1

Presentation on

Amendments in Companies Act,2013
and
Corporate Social Responsibility.

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Companies Act 1956 to Companies Act 2013

2

- 2008 – Cos Bill Introduced
- 2009 – Cos Bill reintroduced
- 2010 – SCF report submitted to Lok Sabha
- 2011 – Revised Bill introduced in Lok Sabha. Bill referred back to SCF.
- Aug. 2012 - SCF report submitted to Lok Sabha
- Oct. 2012 – Cabinet approves amendments to the Bill
- Dec. 2012 – Bill passed by ok Sabha
- 2013 – Presidential assent August 29, 2013 and 98 Sections Notified w.e.f September 12, 2013.

Introduction

3

- Passed by the **Lok Sabha** on 18th Dec 2012;
- Passed by the **Rajya Sabha** on 8 Aug 2013, without any modification;
- Received **President's assent** on 29 August 2013;
- **Replaces** around 60 year old Companies Act, 1956 and becomes the **Companies Act, 2013**;
- **Fine print** to be defined by Rules currently available on MCA website;
- **Simple yet complex** – sections reduced from 650+ to 470, however, **over 300 places** in the Companies Act, 2013 where it mentions of **rules**;
- Expected to be **implemented in phases** – provides flexibility for different effective dates for different sections;
- **98 Sections notified** with immediate effect on 12th Sep. 2013

Structure

4

- The Companies Act, 1956 – 13 Parts, 658 Sections & 15 Schedules
- The Companies Act, 2013 – 29 Chapters, 470 Sections & 7 Schedules
  In approximately 75% of the Sections the words " to be specified" or "as may be prescribed" has been used.

Companies Act 2013 - Features

5

- Enhancing **transparency**;
- Enhancing **protection measures** for investor and minority shareholders;
- Having stringent **Corporate Governance** measures;
- **CSR** initiatives introduced;
- **Greater responsibility** on auditors;
- Having **business friendly** corporate regulations;
- Bringing in **e-governance** measures;
- **Improving accountability** in India's corporate sector.

Agenda for Today's Meeting

6

- Accounts
- Audit & Auditors
- Corporate Social Responsibility
- Related Party Transactions

Accounts

7

Key Changes

- **31 March** to be mandatory financial year-end (except for the purpose of **aligning the financial year** with that of holding/subsidiary companies incorporated outside India, with **prior approval** of the NCLT);
- **Consolidation** mandatory for all companies with subsidiaries.;
- The 2013 Act prescribes the **format** (similar to existing revised schedule VI of the Act) for preparation of CFS;
- Requirement to show **minority interest separately** within equity on the balance sheet.

Accounts

8

Analysis

- The 2013 Act **eliminates** the current flexibility in having a financial year **different than 31 March**, as well as in making amendments to the year-end to suit requirements;
- **Consolidation for all companies**, including intermediate companies is onerous. Internationally, the requirements apply only to **listed companies**;
- The **existing** Indian and international accounting practices **do not require** preparation of CFS when the Company has investments only in **associates and joint ventures** (no subsidiaries).
- The requirement to present **minority as part of equity** is currently **not existing** under the existing Indian accounting practices. However the **International practices are consistent** with the 2013 Act.

Accounts

9

Draft Rules

- **Consolidation requirement apply** even when exempted by accounting standards for the reason of **immediate parent being outside India**;
- Listed companies and public companies, having **net worth more than INR 10 crore**, given a choice of sending financial statements to members by **electronic mode**.

Accounts

10

Key Changes

Restatement of Financial statements

- Court or NCLT may order **re-opening and re-casting** of financial statements upon application by Central Government or any other statutory body;
- Mandatory restatement: in case of **fraud** and when Court or Tribunal passes an order for restatement;
- **Voluntary restatement** can be done to comply with accounting standards with the **approval of the tribunal**;
- **Directors** may prepare revised financial statements or board's report for any of the **3 preceding FYS** after obtaining approval of NCLT.

