME
- PPIRP- Pre Packaged Insolvency Resolution Process



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# Definition of Small Company- Sec 2 (85)

**MCA vide  
Notification  
No. CG-DL-E-  
01022021-  
224862 dated  
1<sup>st</sup> February,  
2021  
**OTHER THAN  
PUBLIC COMPANY****

**Paid up Share Capital of the  
Company shall not exceed  
Rs. 2 Crores instead of  
Rs. 50 Lakhs  
Max remains same - 10 Cr**



**Turnover of the Company  
shall not exceed  
Rs. 20 Crores instead of  
Rs. 2 Crores  
Max remains same - 100 Cr**

**Effective from 1<sup>st</sup> day of April, 2021**





# ONE PERSON COMPANY



# Eligibility Criteria: Incorporation of OPC

MCA on 1<sup>st</sup> February, 2021 issued Notification regarding eligibility criteria for incorporation of One Person Companies (OPC)– wef 01.04.2021

- ▶ Earlier, only Indian National and Resident were allowed to Form OPC in India;
- ▶ Now Non-Resident Individuals with entrepreneurial potential are allowed to set up OPC with no paid up capital and turnover restrictions i.e without any threshold limits;



# Eligibility Criteria: Incorporation of OPC

- ▶ Timeline of “Resident of India” who has stayed in India has been substituted from 180 days to 120 days;
- ▶ Effective from 1<sup>st</sup> day of April, 2021
- ▶ A OPC can be easily converted into a Private or Public Company, other than Section 8 company after
  - ▶ (a) increasing the minimum number of members and directors to 2 or 7 members and 2 or 3 Directors, as the case may be,
  - ▶ (b) maintaining the minimum paid-up capital as per CA 2013 ;and
  - ▶ (c) by making due compliance of section 18 of the Act for conversion



# Board Meetings





# Board Meetings - Recent Changes by way of Amendment in Rules

Original Relaxation: Up to 30.06.2020. However, it has been extended to 30.09.2020, then to 31.12.2020 & then now it is upto 30.06.2021

- The Companies (Meetings of Board and its Powers) Amendment Rules, 2020 (dtd. 19.03.2020, 24.06.2020, 29.09.2020 & 30.12.2020)
- Temporary relaxation to the requirement of physical presence of Directors in Board Meeting and dealing of Restricted Matters such as approval of the Annual Financial Statements, Board's report, Prospectus, etc. through video conferencing allowed.



# Board Meetings - Recent Changes by way of Amendment in Rules

Requirement as per CA2013 : Minimum Four Meetings to be held in a year with maximum gap of not exceeding 120 days

**MCA circular dated 24.03.2020 & 03.05.2021**

- Until next two quarters (i.e. up to September 30, 2020) the time gap between two BM can be up to 180 days.
- Due to second wave of COVID 19 Pandemic, similar relaxation has been given for further next two quarters (i.e. up to September 30, 2021)



# Board Meetings - Recent Changes by way of Amendment in Rules

- ▶ If A Ltd has held Board meeting on 10.01.2021. By what latest date it can have next meeting?

## Position without relaxation

- ▶ Next Meeting – 10/01/2021+120 days = 10/05/2021
- ▶ Further Meeting – 10/05/2021+120 days = 07/09/2021

## Position with relaxation

- ▶ Next Meeting – 10/01/2021+180 days = 09/07/2021
- ▶ Further Meeting – 09/07/2021+120 days = 06/11/2021



# Board Meetings - Recent Changes by way of Amendment in Rules

If A Ltd has held Board meeting on 10.04.2021. By what latest date it can have next meeting?

## Position without relaxation

- ▶ Next Meeting – 10/04/2021+120 days = 08/08/2021
- ▶ Further Meeting – 08/08/2021+120 days = 06/12/2021

## Position with relaxation

- ▶ Next Meeting – 10/04/2021+180 days = 07/10/2021  
(01/10/2021)
- ▶ Further Meeting – 01/10/2021+120 days = 29/01/2022



# Board Meetings – Practical Issues

1. Due to lockdown restrictions, professionals are unable to make any movement and have limited access to statutory records, in such a situation how to see the compliances can be done and records can be maintained ?

- Digitally signed document has validity in digital environment but in physical form it has no meaning.
- BM/GM Notice; Shorter notice consent; Minutes; Attendance Records; Nomination Resolutions and Proxy forms.=== **All can be digitally signed**



# Board Meetings – Practical Issues

**2.Can a Board pass all restricted items through circular resolutions?**

All agenda items can be passed through VC or OAVM upto 30.09.2021 except the following items that cannot be passed through circular resolution:

- Resolution for filling casual vacancy of Director under section 161(4);
- Items specified in section 179(3);



# Board Meetings – Practical Issues

Section 179 (3) – Only in BM may be thru VC/ OVAM but not thru circulation

- (a) to **make calls** on shareholders in respect of money unpaid on their shares;
- (b) to authorize **buy-back of securities** u/s 68;
- (c) to **issue securities**, including debentures, whether in or outside India;
- (d) to **borrow monies**;
- (e) to **invest the funds** of the company;
- (f) to **grant loans or give guarantee** or provide security in respect of loans;
- (g) to approve **financial statement** and the **Board's Report**;
- (h) to **diversify the business** of the company;
- (i) to approve **amalgamation, merger or reconstruction**;
- (j) to **take over a company** or acquire a controlling or substantial stake in another company;
- (k) any **other matter** which prescribed under Rule 8 of meeting of Board and its Power:



# Board Meetings – Practical Issues

- Resolution for **contribution to political parties** under section 182(1);
- Resolution under **section 188(1)** for RPT
- Resolution for **appointment of MD, WTD or Manager u/s 196** ;
- Appointment of person as MD/Manager who is already MD/ Manager of any other Company under section 203(3)



# Shareholders Meetings- Recent Changes

## EGM/Postal Ballot

- Relaxation in conducting EGM through VC/ OAVM
- Clarification on passing of Ordinary and Special Resolutions by the Companies.
- Dispensation from sending physical notices for EGM/Postal ballot.



# Shareholders Meetings- Recent Changes

- General Circular No. 14/2020 dated 08.04.2020 - **Permitted convening of EGM's through VC/OAVM**
- General Circular No. 17/2020 dated 13.04.2020 - **Clarification that notice through email sufficient**
- General Circular No. 22/2020 dated 15.06.2020- **Registration of emails and Newspaper advertisement**



# Shareholders Meetings- Recent Changes

- General Circular No. 33/2020 dated 28.09.2020 -  
**All resolutions to be filed with RoC**
- General Circular No. 39/2020 dated 31.12.2020 -  
**Relaxation extended up to 30.06.2021**



# Shareholders Meetings- Recent Changes

## Annual General Meeting

Time limit for holding AGM may be extended by three months by general orders of the respective Registrar of Companies. This is especially required for the Companies whose financial year ended at 31.12.2020



# Shareholders Meetings- Recent Changes

- **General Circular No. 18/2020 dated 21.04.2020 -Extension of time for holding AGM within 9 months (30.09.2020) for companies whose financial year ended at 31.12.2019**
- **General Circular No. 20/2020 dated 05.05.2020 - Relaxation has been given for all AGM due in 2021**
- **General Circular No.02/2021 dated 13.01.2021 – AGM of the Companies due to be held in the year 2020 or become due in the year 2021, timeline to conduct AGM on or before 31.12.2021**



# Shareholders Meetings- Recent Changes

- 1. Content:** The notice is required to make disclosures with regard to the manner in which the framework provided in the circular shall be available for use of members and also contain clear instructions on how to access and participate in the meeting along with necessary helpline numbers.
- 2. Email id's:** The company shall make efforts by phone call etc. to collect email id's.
- 3. Dispatch:** Through e-mail only.
- 4. Website:** The notice shall be displayed on website, if any, of the Company.



# Shareholders Meetings- Recent Changes

- 1. Notice convening the meeting:** Notice through email sufficient. No notice required to be given to the shareholders who have not provided their email id's to the Company.

Company to make efforts to collect email id's, by making phone calls and other modes. News paper advertisement to be given at-least 3 days before sending notices in certain cases;

- 2. Postal Ballot:** The resolutions can be passed through Postal ballot also;



# Shareholders Meetings- Recent Changes

3. **AGM:** The Companies can hold AGM for consideration of ordinary or special business;
4. **VC or OAVM to conduct meetings:** Companies allowed to hold general meetings through video conferencing (VC) or other audio visual mode (OAVM);
5. **Quorum:** Members attending meeting through VC or OAVM shall be counted for quorum;
6. **Proxies:** No option to allow participation of members through proxies;
7. **Show of hands:** No option to vote through show of hands



# Shareholders Meetings- Recent Changes

- 1. Can a Company pass resolution for removal of Director or Auditor through General meeting held through VC/OAVM, where director/auditor has right to representation?**

Yes, provided the director/auditor has been provided necessary right of representation.



# Shareholders Meetings- Recent Changes

## **2. Can a Company hold Physical Meeting of Shareholders?**

Yes, subject to compliance of Lockdown restrictions and necessary permissions from competent authorities, if any for holding meeting/physical gathering

## **3. Can a company avail exemption for sending notice/annual reports through email? No**



# Changes in Board Report

- 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.
- ***The Companies (Accounts) Amendment Rules, 2021 effective from 01.04.2021***



# Accounting Software

Every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has following feature

- Capable of recording audit trail of each and every transaction;
- Capable of creating an edit log of each change made in books of account along with the date when such changes were made;
- Ensure that the audit trail cannot be disabled.
- ***The Companies (Accounts) Amendment Rules, 2021 effective from 01.04.2022***



# Decriminalization of Offences CAA 2020





# Decriminalization of Offences

- Punishment for non compliances regarding transfer/transmission of shares under section 56(6);
- Punishment for non compliances regarding creation, modification or satisfaction of charges under section 86(1);
- Punishment for non maintenance of register of member under section 88(5);
- Punishment for non declaration of beneficial interest by the registered holder or beneficiary under section 89(5);



# Decriminalization of Offences

- Punishment for non filing of beneficial interest by the Company under section 89(7);
- Punishment for non compliance regarding SBO under section 90(11) & (12);
- Punishment for wrong certification by PCS under section 92(6);
- Punishment for sending invitations for appointment of proxies at Company's expense under section 105(5);
- Punishment for non compliance regarding unpaid dividend or transfer of shares under section 124(7);



# Decriminalization of Offences

- Punishment for non compliance regarding signing of financial statement and content & signing of board report under section 134(8);
- Punishment for non compliance regarding CSR under section 135(7) & (8);
- Punishment for any non compliance in Chapter XI under section 172;
- Punishment for non compliance in relation to Audit Committee or NRC under section 178(8);