Accounts

11

Estimated useful life

- The threshold for minimum useful life of fixed asset has been **removed** and a list for **indicative useful lives** has been prescribed.
- Any **variation from** the useful life of an asset needs to be **justified**.
- **No transaction period** provided and the change needs to be applied prospectively.
- If on the date of implementation of the 2013 Act, there is no useful life left for an asset with carrying value on transitioning, the same may be adjusted through opening reserves.

Accounts

12

Analysis

Restatement

- Restatement in line with **international standards**;
- Further **SEBI requires** companies to restate financial statements in case of **justified audit qualifications**.

Estimated useful life

- For a certain class of companies, the useful life **shall not** normally be different than that as indicated in the 2013 Act;
- **Deviations** are allowed but would need to be justified.
- Other companies are **not permitted** to have a useful life which exceeds the prescribed/indicated life. May lead to different useful life for same asset by similar companies.

Accounts

13

Draft Rules

- In case of **revision** of financial statements and where there has been a **change in auditor, consent** will be required from previous auditor for the said revision.

NFRA (National Financial Reporting Authority)

14

Key Changes

National Financial Reporting Authority (NFRA)

- Monitor and enforce **compliance** with accounting and auditing standards;
- Oversee the **quality of services** of the profession;
- Not merely an **advisory body** but will have power to **investigate matters** of professional misconduct by CA's or firms;
- **No other body** shall initiate proceedings in matters where investigation initiated by NFRA;
- Will have the **powers vested in a Civil Court** while trying a suit.

NFRA (National Financial Reporting Authority)

15

Class action suits

- Will allow a **requisite number** of members or depositors with common interest, in a matter to **file an application** in the National Company Law Tribunal ('NCLT') against the company/ its management/ its auditors or a section of its shareholders for **damages or compensation** if they are of the opinion that the management or conduct of the affairs of the company are being **conducted in a manner prejudicial to their interest.**

NFRA (National Financial Reporting Authority)

16

Analysis

- The constitution of the NFRA will bring in a significant change to the **current structure** of standard setting regulations;
- In the **absence of** significant anti-abuse provisions in the implementation of class action suit rules, **this can be misused**;
- The **new risks and liabilities** will enforce **more responsibility** into the role of an auditor.

NFRA (National Financial Reporting Authority)

17

Draft Rules

- Draft National Financial Reporting Authority Rules, 2013 released and NFRA structure to have committees on Accounting Standards, Auditing Standards and on Enforcement;
- NFRA shall undertake investigation or conduct quality review of audit of following class of companies:
  - Listed Companies;
  - Unlisted companies with **net worth** or paid up capital of not less than **INR 500 crores** or **annual turnover** not less than **Rs. 1,000 crores** as on 31st March of immediately preceding financial year; or
  - Companies having **securities listed outside India**

Audit and Auditors

18

Key changes

Tenure & Re-appointment of Auditors

- Auditors appointed in **AGM** to hold office from the conclusion of that meeting until the conclusion of the **ensuing 6th AGM** (subject to ratification by members at every AGM);
- An auditor/ audit firm is **eligible** for re-appointment after expiry of **5 years** since completion of the previous tenure;
- An audit firm having **common partner(s)** with another firm which has **completed its term** is not eligible for re-appointment for a period of **five years** from the completion of the other firm's term.

Audit and Auditors

19

Key changes

Tenure & Re-appointment of Auditors

- The individual or firm, against whom an order is issued by the Tribunal for any **fraudulent activity**, shall **not be eligible to be appointed** as auditor of any company for **five years** in addition to other **penal actions;**
- As per the 2013 Act, **before the expiry** of the term of appointment, the company may **remove** the auditors (subject to **special resolution** and prior approval from **Central Government**) and the **auditors**, as well, have the **right to resign**.

Audit and Auditors

20

Analysis

- The auditor's tenure will be **protected for 5 years** as there are stringent provisions on removal of auditors;
- While rotation affects the long-term continuity of the company-auditor relationship, the **5 year** appointment, brings in **stability** for a limited period;
- The **Tribunal's authority** to **change** the auditor and consequent **ineligibility**, to act as an auditor, is quite punitive and could be **disruptive** to the audit profession.

Audit and Auditors

21

Draft Rules

- Rotation requirements apply **retrospectively** i.e. period prior to the commencement of the 2013 Act, included in computing 5/10 consecutive years.
- Incoming auditor/ audit firm **disqualified** for appointment, if **associated with** the outgoing auditor/audit firm under the **same network** of audit firms or operating under the **same trade mark or brand**.

Audit and Auditors

22

Key changes

Mandatory rotation

- In case of listed companies (or a company belonging to such class or classes of companies as may be prescribed) the **term of appointment** of an individual auditor / an audit firm is restricted to a period of **5 years/ 10 years;**
- An auditor/ audit firm should mandatorily rotate at the expiry of the term. Shareholders can mandate:
  - **More frequent** rotation of audit partner and team;
  - Audit can be conducted by **more than one auditor** (joint audit);
- **Transition period of 3 years** provided to comply with the requirement of mandatory rotation of auditor.

Audit and Auditors

23

Analysis

- Mandatory rotation is expected to **change the Indian audit market structure** significantly as several companies have retained their auditors for more than 10 years;
- Mandatory rotation could possibly **result in both** positive and negative influences on the quality of the **financial reporting** processes and on overall **audit quality**;
- **Moves away** from international practice of only mandatory partner rotation and will be an **implementation challenge**.

Audit and Auditors

24

Draft Rules

- Auditor rotation mandatory for **all companies**, except for One Person Company and Small companies.

Audit Committee

25

- Recommend appointment of auditor & his remuneration
- Examination of Financial Statements & auditor's report thereon
- Scrutiny of inter- corporate loans & investments
- Call for comments of auditors about Internal Control system
- Set-up Vigil mechanism
- Evaluation of Internal financial controls & Risk management system.

Audit Committee

26

- Audit Committee to recommend an auditor for the company, after due consideration, so that BOD can put forward the proposal at AGM.
- The committee has to check FS under the light of Auditors opinion, so that there is proper reporting & cross-check.
- Committee to undertake scrutiny assessment of inter-corporate loans & advances, so that related party transactions can be detected & can be disclosed adequately.
- Committee can ask auditors to give special opinion on internal control systems & undertake risk management measures.

Audit and Auditors

27

Key Changes

Eligibility

- The new Act proposes that a firm wherein a **majority of the partners** practicing in India are **qualified for appointment**, may be appointed to be an auditor of a company;
- Where a firm, including a Limited Liability Partnership ('LLP'), is appointed as an auditor of a company, **only partners, who are chartered accountants** are permitted to **act and sign on behalf of the firm**.

Audit and Auditors

28

Key Changes

Whistle blower- Fraud Reporting

- The 2013 Act provides that the auditor should **immediately inform the Central Government** if he has reason to believe that an offence involving fraud is being or has been committed against the company by its officers or employees.

Audit and Auditors

29

Analysis

- The introduction of **LLP as an auditor** and ability to **operate with partners** who are not Chartered Accountants is a **welcome change** and in line with international practices. This will also pave the way for **multi-disciplinary partnership firms.**
- The term "Fraud" as defined under the 2013 Act is very wide and perhaps encompasses **every act of omission or commission**. It will be interesting to understand how these requirements **will work** considering that auditors are also the **gatekeepers** of the accounting and internal controls of the company.

Audit and Auditors

30

Draft Rules

- For fraud reporting by auditors, the **materiality threshold** defined – report to Central Government if fraud is happening **frequently** or amount involved is **not less than 5% of net profits or 2% of the turnover.**

Audit and Auditors

31

Key changes

Additional disqualification for auditors:

- Any person who has a **business relationship** with the company/ its subsidiary/ its associate/ its holding company/ subsidiary or associate of its holding company.
- Whose **relative** is a non-executive/ executive director/ key managerial personnel of the company.
- Who is in **full time employment** elsewhere.
- Whose appointment will result in the person being the auditor of **more than twenty companies**; and
- Whose **subsidiary or associate** or any other form of entity is engaged in providing **non-audit services** as on the date of appointment (non-audit service disqualification).