# Decriminalization of Offences

- Punishment for non compliance regarding disclosure of interest or participation in agenda items in which he is interested under section 184(4);
- Punishment for non compliance regarding requirement of making investments in own name under section 187(4);
- Punishment for non compliance regarding transaction with related parties under S 188(5)
- Punishment for non compliance regarding Secretarial Audit under section 204(4);



# Decriminalization of Offences

- Punishment for non compliance of provisions regarding restructuring under S- 232(8);
- Punishment for contraventions by Valuer under section 247(3);
- Punishment for non cooperation with Liquidator under section 284(2);
- Directions regarding forwarding of dissolution order under section 302(3) & (4);
- Prosecution of Delinquent Officers and Members of Company under section 342(6);



# Decriminalization of Offences

- Directions regarding forwarding of the order under section 356(2);
- Punishment for non furnishing of Information or Statistics to Central Government under section 405(4);
- Punishment for offences for which no specific penalty has been provided in the Act under section 450;
- Punishment for wrongful withholding of property under section 452(2)



# Reduction in amount of Penalty

- **Non compliance regarding alteration in capital under section 64(2)** - Per day Penalty reduced from Rs. 1000/- to Rs. 500/- per day and maximum capping of Rs. 5 lacs reduced to Rs. 1 Lac
- **Non compliance in filing of Annual Return under section 92(5)** - Penalty for non filing of Annual return reduced from Rs. 50K to Rs. 10K. No change in Penalty of Rs. 100 per day in case of continuing offence, however maximum penalty reduced from Rs. 5 lacs to Rs. 2 lacs in case of Company and Rs. 50K for officers.



# Reduction in amount of Penalty

## ➤ Non compliance regarding filing of resolutions/ agreements under section 117

Penalty reduced from Rs. 1 lacs to Rs. 10K, Penalty for continuing offence reduced from Rs. 500 to Rs. 100 per day, Maximum capping reduced from Rs. 25 lacs to Rs. 2 lacs & Penalty for officers reduced from Rs. 50 K to Rs. 10K, Penalty for continuing offence reduced from Rs. 500 to Rs. 100 per day & Maximum capping reduced from Rs. 5 lacs to Rs. 50K.



# Reduction in amount of Penalty

## ➤ **Punishment for non filing of financial statement under section 137(3)**

Penalty for non filing of Financial statement reduced to Rs. 10K, Penalty for continuing offence Rs. 100 per day subject to Max of Rs. 2 lacs, Penalty for MD & CFO or director or all directors Rs. 10K & Penalty for continuing offence Rs. 100 per day subject to Max of Rs. 50K

## ➤ **Punishment for non filing of resignation by Auditor to the Registrar under section 140(3)**


Penalty amount reduced from Rs. 5 lacs to Rs. 2 lacs



# Reduction in amount of Penalty

- **Punishment for failure to discharge duties by Auditors under section 143(3)**  
Higher Penalty of Rs. 5 lacs provided for default relating to listed Companies.
- **Punishment for acceptance of directorship exceeding prescribed limits under section 165(6)**  
Penalty amount reduced from Rs. 5K to Rs. 2K per day. Further maximum capping of Rs. 2 lacs provided.



A magnifying glass and a wooden gavel resting on a dark blue folder on a wooden surface.

# MCA establishes Central Scrutiny Centre for scrutiny of STP e-forms



# Establishment of Central Scrutiny Centre (CSC)

- MCA has vide notification dtd. March 18, 2021 established a CSC under the administrative control of e-governance cell of the MCA.
- CSC shall carry out scrutiny of e-forms filed at Straight Through Processes (STP) and forward their findings to the concerned jurisdictional ROC.
- RoC shall then prosecute the **defaulters and initiate action.**



# Establishment of Central Scrutiny Centre (CSC)

## Challenges faced:

1. Any e-form approved through STP are later **within 8 years found as defective** by CSC, reporting will be made to RoC and RoC shall send Notice to file e-form or document afresh along with fees and additional fees within 30 days timeline.

**No opportunity of resubmission or rectification of defect will be given.**



# Establishment of Central Scrutiny Centre (CSC)

## Challenges faced:

2. **Any form other than STP:** RoC will be sending notice and an opportunity to company to rectify and resubmit the form within 15 days time with any fees or additional fees.
3. RoC through CSC may **open e-forms filed earlier** under STP mode (upto past 8 years).

**Effective from 23<sup>rd</sup> day of March, 2021.**



# Independent Directors

As per The Companies (Appointment and Qualification of Directors) 2<sup>nd</sup> Amendment Rules, 2020



The time limit for registration of persons working as Independent Director in the Database as on 01.12.2019 has been extended up to 13 months i.e. upto 31.12.2020 (earlier extended for 5 months and then 7 months).



# Independent Directors

- ▶ As per Rule 6(4) as amended w.e.f 18.12.2020, Every individual whose name is included in the Data Bank should pass an **online proficiency self assessment test** conducted by the institute **within 2 years** from date of inclusion of name in Data Bank.
- ▶ If he does not appear for the test within the time limit his name will be removed from the Data Bank.
- ▶ Extension of time for registration with Data Base was granted to persons **who are already holding position of ID in any Company.**



# Independent Directors

## Who is not required to pass Proficiency test?

Any person who has **3 years experience** as:

- A. Director/KMP of a listed Public Company, unlisted public company having paid up capital of Rs. 10 cr or more, body corporate listed on any recognised stock exchange in India or FATF member country, foreign bodies corporate having capital of US \$ 2 million or more, Statutory Corporations setup under an act of parliament or state legislature carrying commercial activities
- B. In the pay scale of Director or above with MCA, MOF, MOC or MOHIPE
- C. In the pay scale of CGM or above with SEBI, IRDA, RBI, PFRDA, IREB



# Issue of Shares

- ▶ As per the Notification dated 11.02.2021, Rule 12A has been inserted in Companies Act, 2013 wherein Company can raise its subscribed capital by offering shares to its existing shareholders (Right Issue) by restricting the time to accept such offer in Seven days from date of offer.
- ▶ As per General Circular dated 11.05.2020 and 03.08.2020, clarification on dispatch of notice under Section 62 (2) by Listed Companies for right issues opening up to 31.07.2020 which is extended to 31.12.2020.



# Issue of Shares

- ▶ MCA vide its General Circular dated 19.06.2020, extended the time limit till 31.12.2020 for the following:
  - (i) Requirement **to create the Deposit Repayment Reserve of 20% of deposits maturing** during the financial year 2020-21 before 30.04.2020 shall be allowed to be complied with till 31.12.2020.
  - (ii) Requirement to **invest or deposit at least 15% of amount of debentures maturing** in specified methods of investments or deposits before 30.04.2020, may be complied with till 31.12.2020.



# CFSS- 2020

- ▶ Companies Fresh Start Scheme 2020 (CFSS 2020) was announced enabling filing of all previous forms/returns without payment of additional fees and providing Immunity from future prosecution.
- ▶ This Scheme is not applicable to E-Forms relating to Charge and SH-7.
- ▶ **The scheme was valid up to 31.12.2020 and the last date of filing Form for availing Immunity is 30.06.2021.**



# LLP Settlement Scheme, 2020

MCA issued Modified LLP Settlement Scheme, 2020 vide general circular 13/2020 dated March 30, 2020 in order to provide relief to defaulting LLPs registered in India to focus on taking necessary measures to address COVID-19 threat and to reduce their compliance burden.

As per the Scheme, filing of all previous e-forms without payment of additional fees and immunity from prosecution for delay in filing.

**The scheme was valid up to 31.12.2020.**



# Changes in Audit Report

- ▶ The Company **has not advanced or given loan or invested** (either from borrowed funds or share premium or any other sources or kinds of funds) to any person with the understanding that the intermediary shall lend or invest in other persons or entities who are the **Ultimate Beneficiaries** of the Company.
- ▶ The Company **has not received any funds** from any persons or entities including foreign entities, with the understanding that the intermediary shall lend or invest in other persons or entities who are the **Ultimate Beneficiaries** of the Company from where such funds have been received.
- ▶ **Dividend paid or declared by the Company** during the year is in compliance with Section 123 of Companies Act, 2013.
- ▶ The **Accounting Software** used by the Company has necessary feature of Audit Trail, Audit Log, etc (Effective from 01.04.2022)



# Relaxation from Additional filing fees

- ▶ MCA issued a **General Circular No. 06/2021** dated May 03, 2021, relaxing the time and additional fees to be payable by any Company or LLP for Forms which are due for filing between **April 01, 2021 to May 31, 2021** till **July 31, 2021**.
- ▶ However Forms related to Charges that is Form CHG-1, CHG-4 and CHG-9 **are not included** in the general relaxation given under Circular 6 /2021.



## Relaxation of time in filing Charge related Forms

- ▶ MCA issued a **General Circular No. 07/2021** dated May 03, 2021, relaxing time delay in filing of **Charge related documents** by the Company or the Charge Holder under Form CHG-1 and CHG-9 (“ the Charges”) and not CHG-4, satisfaction of charges.



## Relaxation of time in filing Charge related Forms

- ▶ This Circular shall apply--- Time period 01.04.2021 to 31.05.2021 shall not be counted in the time line

### CASE 1

The Charge is created / modified **prior to April 01, 2021 but 120 days** from creation/modification of charge **is not expired as on April 01, 2021** as per section 77

### CASE 2

The Charges is created / modified **between April 01, 2021 to May 31, 2021** (both dates inclusive).



## Relaxation of time in filing Charge related Forms

- ▶ This Circular **shall not apply to:**
  - The filing of e-Forms CHG-1 and/or CHG-9 is done **before** the issue of Circular i.e. May 03, 2021.
  - The **timeline for filing** of e-Forms CHG-1 and/or CHG-9 has already **expired prior to April 01, 2021** (that is 120 days from the date of creation or modification of charge).
  - If filing of e-Forms CHG-1 and/or CHG-9 **is delayed** beyond 120 days from June 01, 2021, despite the relaxation given of time till **May 31, 2021**.
  - Filing of **e-Form No. CHG -4**, for the **Satisfaction of Charge**.



# The Companies (Auditor's Report) Order, 2020

- ▶ MCA has notified the Companies (Auditor's Report) Order, 2020 (**CARO, 2020**) which shall be applicable for the eligible companies for the financial year commencing on or after **1st April, 2021**.
- ▶ MCA also amended **Schedule III** to the Companies Act, 2013 with effect from 1st April, 2021.
- ▶ Every company including Foreign Company **except-**

Banking company, Insurance company, Section 8 company, OPC, Small Company, Private Company having a paid up share capital and reserve < Rs. 1 Crores and total borrowings < Rs.1 Crore and a total revenue is < Rs.10 crore during the FY as per the financial statements.



# Clauses of CARO, 2020

- ▶ Non Current Assets- **Modified**
- ▶ Inventory and Other Current Assets- **Modified**
- ▶ Investments, Loans or Advances by Company- **Modified**
- ▶ Loan to Directors and Investment by the Company
- ▶ Deposits accepted by the Company
- ▶ Maintenance of Cost Record
- ▶ Statutory Dues
- ▶ Disclosure of undisclosed transactions- **Inserted**
- ▶ Loans and other Borrowings- **Modified**
- ▶ Money raised through IPOs and FPOs- **Modified**
- ▶ Frauds- **Modified**



# Clauses of CARO, 2020

- ▶ Nidhi Company
- ▶ Related Party Transactions
- ▶ Internal Audit System- **Modified**
- ▶ Non- Cash Transactions
- ▶ RBI Registration
- ▶ Cash Losses- **Inserted**
- ▶ Consideration of outgoing Auditor- **Inserted**
- ▶ Material uncertainty in relation to realization of financial assets and payment of financial liabilities- **Inserted**
- ▶ Compliance of CSR- **Inserted**
- ▶ Qualifications or adverse remarks in the consolidated financial statements- **Inserted**
- ▶ **Clause related to Managerial Remuneration in CARO 2016 is omitted**



# Clauses of CARO, 2020– In detail

- Fixed Assets replaced by Property and Plant & Equipment – Intangible assets covered, Immovable Property kept as stock in trade also covered now
- Format for providing detail of immovable properties not held in the name of the Company also provided
- Revaluation to be based on report of Regd Valuer
- Proceedings under Benami
- Material discrepancies defined – variation of 10% or more in a class
- Sanction of WC > 5 cr
- Statement filed with banks are in agreement with books of accounts



# Clauses of CARO, 2020 –in detail

- In addition to Loan, now Investments and Guarantees also covered.
- Not restricted to just persons covered in 189
- Deemed Deposits also covered
- All Statutory dues covered
- Rectification of Books of Accounts
- Reporting of Loan Defaults extended to all lenders instead of Bank & FI. Format also prescribed.
- IPO/FPO proceeds utilization
- Compliances for raising of funds through Private Placement



# Clauses of CARO, 2020- in detail

- Additional disclosures on willful defaulters, loan utilisation, utilisation of short term loan for long term purpose, loans taken to meet the obligations of subsidiaries, JV, associates, Loans obtained by pledge of securities of subsidiaries, JV, associates
- Scope of reporting on **fraud extended**. Now any fraud by the Company or any fraud on the Company to be reported as against frauds committed by the Employees/Directors on the Company



# Clauses of CARO, 2020- in detail

- Additional Disclosure on compliances by Nidhi company
- Disclosure regarding status of NBFC, CIC
- Disclosure regarding resignation by Statutory Auditor
- Comment on capability of the Company to meet liabilities
- Compliances regarding transfer of unutilised CSR funds to fund constituted u/s 135 of CA 2013
- Adverse remarks in CARO to be mentioned in Consolidated Report also
- Clause related to Managerial Remuneration in CARO 2016 is omitted



# Amendment in Schedule III of Companies Act, 2013

- ▶ Shareholding of Promoters
- ▶ Trade Payable with ageing schedule with details of payable to MSME and disputed or not
- ▶ Trade Receivables with ageing schedule with details of good or doubtful and disputed or undisputed
- ▶ Intangible assets under development ageing schedule
- ▶ Use of money borrowed from the Bank and financial institution
- ▶ Title Deeds of immovable properties are held in the name of the company or not
- ▶ Loans or advances granted to promoters, directors, KMPs and related parties
- ▶ Details of Benami Property held
- ▶ Whether the company is declared as a willful defaulter by any Bank or Financial institution or other lender.



# Amendment in Schedule III of Companies Act, 2013

- ▶ Whether the company has any relationship with struck off companies
- ▶ If any charges creation or satisfaction is overdue and not registered with reason thereof
- ▶ Downstream investment by the company
- ▶ Various ratios
- ▶ Effect of scheme of arrangement, if any
- ▶ Borrowing or lending or giving guarantee to and on behalf of the Ultimate Beneficiaries
- ▶ Compliance of FEMA,1999 and no violation of PMLA,2002
- ▶ Grant or donation received by section 8 company
- ▶ Undisclosed Income
- ▶ More details on Corporate Social Responsibility
- ▶ Whether the company has traded or invested in Crypto Currency or Virtual Currency

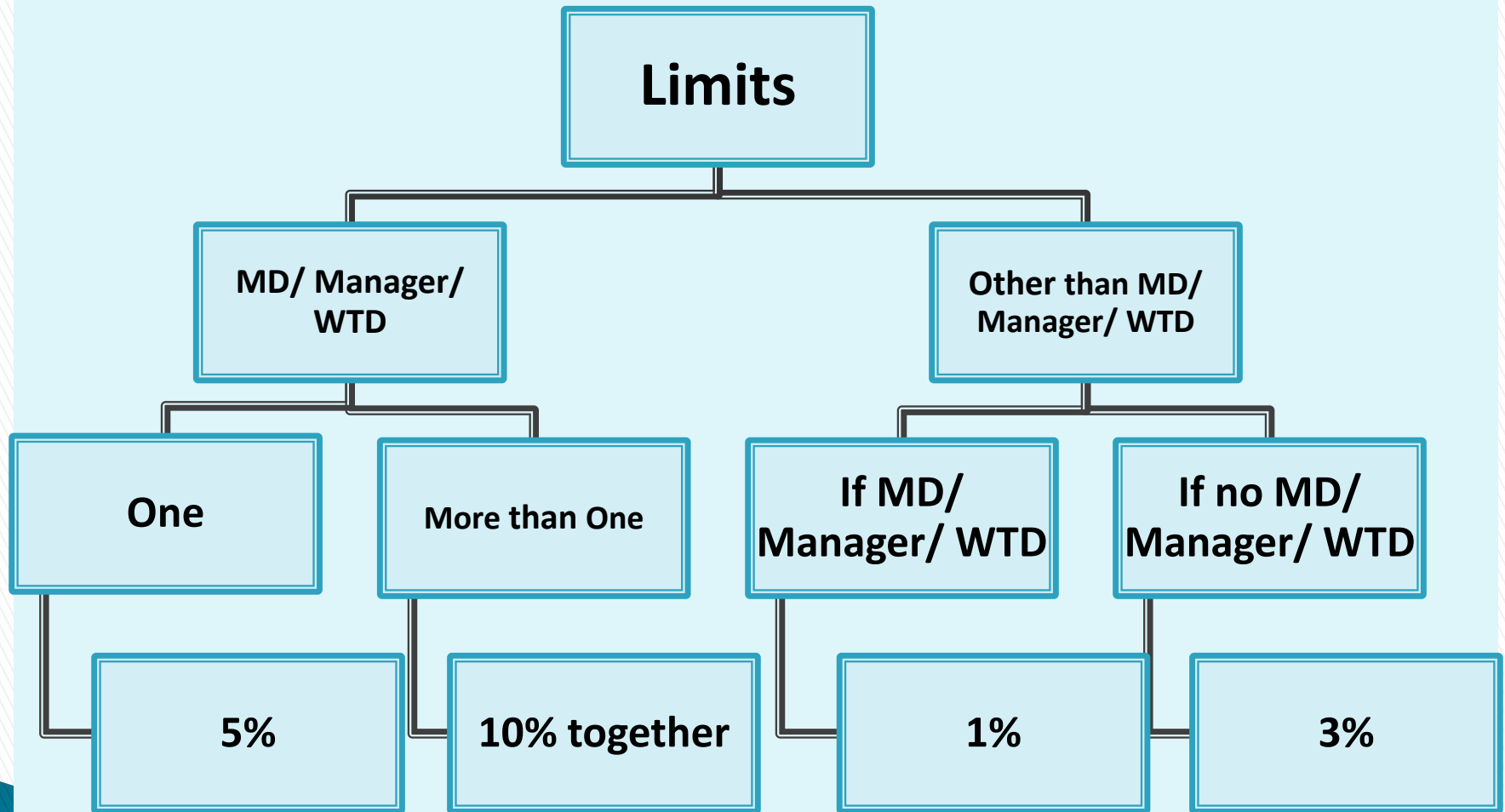


## Section 197 and Schedule V of Companies Act, 2013

- ▶ The Overall Limit of remuneration by a Public Company in a Financial year is **11% of Net Profit** to its Directors including MD/WTD/Manager.
- ▶ **Net profit is as per Section 198** of the Companies Act, 2013 according to which remuneration of directors shall not be deducted from gross profits.
- ▶ Company **can pay more than 11% of net profits** as remuneration provided resolution is passed in the general meeting authorizing the same subject to provisions of Schedule V.
- ▶ **No Central Government Approval needed** except Part I of Schedule V.