Audit and Auditors

32

Key changes

Additional disqualification for auditors:

- **Holding interest** greater than specified amount.
- A person who has been **convicted by a court of an offence involving fraud** and a period of ten years has not elapsed from the date of such conviction;
- Any person whose appointment will result in the person being the auditor of **more than twenty companies**

Audit and Auditors

33

Analysis

- Some of the disqualifications seem to be **quite punitive** and may be **difficult to implement;**
- The current language appears to be **including routine business transactions** at an arm's length or even **immaterial transactions**, which may have no effect on the company-auditor relationship;
- It is not clear whether a person/ firm engaged in providing **non-audit services** is disqualified to be the auditor of **any company** or of only the company to which such **non-audit services are rendered;**
- The non-audit services may be provided in the **year of the appointment** without affecting eligibility provided the **engagement is terminated**, prior to appointment date.

Audit and Auditors

34

Draft Rules

- For auditor's disqualification with respect to business relationships, the term 'business relationships' is defined to construe any transaction entered into for a commercial purpose.

Restrictions on Auditors

35

Key changes

Restriction on audit limits

- Limit on number of companies that can be audited by a firm: 20 per partner (including private companies)
- Provisions prohibit auditors of a company to render non-audit services to an audit client (or its holding company or its subsidiary company)

Restriction on services

- Severe restrictions on providing non-audit services, directly or indirectly include:
  - Accounting and book keeping services;
  - Internal audit;
  - Design and implementation of any financial information system;

Restrictions on Auditors

36

Restriction on services

- Actuarial services;
- Investment advisory services;
- Investment banking services;
- Rendering of out sourced financial services; and
- Management services.

- **One year** from the date of enactment of the 2013 Act

Restrictions on Auditors

37

Analysis

- **No restrictions** based on nature/size of the companies and **private companies** will also be considered for calculating the limit of twenty audits per partner;
- Whilst the provision of some **non-audit services** to audit clients can **pose a risk**, the **objectivity** of auditors is not compromised by providing non audit services to audit clients or their holding companies provided that auditors comply with **independence standards;**
- Scope of service **restrictions** significantly **hamper the ability** of auditors to provide valid non-audit services that **don't impact** independence.

Restrictions on Auditors

38

Analysis (contd)

- The risks associated with the audits **increase significantly** and have a severe impact on the cost of **professional indemnity** insurance and hence **costs of audits.**

Audit and Auditors

39

Key changes

Penalties & Prosecution

- In case the auditor has **contravened** any of his duties, he shall be **punishable** as below:
  - required to **refund the remuneration;**
  - **pay damages** to the company, statutory bodies/ authorities or any other person for **losses arising** of incorrect or misleading statements in his audit report;
  - **pay a fine** which shall not be less than INR 25,000 but which may extend to INR 5 lakh;

Audit and Auditors

40

- Where, in case of audit of a company being conducted by an **audit firm,** it is proved that the partner(s) have acted in a **fraudulent manner:**

  - **imprisonment** for a term not less than **six months** and may extend upto **10 years,** provided that where the matter involves **public interest**, the minimum term will be **3 years;** and

  - **fine** for an amount ranging between **1 and 3 times** the amount involved in the fraud.
- **High penalties** in case a certain specified person (director, promoter, experts and auditor) has provided **misleading Information and people have acted** on such information;

Audit and Auditors

41

Analysis

- The terms mentioned in the Act like **"intention to deceive"** or '**improper or misleading** statement of particulars', etc. are **vague** and subject to wide interpretation resulting in **unnecessary litigations;**
- Potential **unlimited liability** on auditor may result **adverse impact** on auditing profession and may give rise to long disputes and increased audit costs;
- Also there could be an **unlimited liability** to the firm for an **act of a partner** and this seems to be a **disproportionate punishment** for an individual act;
- This requirement results into auditors being **held liable to every person** and the liability is not limited to his involvement and work performed.
- Also, the reference by an **expert or advisor or consultant** is very **broad and vague** and could result in wide and unintended interpretations of the intent of the clause.