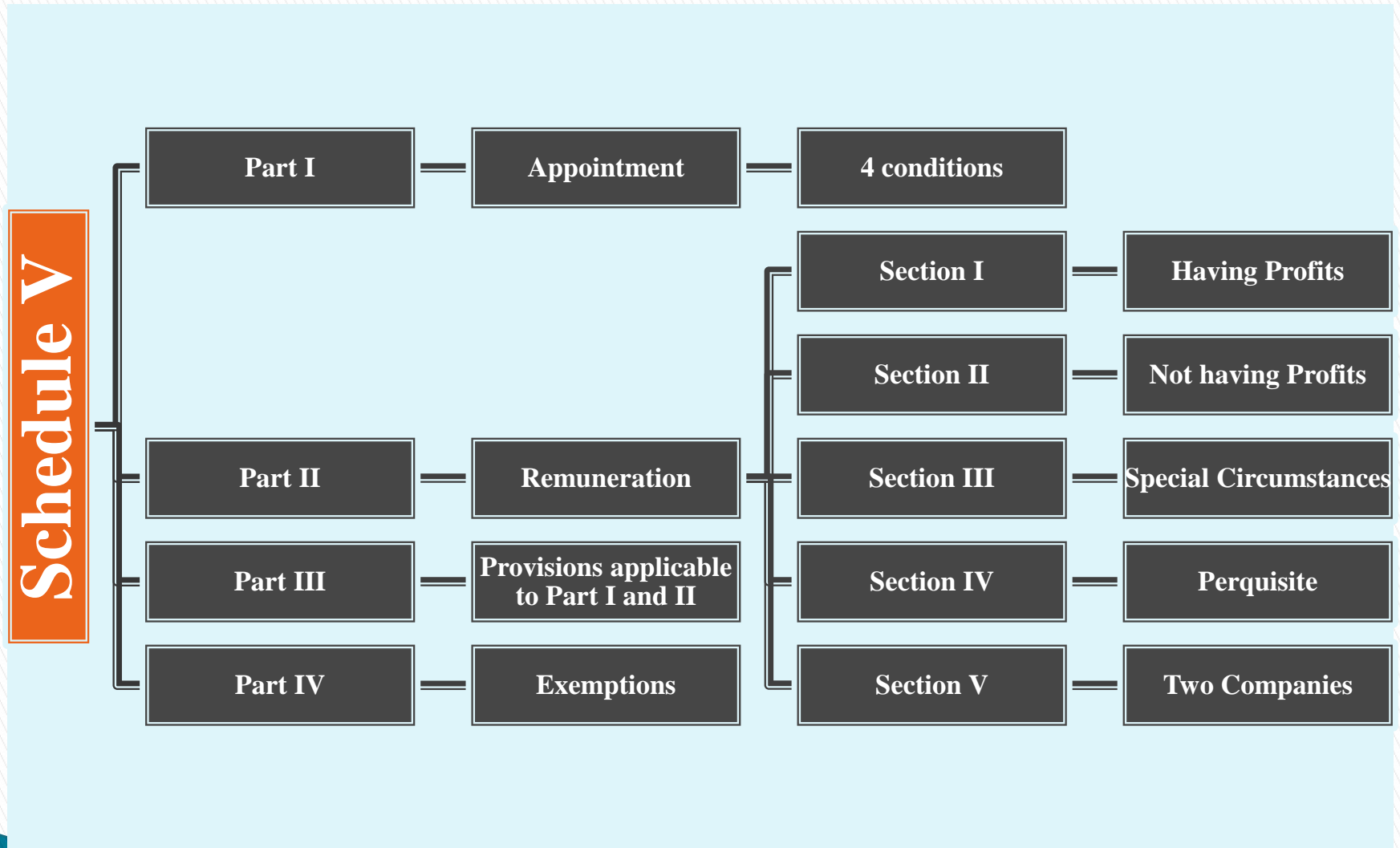


# Section 197 and Schedule V of Companies Act, 2013



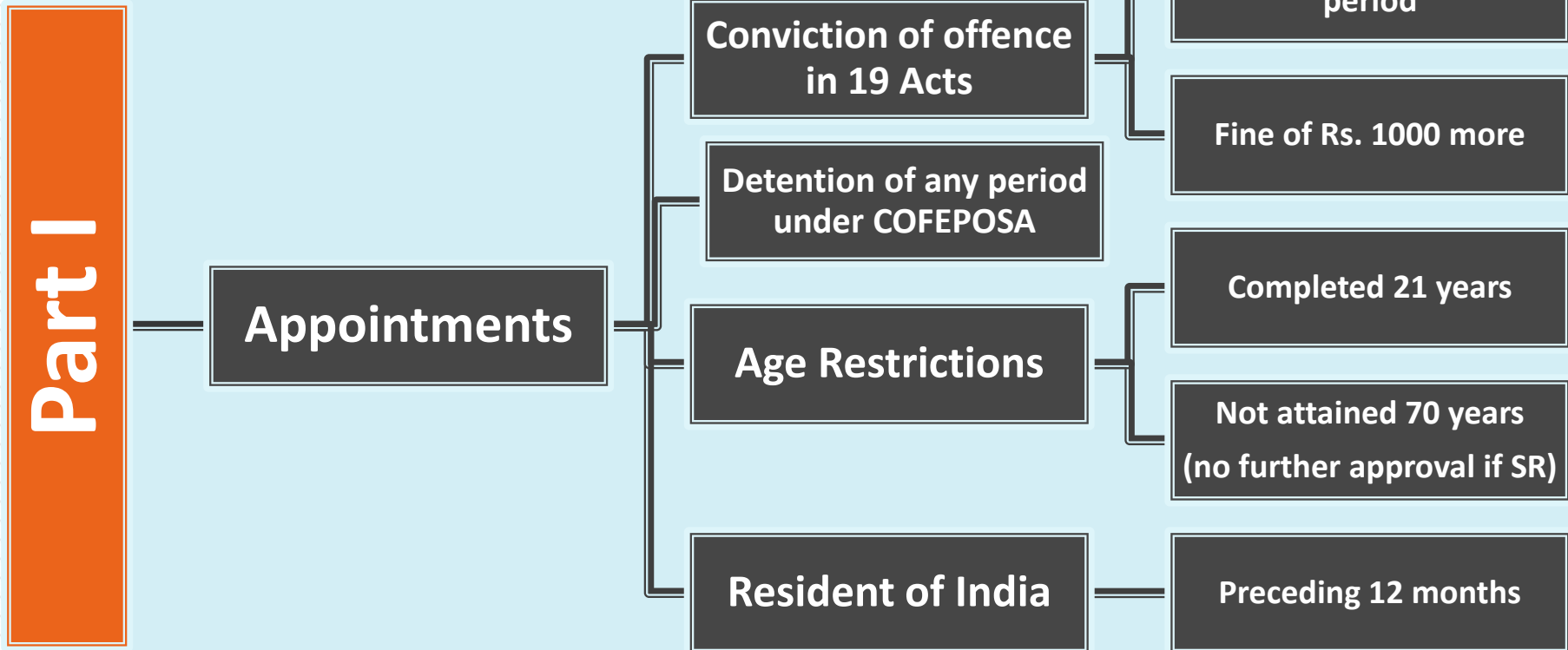


# Section 197 and Schedule V of Companies Act, 2013



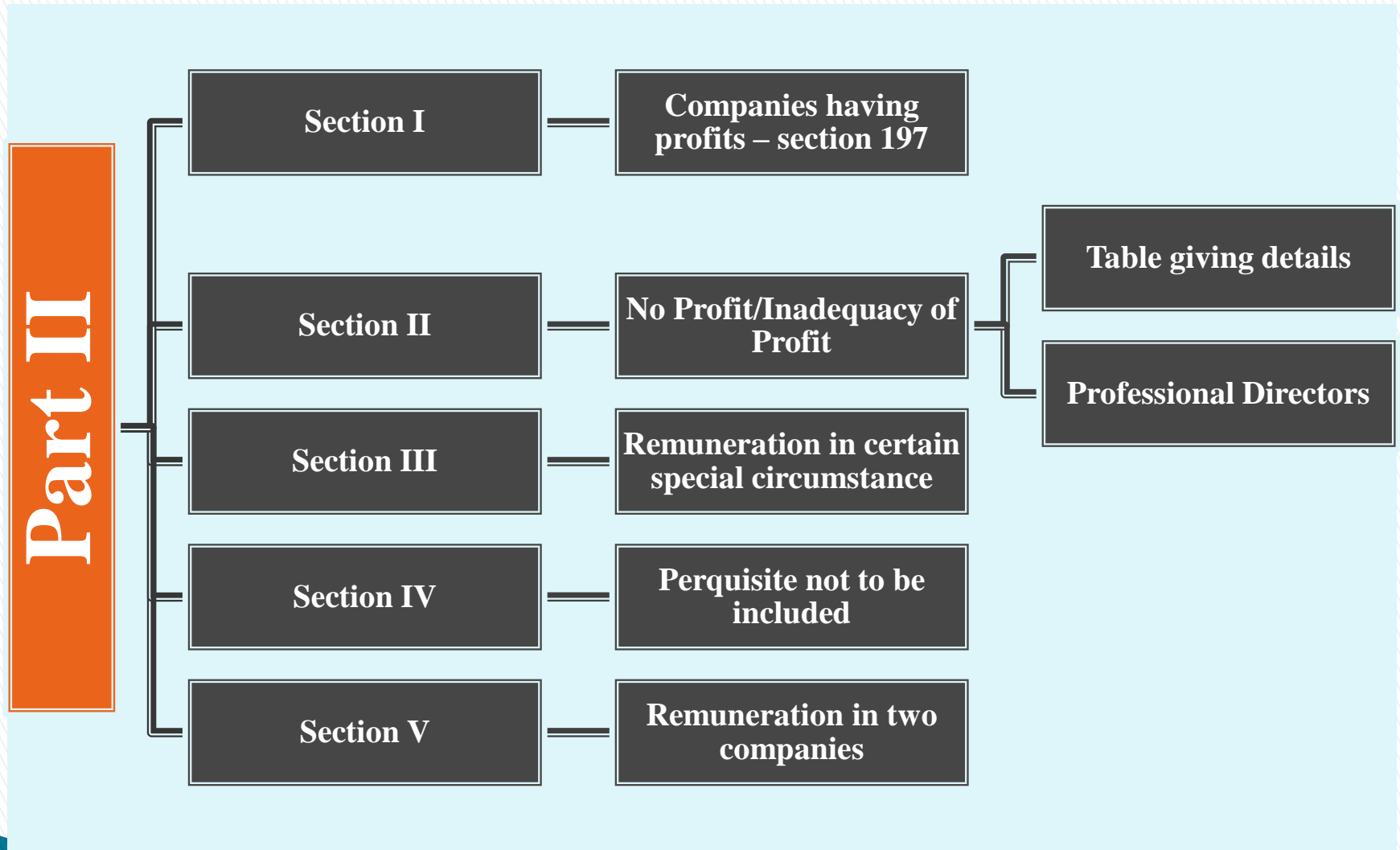


# Schedule V relating Appointment





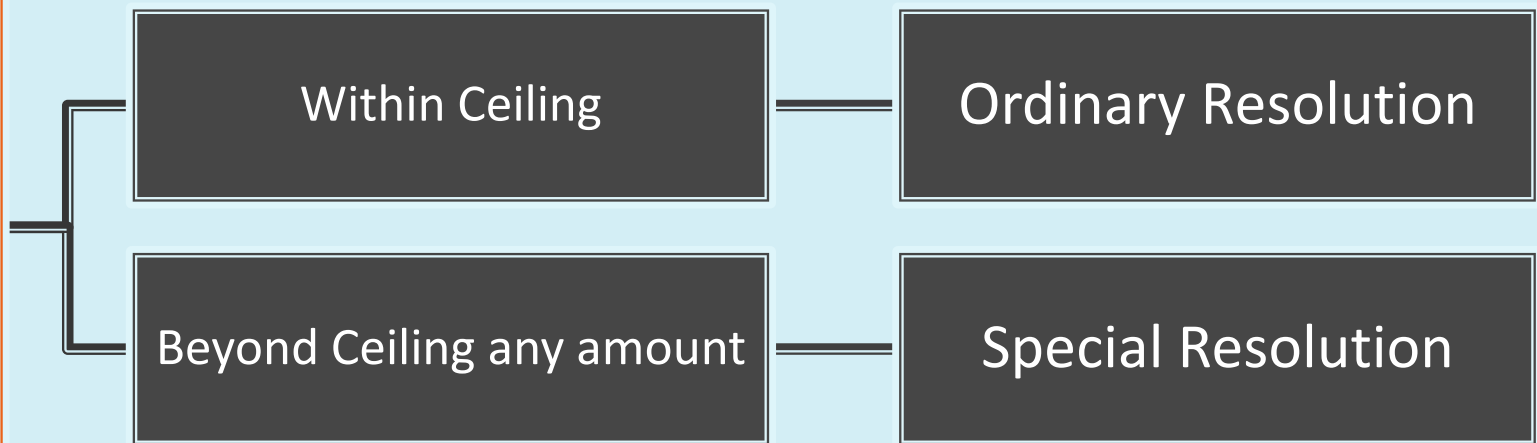
# Section 197 and Schedule V of Companies Act, 2013





# Schedule V relating Appointment

## Remuneration





# Schedule V relating to Remuneration

Effective capital		Limit yearly remuneration in Rs. (in case of Managerial Personnel)
Negative or less than 5 crore		60 lakhs
5 crores and above but less than 100 crores		84 lakhs
100 crores and above but less than 250 crores		120 lakhs
250 crores and above		120 lakhs plus 0.01% of effective capital in excess of Rs. 250 crore
Effective capital		Limit yearly remuneration in Rs. (in case of Other Directors)
Negative or less than 5 crore		12 lakhs
5 crores and above but less than 100 crores		17 lakhs
100 crores and above but less than 250 crores		24 lakhs
250 crores and above		24 lakhs plus 0.01% of effective capital in excess of Rs. 250 crore

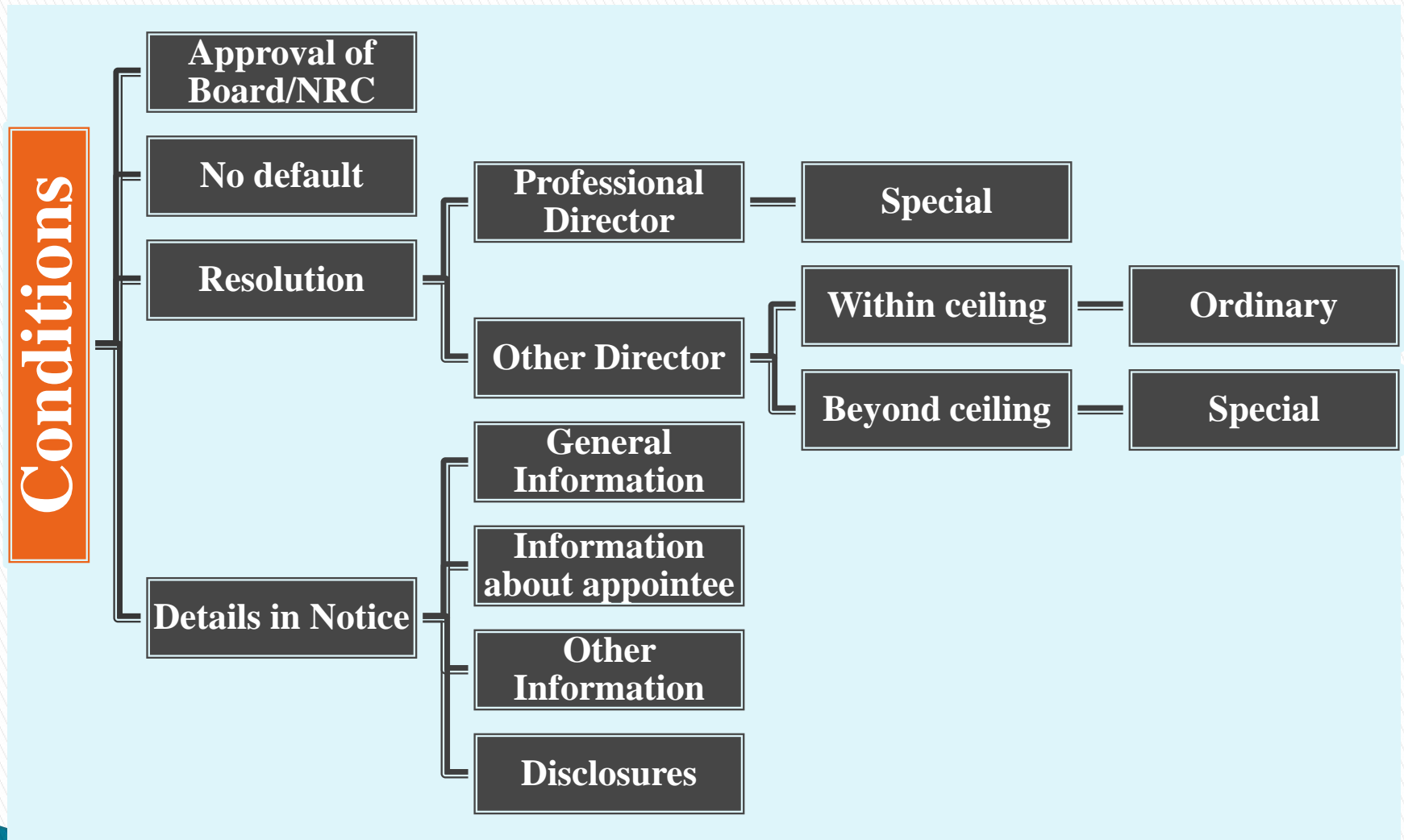


**Effective capital means** the aggregate of the:

- ▶ **Paid-up share capital** (excluding share application money or advances against shares);
- ▶ **Share premium account;**
- ▶ **Reserves and surplus** (excluding revaluation reserve);
- ▶ **long-term loans** and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements)
- ▶ **Reduced by** the aggregate of :
  - ▶ **any investments** (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities),
  - ▶ **accumulated losses and preliminary expenses not written off.**



# Section 197 and Schedule V of Companies Act, 2013





## Remuneration in case of Inadequacy or losses

- ▶ Earlier Schedule V to the CA 2013 was having provision only for remunerating **Managerial Personnel** in case of no profit or inadequate profit
- ▶ The Companies Amendment Act, 2020 (CAA 2020) amended Section 149 and 197 for payment of remuneration to **NED and ID** as per schedule V in case of inadequate or no profit w.e.f. 18/03/2021



# Managerial Remuneration under Schedule V – Remuneration from more than one Companies

- ▶ Subject to the provisions of Sections I to IV of Schedule V, a Managerial Personnel can draw remuneration from one or both companies, provided that **the total remuneration drawn from the companies does not exceed the higher maximum limit** admissible from any one of the companies of which he is a managerial person.



# Schedule V of Companies Act, 2013

- ▶ The appointment and remuneration referred to in Part I and Part II of Schedule V shall be subject to **approval by a Resolution of the shareholders in general meeting.**
- ▶ The Auditor or the Secretary of the company or where the company is not required to be appointed a Secretary, a Secretary in whole-time practice shall **certify that the requirements of this Schedule have been complied with** and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.



# Schedule V of Companies Act, 2013

## Exemption

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule



# Provisions of Schedule V applicable incase of services offered by Directors in other capacity

- ▶ Remuneration to Director for services
- ▶ The services rendered by the Directors are of professional nature; and
- ▶ It is in the opinion of the NRC (Nomination and Remuneration Committee), that the Director possesses the requisite qualification for the practice of the profession.



# Auditors Responsibility under Schedule V of CA 2013

The Auditor of the company shall, in his report u/s 143 to make a statement as to whether

---the **Remuneration paid by the company** to its Directors is in accordance with the provisions of this section,

---whether remuneration paid to any Director **is in excess of the limit laid down** under this section and give such other details as may be prescribed.



# Non – Executive Directors

- ▶ Non-executive Directors of a company can be paid remuneration (besides sitting fees) **within prescribed limit.**
- ▶ The payment beyond the prescribed limit can be made with permission of shareholders by way of **Special Resolution.**
- ▶ Effective from **March 18, 2021** NED's may be paid remuneration as per Schedule V, **in case of inadequacy** or losses
- ▶ Section 197(6) explicitly provides that a Director or Manager may be paid remuneration either by way of a monthly/quarterly/half-yearly payment or at a specified percentage of the Net Profits of the company or partly by one way and partly by the other.



# Non – Executive Directors

- ▶ Hence NED's can be paid remuneration either by way of **commission after the end of a financial year** on the basis of Net Profit computed in accordance with section 198 **or by way of quarterly/half-yearly remuneration** or partly by one way and partly by another way.
- ▶ A company may pay a **fixed monthly remuneration** and pay more in lump-sum after the amount of Net Profit is available, but the total remuneration paid must be within the limit of 1% or 3% as applicable.



# Corporate Social Responsibility





# Recent Changes in CSR provisions – 22 – Jan 2021



**Section 21 of the Companies  
(Amendment) Act, 2019 – CAA 2019**

**Section 27 of the Companies  
(Amendment) Act, 2020 –  
CAA 2020**

**The Companies (Corporate Social  
Responsibility Policy) Amendment  
Rules, 2021 – CSR Amendment Rules 2021**



# Recent Changes in CSR provisions – 22 – Jan 2021

## Section 21 of the CAA 2019

▶ Section 135 (5) amended :

(a) New company are also required to comply with CSR if it meets the criteria

(b) If the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount and unless such unspent amount relates to any ongoing project transfer it to a Fund specified in Schedule VII, within a period of six (6) months of the expiry of the financial year.



# Recent Changes in CSR provisions – 22 – Jan 2021

## Section 21 of the CAA 2019

### Section 135 (6) inserted

#### Unspent

Any amount remaining unspent pursuant to any **Ongoing Project** to be transferred by the company within a period of thirty (30) days from the end of the FY to a **special account** to be opened by the company in that behalf for that FY in any scheduled bank to be called the **Unspent Corporate Social Responsibility Account**, and

The same to be spent within a period of three (3) FY from the date of such transfer, failing which, the company to transfer the same to a Fund specified in Schedule VII, within a period of thirty (30) days from the date of completion of the 3<sup>rd</sup> FY



## **Section 21 of the CAA 2019**

### **Power of CG**

#### ▶ **Section 135 (8) inserted**

The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.



# Recent Changes in CSR provisions – 22 – Jan 2021

## Section 27 of the CAA 2020

Under Section 27

## Section 135 (5) proviso added

### Excess Spent

Provided also that if the company spends an amount in excess of the requirements provided under this sub-section, such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding three FY



# Recent Changes in CSR provisions – 22 – Jan 2021

## Section 27 of the CAA 2020

### Section 135 (7) substituted which was proposed under CAA 2019-- Penalty

If a company is in default in complying with the provisions Spent and Transfer as mentioned u/s 135 (5) and 135 (6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR account, as the case may be, or Rs.1 crore , whichever is less ; and

Every officer of the company who is in default shall be liable to a penalty of 1/10<sup>th</sup> of the amount required to be transferred by the company to such Fund specified in Schedule VII or the Unspent CSR or Rs.2 lakh , whichever is less



# Recent Changes in CSR provisions – 22 – Jan 2021

## Section 27 of the CAA 2020

### Section 135 (9) added

Where the CSR obligation **does not exceed Rs.50 lakh**, the constitution of the CSR Committee is optional and the Board of Directors to discharge the functions for CSR.



### **Is this Amendment dated 22 January 2021 is Retrospective**

Any Amendments as a general rule cannot be retrospective or retroactive.

The amendment was notified during the FY 2020-21 **hence for following it is applicable for FY 2020-21**

- a. Any amount outstanding to spend on CSR in FY 2020-21 need to be in compliance with the amendments made as on 22 Jan 2021.
- b. Impact Assessment for the projects undertaken in earlier years & one year completed on 01 April 2020



# Ten major changes in CSR-22 Jan 2021

1. New **Definition of CSR** which excludes certain activities. This is more like a clarification on various FAQs on what is CSR and what is not is described.

2. **Administrative Overhead** is defined. More clarification is required on what is included on designing, implementing, monitoring and evaluation expenses. This definition is also more like clarification.

3. New definition of **CSR Policy** and **On Going Project**. Very important to address social causes having large multi year projects.



# Ten major changes in CSR-22 Jan 2021

4. **International Organization(IO)** is also defined, the company can engage IO for designing, monitoring and evaluation of CSR Projects. However, such International Organization cannot do implementation of the CSR Projects. To avail the benefit of expertise of International Organization this provision is added.

5. Detailed Rule on **CSR implementation** and **mandatory registration of implementing agency** (including company itself) with MCA & also Income Tax authorities u/s 12A and 80 G of IT Act, 1961. More responsibility is cast on the Board for CSR Implementation.

6. Responsibility cast on **CFO or person responsible for financial management to certify** that the funds are utilized as approved by the Board. This provision shall bring more accountability.



# Ten major changes in CSR-22 Jan 2021

7. CSR Committee to formulate **Annual Action Plan**. This provision is to bring focus, involvement, discipline in CSR spent and not to consider it as any random one time activity .

8. Detailed Rule on **CSR Expenditure, surplus, carry forward and set off and transfer of Capital assets** to certain entities having CSR Registration number or to Beneficiary or to Public Authority. This provisions encourage company to spend for Ongoing Project of multi year with commitment.

9. **Reporting requirement** increased to bring more transparency and accountability.

10. **Impact Assessment** by independent agency for certain large CSR Projects. This Report and analysis will certainly help the company, beneficiaries and Nation at large to increase Social Return on Investment (SRoI).



# Definition of CSR-- New



**“Corporate Social Responsibility”** means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the CA 2013 in accordance with the provisions contained in the CSR Policy Rules, but shall not include following six activities :



# What is not included as CSR

1. Activities undertaken by the Company in pursuance of its **NORMAL COURSE OF BUSINESS except** company engaged in **Research and Development activity** of new vaccine, drugs and medical devices related to COVID-19 for next three financial years from 2020-21 **subject to the conditions that:**

(a) such research and development activities shall be carried out in **collaboration with any of the Institutes or Organizations** mentioned in item (ix) of Schedule VII to the Act; **AND**

(b) Details of such activity shall be disclosed separately in the **Annual Report on CSR included** in the Board's Report;



# What is not included as CSR

## Normal Course of business

- Absence of a profit motive
- Company product provided without profit
- Sub standard material
- Accounting of such products
- Brand awareness
- Social Motive may be absent



# What is not included as CSR

2. Activities **undertaken outside India** except for training of Indian sports personnel representing State or UT at National level or India at International level ;
3. Contribution of any amount to **any political party** under section 182 of the Act;
4. Activities **benefitting employees** of the Company (Employees defined under Section 2(k) of the Code of Wages ,2019
5. Activities supported by the Company on **sponsorship basis** for deriving marketing benefits for its products or services;
6. Activities carried out for **fulfillment of any other statutory obligations** under any law in force in India;



# What is not included as CSR

## **Who are the Employees**

The Amendment Rules include all employees as defined under the Code of Wages Act, 2019.

## **Code of Wages Act, 2019**

Employees as defined as include all employees whether skilled, unskilled or semi-skilled.

**Apprentices and Interns** engaged under the Apprentices Act, 1961 are specifically excluded from the definition and thus would be eligible for CSR expenditure.



# What is not included as CSR

## **Spend only for Employees--- or employees not be beneficiary**

ICSI FAQ 20 -- where a medical camp has been organised exclusively for the benefit of unskilled labour engaged by the Company, the same will not qualify as CSR.

Any activity which is **not exclusive for employees** can still be considered as CSR spend by the Company

Eg--- Construction of Roads, Sport complex, school etc where others are also beneficiary and not juts the employees and their families



# What is not included as CSR

**The CSR activities that benefit only the employees of the company and their families.**

- Distribution of medicines or food to employees or their families;
- Reimbursement of school fees of children of employees;
- Healthcare facility for employee and their families
- Cretch facility for families of employees



# Circular No.21/2014 dated June 18, 2014

The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Act, the entries in the said Schedule VII must be **interpreted liberally** so as **to capture the essence** of the subjects enumerated in the said Schedule.

The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities as **illustratively mentioned in the Annexure** to the said circular.



# Circular No.21/2014 dated June 18, 2014

- ▶ It was further clarified by the MCA that CSR activities should be undertaken by the companies in project/ programme mode [as referred in Rule 4 (1) of Companies CSR Rules, 2014]. **One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure.**
- ▶ Expenses incurred by companies for the **fulfillment of any Act/ Statute** of regulations (such as Labour Laws, Land Acquisition Act etc.) **would not count as CSR** expenditure under the Companies Act, 2013.



# Circular No.21/2014 dated June 18, 2014

- ▶ Salaries 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.**
- ▶ “Any financial year” referred/s 135 (1) of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies ‘any of the three preceding financial years’.--- **Later amendment made**
- ▶ Expenditure incurred by **Foreign Holding Company** for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures **are routed through Indian subsidiaries** and if the Indian subsidiary is required to do so as per section 135 of the Act.



# Circular No.21/2014 dated June 18, 2014

- ▶ ‘Registered Trust’ (as referred in Rule 4(2) of the Companies CSR Rules, 2014) **would include Trusts registered under Income Tax Act**, for those States where registration of Trust is not mandatory.
- ▶ **Contribution to Corpus** of a Trust/ society/ section 8 companies etc. **will qualify as CSR** expenditure as long as
  - (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or
  - (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.



# Circular No.10/2020 dated March 23, 2020

Ministry vide General Circular No. 10/2020 dated March 23, 2020 has clarified that **spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure** under promotion of health care and disaster management

Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may **be interpreted liberally for this purpose.**



# Circular No.15/2020 Dt April 10, 2020

MCA has provided various clarification in the **form of FAQs** on the contributions made in certain fund will be treated as CSR contribution or not. It clarifies as follow:

1. Contribution made to **'PM CARES Fund'** shall qualify as **CSR expenditure** under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020.
2. Contribution made to **'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19'** is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds **shall not qualify** as admissible CSR expenditure



# Circular No.15/2020 Dt April 10, 2020

3. Contribution made to **State Disaster Management Authority to combat COVID-19 shall qualify** as CSR expenditure under item no (xii) of Schedule VII of the.

4. The funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to **promotion of health care** including preventive health care and sanitation, **and disaster management.**



# Circular No.15/2020 Dt April 10, 2020

**5. Payment of salary/ wages in normal circumstances** is a contractual and statutory obligation of the company even during the lockdown period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) **shall not qualify as admissible CSR expenditure.**

**6. Payment of wages to temporary or casual or daily wage workers** during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. **It shall not count towards CSR expenditure.**



## Circular No.15/2020 Dt April 10, 2020

**7. If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages,** specifically for the purpose of fighting COVID 19, the same **shall be admissible towards CSR expenditure** as a onetime exception provided there is an explicit declaration to that effect by the Board of the company, which is duly **certified by the statutory auditor.**



# Circular No. 1 dt January 13,2021

## ► Clarification on spending CSR Funds for COVID-19 awareness

**MCA** clarified that spending of CSR funds for carrying out awareness campaign/ programmes or public outreach campaigns on COVID -19 vaccination programme is an eligible CSR activity subject to fulfilment of the Companies ( CSR Policy) Rules, 2014.





# Circular No. 5 dt April 22, 2021

## Clarification on spending of CSR funds

MCA clarified that in continuation with earlier **Circular 10/2020** dated March 23, 2020 companies spending CSR fund on activities on **“setting up makeshift hospitals and temporary COVID Care Facilities”** shall be considered as an eligible CSR activity.



# Latest Circular No. 9 dt 03 May 2021

MCA in continuation of its earlier **Circular No. 10/2020** dated 23.03.2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, vide **Circular No. 9/2021 dated 03.05.2021** further clarified that spending of CSR funds for

*‘creating health infrastructure for COVID care’,*

*‘establishment of medical oxygen generation and storage plants’,*

*‘manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities are eligible CSR activities relating to promotion of health care, including preventive health care, and, disaster management.*



# Latest Circular No. 9 dt 03 May 2021

MCA has drawn the attention that any contribution to **specified R & D projects** as well as contribution to public funded universities and certain Organisations engaged in conducting **research in science, technology, engineering, and medicine** as eligible CSR activities.

The **companies including Government companies** may undertake the activities or projects or programmes using CSR funds, directly by **themselves or in collaboration** as shared responsibility with other companies, subject to compliances



# International Organisation

**“International Organisation” (IO)** , means an organisation notified by the Central Government as an International Organisation u/s 3 of the United Nations (Privileges and Immunities) Act, 1947, to which the provisions of the Schedule to the said Act apply.

Such IO can be engaged by the company for **designing, monitoring and evaluation** of its CSR projects and also for **capacity building** of company's personnel for CSR but **not for implementing**



# CSR Policy

“CSR Policy” means a **statement** containing

1. The **approach and direction** given by the Board taking into account the recommendations of its CSR Committee,

2. **Guiding principles** for selection, implementation and monitoring of activities,

3. Principle for formulation of **Annual Action Plan**.



# Administrative Overheads

## Administrative Overheads- is defined in Rule 2(b)

“Administrative Overheads” means the expenses incurred by the company for ***‘general management and administration’*** of CSR functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular CSR project or programme





# Administrative Overheads

## CSR Adm O/h - CAP of 5%

Rule 7 of CSR Amendment Rules, 2020 provides that maximum limit of **Administrative Overheads** for CSR Expenditure for FY shall **not exceed 5%** of total CSR expenditure for that FY. It **shall not include direct expenses** for designing, implementing, monitoring and evaluation of CSR Project.





# Surplus from CSR Activities

## Surplus Amount

1. Any surplus arising out of the CSR activities **shall not form part of the Business Profit** of the Company
2. Such surplus to be ploughed back into the same project or shall be **transferred to the Unspent CSR Account.**
3. Any Unspent CSR amount need to be spent by the Company as per its CSR policy and Annual Action Plan of the Company or to be **transferred to a Fund specified in Schedule VII** within a period of 6 months from the end of FY.



# Excess amount spent then obliged

## Excess Amount Spent

In case the Company spends on CSR activities in excess of its obligation of 2% of Average Net profit for three years, then the Company can **take set off of** such excess spend against the obligation **to spend in immediate succeeding 3 FY** subject to following two conditions :

1. Excess amount available for set off shall **not include the surplus** arising out of the CSR activities, if any ;
2. The Board is required to **pass resolution** to that effect



# Ongoing Project

## Ongoing Project and its relevance

“Ongoing Project” means a **multi-year project** undertaken by a Company in fulfilment of its CSR obligation having timelines **not exceeding 3 years** excluding the FY in which it was commenced,

**and**

**shall include** such project that was initially not approved as a multi-year project but whose duration has been **extended beyond 1 year by the Board based on reasonable justification**



## Ongoing Project- Unspent --Sec 135 (6)


1. Any unspent amount remains relating to ONGOING PROJECT need to be transferred in **30 days from the end of the FY** to a special account in any **Scheduled Bank** to be called as the “**Unspent Corporate Social Responsibility Account for FY-\_\_\_\_\_**”.
2. The Company to **spend it in a period of 3 FY** from the date of such transfer in Scheduled Bank account
3. **After 3 FY**, if anything remains unspent the same need to be transferred to a Fund specified in Schedule VII, **within a period of 30 days** from the date of completion of the third FY




# CSR Committee & its Role

As per CAA 2020, every company to which CSR criteria is applicable and having **CSR spent more than Rs.50 lakh p.a** shall constitute CSR Committee.

**section 135 (9) – diff view Rule 3(2)- Cease to cover u/s 135 (1)– so for 3 consecutive years**



CSR Committee to have **minimum 3 or more Directors** of which at least **1 Independent Director (ID)**, if Company require to have ID, **otherwise 2 or more Directors** .



For the **Foreign Companies**, CSR committee shall comprise of **at least 2 persons** of which **one person shall be resident in India** authorized representative of the Foreign Company and **another person to be nominated by the Foreign Company**.



# CSR Committee Section 135 (9) and Rule 3 (2)

## Section 135(9) and Rule 3(2)

Section 135 (9) of the CA 2013 and Rule 3 (2) of the CSR Policy Rules are different

Section 135 (9) reads that if the CSR obligation does not exceed Rs. 50 Lakh the company is not required to have CSR Committee and the responsibility of the CSR committee to be discharged by the Board.

Rule 3 (2) reads that if the company ceases to be covered u/s 135 (1) for three consecutive years then only it is not required to constitute CSR Committee.

Accordingly, the cases which can attract sub-sec (9) may be those companies which are covered under sub- section (1) for the first time or which are otherwise also covered however, have a temporary fall in the criteria of applicability , the board has to decide on the CSR matters.

**Dissolving of the CSR committee can only be done where the company fulfills the conditions under Rule 3(2) ( for three consecutive years ) and not otherwise.**



# CSR Committee & its Role



## CSR Committee



- To **formulate & recommend** to the Board CSR Policy of the Company, which shall include Activities to be undertake by the Company ;
- To **recommend the amount** of CSR activities
- To **monitor CSR Policy**



# CSR Committee & its Role

**As per Amendment dated January 22,2021** , CSR Committee shall formulate and recommend to the Board, an **Annual Action Plan** in pursuance of its CSR Policy, which shall include the following, namely:-

- **Annual Action Plan**
- list of CSR projects or programmes
- areas where CSR projects to be implemented
- manner of execution of such
- modalities of utilisation of funds and implementation schedules for the projects
- monitoring and reporting mechanism for the projects; and
- details of Need and Impact Assessment, if any, for such projects

Provided that Board may **alter such Annual Action Plan** at any time during the financial year, as per the recommendation of its CSR Committee, based on the **reasonable justification** to that effect.



# Role of Board & CFO Certificate

1. **Approve CSR Policy** of the Company **and ensure that CSR activities** undertaken by the Company are as per CSR Policy.
2. Ensure that the Company spends **minimum 2% of the average Net Profits** made during the 3 immediately preceding FY and if the Company has not completed 3 FY since its incorporation, then preceding FYs.
3. Ensure that the **Board Report cover disclosure** required as per CSR Rules
4. Ensure that CSR activities are undertaken either by the **Company itself or through other entity as per Rule 4 and Form CSR-1** is filed with RoC



# Role of Board & CFO Certificate

5. **Monitor implementation** of CSR Project with reference to timelines and year wise allocation
6. **Modify CSR Project**, if required
7. Satisfy itself that the **funds have been utilized for the purpose and the manner approved by the Board and CFO or the person responsible for** financial management to give certify to the effect
8. Engage **International Organization for designing, monitoring and evaluation** of CSR project and capacity building for CSR within the Company
9. Ensure that the **Administrative Overheads shall not exceed 5%** of total CSR Expenditure of the company for the FY.



## Role of Board & CFO Certificate

10. Any **surplus** arising out of the CSR activities **shall not form part of the business profit of the Company** and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and Annual Action Plan of the company **OR** transfer such surplus amount to a **Fund specified in Schedule VII**, within a period of **six months** of the expiry of the financial year. **For FY 2020-21 the same need to be transferred by 30 Sept 2021.**



# Role of Board & CFO Certificate

11. If the Company spends an amount in **excess of 2% of Net Profits** as required u/s 135 (5) then the Company **can take set off** of such excess amount up to immediate **succeeding 3 FY** , ensuring that excess amount is not surplus arising out of CSR Activities and the Board has passed the resolution.

12. If any CSR amount is spent by the Company for creation or acquisition of a **Capital Asset**, the Board to ensure in **180 days from 22 Jan 2021, i.e by 21 July 2021** (can be extended further **90 days** on Board's reasonable justification) i.e by **19 October 2021**



# CSR Implementation

The Company can undertake CSR activities **only by itself or through following 4 types of entities having Registration Number and Registration u/s 12A and 80G of IT Act, 1961-**

**(1) A Section 8 Company / Registered Public Trust / Registered Society and having registration u/s 12A and 80G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or**

**(2) A Section 8 Company / Registered Trust / Registered Society, established by the Central Government or State Government; or**



# CSR Implementation

(3) Any **entity** established under an **Act of Parliament or a State Legislature**; or

(4) A **Section 8 Company/ Registered Public Trust / Registered Society**, having **registration u/s 12A and 80G** of the Income Tax Act, 1961, and having an **established track record of at least 3 (three) years** in undertaking similar activities.



# CSR Implementation

A company may engage **International Organizations** for designing, monitoring and evaluation of the CSR projects as per its CSR policy as well as for capacity building of their own personnel for CSR.

A company may also **collaborate with other companies** for undertaking CSR projects or CSR activities, in such a manner that the CSR committees of **respective companies are in a position to report separately** as per CSR Policy Rules

The Board shall satisfy itself that the funds so disbursed have been utilised for the **purposes and in the manner** as approved by it.

In case of **Ongoing Project**, the Board to monitor the implementation of the project with reference to the **approved timelines and year-wise allocation** and shall be competent to make modifications, if any, for smooth implementation of the project.



# Registration of Implementing Agency in Form CSR-1

**Every Entity through which the company undertake CSR activities** mandatorily Register itself with the Ministry of Corporate Affairs (MCA) by filing **Form CSR-1 on MCA Portal** with effect from **01<sup>st</sup> April 2021:**

Form CSR-1 shall be **verified digitally by a** Chartered Accountant in Practice  
or  
Company Secretary in Practice  
or  
Cost Accountant in Practice.

Upon filing of **Form CSR-1** by the Entity on MCA Portal, automatically a unique **CSR Registration** Number shall be generated.



# Details to be given to MCA in Form CSR-1

**Nature of the entity**



**Entity is established by any company or group company**



**CIN of company ( name, date of incorporation and address are pre- filled)**



**PAN of the entity, Details of Directors , Board of Trustees, Chairman , CEO, Secretary or Authorised Representative of the Entity**



**E-mail ID on which One Time Password (OTP) be generated**

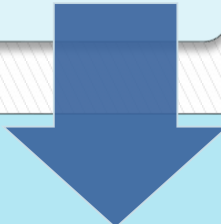


**Copy of Certificate of Registration and PAN should be attached.**

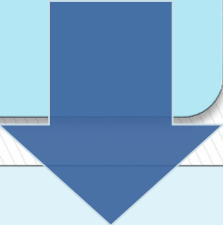


# CSR Reporting

Rule 8 is on CSR Reporting which is substituted vide CSR Amendment Rules 2021



The Board's Report shall include an Annual Report on CSR containing particulars specified in **Annexure I or Annexure II**, as applicable




In case of a Foreign Company, the Balance Sheet to contain an Annual Report on CSR containing particulars specified in Annexure I or Annexure II, as applicable




# CSR Reporting

Every company having average CSR obligation of Rs.10 crore or more in the 3 immediately preceding FY, shall undertake **Impact Assessment**, through an independent agency, of their CSR projects having **outlays of Rs. 1 crore** or more **and** which have been completed **not less than 1 year** before undertaking the impact study.



**Expenditure** of the Company undertaking **Impact Assessment** **shall not exceed 5%** of the total CSR Expenditure for that FY or Rs.50 lakhs, whichever is less.



Impact Assessment Report to be placed before the Board and **annexed to the Annual Report on CSR**



# CSR Reporting

Board  
Report to  
disclose

Composition  
of CSR  
Committee

Annexure I or  
Annexure II of  
CSR Rules



# CSR Reporting

## Annexure II to Board Report

Brief outline of **CSR Policy**



Composition of **CSR committee**



**Web-link** where composition of CSR committee, policy and projects approved are disclosed



Details of **Impact Assessment** of CSR Project , if applicable attach Report also. Also give amount spent on Impact Assessment



Details of **amount available for set off**



# Annexure II to Board Report

CSR amount **Spent/ Unspent** for the FY



```
graph TD; A[CSR amount Spent/ Unspent for the FY] --> B[Details of CSR amount spent against Ongoing Projects and Other Than Ongoing Projects for the FY]; B --> C[Amount spent on Administrative Overheads]; C --> D[Details relating to creation or acquisition of Capital Asset through CSR spent in the FY.]; D --> E[Reasons, if company fail to spend CSR obligations];
```

Details of CSR amount spent against **Ongoing Projects** and **Other Than Ongoing Projects** for the FY

Amount spent on **Administrative Overheads**

Details relating to creation or acquisition of **Capital Asset** through CSR spent in the FY.

**Reasons**, if company fail to spend CSR obligations



# Disclosure on Website

Rule 9 is substituted vide CSR Amendment Rules, 2021 which now mandates Company to disclose on its **website, if any** :

(1) Composition of the CSR Committee;



(2) CSR Policy; and

(3) Projects approved by the Board for public access.



# Transfer of Unspent CSR Amount

Rule 10 is inserted vide CSR Amendment Rules, 2021

The Company is required to transfer Unspent amount of CSR for that FY and any Unspent amount remained from Ongoing Project, to any Fund included in Schedule VII until a Fund is specified for the purpose.

Note: The CSR Amendment Rules, 2021 is applicable wef 22 Jan 2021 and hence only the amount Unspent on CSR for FY 2020-21 and/or unspent amount for which the provisions were made in the earlier financials and/or Directors Report of earlier years had made mention to transfer it to unspent account, need to be transferred to any Fund mentioned under Schedule VII or Board Resolution to change it



# Transfer of Unspent CSR Amount

## Schedule VII Funds

Central Government shall establish a '**National Unspent CSR Fund**' for purpose of transferring the unspent amount of companies , which shall be then used for activities outlined in Schedule VII.

Until such fund is created the unspent CSR amount in terms of provisions of sub-section (5) and (6) of section 135 of the Act shall be transferred by the company to any fund as specified in schedule VII of the Act.

1. Swatch Bharat Kosh
2. Clean Ganga Fund
3. Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (**PM CARES Fund**)
4. Prime Minister's National Relief Fund



# Capital Assets -out of CSR Expenses

## Past period -Capital Assets

Any Capital Asset **created** by the Company before 22 Jan 2021 when the CSR Amendment Rules, 2021 were notified, are required to be transferred within a period of **180 days from 22 Jan 2021 (which can be further extended to 90 days** with the approval of the Board with reasonable justification) to the entities mentioned in next slide.

## Future - Capital Asset

Any Capital Assets **created or acquired** by the Company from CSR amount can be held by the entities mentioned in next slide.-



# Capital Assets -out of CSR Expenses

- 1) Section 8 Company or Registered Public Trust or Registered Society, having charitable objects and **CSR Registration Number** which the entity gets on filing of Form CSR-1 ; or
- 2) **Beneficiaries of that CSR project**, in the form of self-help groups, collectives, entities; or
- 3) A **Public Authority**, which means as defined in Section 2(h) of the Right to Information Act, 2008.



# Penalty on default and non-compliances

Failure to spend CSR expenditure in any FY or Failure to transfer such Unspent CSR Amount of that FY or Failure to transfer any Unspent CSR Amount of Ongoing Project after three years, to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be **was earlier proposed to be a criminal offence as per CAA 2019, however that provision was not made effective.**

AND

Later vide CAA 2020 defaults are decriminalised and now only monetary penalties will be levied.



# Penalty on default and non-compliances

Penalty for Failure to spend CSR expenditure in any FY  
or  
Failure to transfer such Unspent CSR Amount

Penalty on the Company, shall be **twice the amount** required to be transferred by the Company to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or **Rs.1 Crore**, whichever is less.

Penalty on every officer of the Company who is in default shall be **1/10<sup>th</sup> of the amount** required to be transferred by the Company to such Fund specified in Schedule VII, or the Unspent CSR Account, as the case may be, or **Rs. 2 lakh** whichever is less



## Immediate Action by Companies before 31 March 2021

1. 01 April, 2021 to file **Form CSR -1** for company itself or for implementing agency (Section 8 company or Regd Public Trust or Regd Society)- **CSR Amended Rules 2020**
2. Draft **new CSR Policy** as per new definition given in CSR Rules , giving statement containing approach and directions by the Board and guiding principles for CSR projects selection, implementation and monitoring activities and formulation of Annual Action Plan
3. Implementing agency or company to have **80G** to get benefit to donors- **CSR Amended Rules 2020**
4. **No need of CSR committee** if the spent on CSR by the company is less than 50 Lakhs—**CAA 2020**
5. CSR committee to be **updated with changes** and certain additional responsibilities on them like Annual Action Plan containing many details including details of need and impact assessment- **CAA 2020 and CSR Rules**
6. CSR committee to formulate and recommend **Annual Action Plan** as per Rules 5 of CSR Rules, 2020 - **CSR Amended Rules 2020**



## Immediate Action by Companies before 31 March 2021

7. CSR Committee to suggest to **have Standard Operating Process (SoP)** for better monitoring, implementing and evaluating – **General suggestion**
8. Amount of spent on CSR for FY 2020-21 remained **unspent and NOT FOR ON GOING Project** then —Need to transfer in 6 months by **30 Sept 2021** to Fund notified under Schedule VII.—**CAA 2019**
9. Amount of spent on CSR for FY 2020-21 remained **unspent for ON GOING PROJECT** then —Need to transfer in 30 days to separate Bank Account with Scheduled Bank to be called the Unspent Corporate Social Responsibility Account, company to spend it in 3 FY from date of transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days from the date of completion of the third financial year.—**CAA 2019**



## Immediate Action by Companies before 31 March 2021

10. **Directors Report for FY 2020-21** will be reported in new annexure and with Impact Assessment by independent agency ( if the spent is more than 10 Cr)- **CSR Amended Rules 2020**
11. Any **Capital Assets created** prior to CSR Rules, 2021 to be transferred as per these Rules in 180 days ( 90 days with approval of Board with justification) – **CSR Amended Rules 2020-- Many challenges here .**
12. **CFO or person responsible** for financial management to certify that funds disbursed by the company have been utilized for the purpose and in the manner as approved by the Board- **CSR Amended Rules 2020**
13. Excess **CSR Expenditure to be c/f subject to Board Resolution - CSR Amended Rules 2020**
14. **Board** to ensure CSR implementation and satisfy itself that the funds disbursed are used for the purpose and in the manner as approved by it-- **CSR Amended Rules 2020**
15. Appoint **Independent agency for Impact Assessment** – by company, if the spent is >10 Cr in 3 years, for project where spent is > 1 cr and one year old



## Immediate Action by Companies before 31 March 2021

16. **Impact Assessment Expenses not to exceed 5% of total CSR Exp of that FY or 50 Lakhs** , whichever is less
17. Monitor **Administrative overheads** as per new definition which does not include expenses directly incurred for **designing, implementing , monitoring and evaluating** of a particular CSR projects- **CSR Amended Rules 2020- Many challenges and chances of misuse**
18. **Display on Website** (a) composition of CSR Committee (b) CSR Policy and (c) Project of CSR approved by the Board
19. **For reporting** on creation or acquisition of Capital Assets--- Date of creation, amount, whose name it is registered with address and location
20. Keeping **track of CSR amount Spent, Set Off or Carried Forward**
21. Approve specifically any **project as Multi Year Project.**



## CSR in COVID

1. In the present era of COVID-19, the Government of India is inspiring companies to provide social support. According to a March 23, 2020 MCA circular, all expenditures incurred on activities **related to COVID-19** would be added as permissible avenues for CSR expenditure.
2. This announcement by MCA is welcomed by Corporate India. It created a **win-win situation** for companies with existing CSR obligation and funds at disposal who wanted to contribute to relief and meet statutory requirements of The Companies Act at the same time.
3. With the announcement, a majority of the companies either contributed to the **PM CARES Fund** or for various other purposes that contributed to protecting health and preventing hunger of the affected.



# NFRA



## List (Provisional) of Data base of Companies as of 31.03.2019 within the scope of NFRA

- ▶ National Financial Reporting Authority (NFRA), a regulatory body that oversees **Public Interest Entities** as regards their compliances to accounting and auditing standards, has compiled a provisional Data Base of companies and their Auditors as of 31 March 2019 .
- ▶ This Data base includes total 6500 companies. This has been published on the website of NFRA
  1. 5300 listed companies
  2. 1000 unlisted companies &
  3. 200 Insurance and Banking companies



## List (Provisional) of Companies within the scope of NFRA dated 4th May, 2021

- Companies whose securities are listed on any stock exchange in India or outside India
- Unlisted Public Companies
  - (a) having paid-up capital of not <Rs.500 crores or
  - (b) having Annual Turnover of not <Rs.1000 crores or
  - (c) having in aggregate, outstanding loans, debentures and deposits of not <Rs.500 crores as on the 31st March of immediately preceding financial year
- Insurance companies, Banking companies, companies engaged in the Generation or Supply of Electricity, companies Governed by any Special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act



# List (Provisional) of Companies within the scope of NFRA dated 4th May, 2021

## PUBLIC INTEREST ENTITIES

### NFRA publishes provisional database of companies, auditors

#### OUR BUREAU

New Delhi, May 7

The National Financial Reporting Authority (NFRA), a regulatory body that oversees public interest entities as regards their compliance to accounting and auditing standards, has compiled a provisional database of companies and their auditors as of March 31, 2019.

This includes about 6,500 companies comprising listed companies (around 5,300), unlisted companies (around 1,000), and insurance and banking companies.

#### Available on website

The auditor details for many of these companies have been compiled while for the remaining cases, this exercise is

in progress. This provisional data has been published on the website of the NFRA ([https://www.nfra.gov.in/nfra\\_domain](https://www.nfra.gov.in/nfra_domain)), an official release said. This data will be updated/revised going forward based on the collection of further data and information. “Similar exercise for compilation of the database as of March 31, 2020 will be undertaken shortly,” release added.

Public interest entities group includes all listed companies, and large unlisted companies. To establish this database, the NFRA has been engaging with the Corporate Data Management (CDM) division of the Ministry of Corporate Affairs (MCA) and three recognised stock exchanges in India.







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