Auditors' report

42

Key changes

Reporting Requirements

- The Act includes following **additional matters** for auditor reporting;
  - Adequacy of the **internal financial controls' system** and the **operating effectiveness** of such controls;
  - Any **disqualification, reservation or adverse remark** relating to the maintenance of accounts and other matters connected therewith;
  - **Any fraud** by officers or employees on the Company (immediate reporting to CG) is being or has been committed.
- For **listed entities,** in the director's report, the 2013 Act **requires directors** to provide a similar report on **internal financial controls.**

Auditors' report

43

Analysis

- The auditors are subjected to **wider and onerous responsibility** of providing a **comfort on internal controls** and on **operational effectiveness** of the conduct of the business, in addition to the true and fair opinion on financial statements;
- Scope of audit inquiries / testing may **no longer be restricted to financial information** and may include more **qualitative operational assessments** as well. It is **not yet clear** as to what 'Other matters connected herewith' may include;
- Concept of **materiality** in reporting frauds **exists**;
- For **unlisted entities**, the requirements related to **reporting on internal financial controls** apply only to auditors and **not to the directors** which is **inconsistent** with the company's / directors' primary responsibility for implementing such controls.

Auditors' report

44

Draft Rules

- **Additional comment** in auditor's report – **disclosure** of the effect of **pending litigations**, provision for **foreseeable losses** on long-term contracts and delay in depositing money into the **Investor Education and Protection Fund;**
- For reporting of fraud by auditors, the **materiality threshold** defined – report to Central Government if fraud is **happening frequently** or amount involved is not less than **5%** of net profits or **2%** of the turnover.

Accounts, Audit and Auditors

45

Key changes

Other audits

- **Internal** audit and **Secretarial** audit – **mandatory** for listed and prescribed classes of companies
- **Cost audit** has been mandated for specified of companies

Accounts, Audit and Auditors

46

Analysis

- Mandatory internal audit requirement will **strengthen** the system of internal controls in the wake of recent corporate frauds
- Mandatory secretarial audit report would be a **good measure to ensure compliance** with legal requirements as any **adverse comment** in the report could have **significant impact** from a regulatory perspective.

Accounts, Audit and Auditors

47

Draft Rules

- Internal audit made **mandatory** for **listed** companies, **public companies** with paid up share capital of **INR 10 crore** or more or outstanding loans or borrowings exceeding **INR 25 crore** or with acceptance of deposits of **INR 25 crore** or more at any point of time during the last financial year;
- Secretarial audit made **mandatory** for every listed company and every public company having a paid-up share capital of **INR 100 crore.**

Accounts, Audit and Auditors

48

To Conclude

- Many proposed changes need to be re-visited in the interest of profession and from practicality perspective.
- Auditors and audit firm need to be very careful in client acceptance/ re-acceptance process, throughout;
- Auditors to be very careful in handling the fraud reporting process
- Full clarity on exact time for audit rotation is very important
- MCA should not isolate ICAI as the latter plays a very important role to regulate and strengthen the profession;
- NFRA need to have learned and experienced executives and staff as they would be challenging learned professionals;
- It is time that we embrace the changes in the right spirit.

Other Important Provision

49

Fraud and Class Action

Key changes

Fraud

- Specific provision relating to any act of fraud has been included in definitions which was not there in 1956 Act
- The terms 'wrongful gain' and 'wrongful loss' have also been defined

Class Action Suits

- CAS will allow requisite number of members or depositors with common interest, to file an application in the NCLT, if they feel the company are being conducted in a manner prejudicial to their interest.

Other Important Provision

50

Fraud and Class Action

- CAS can be filed against the audit firm or expert advisors for improper or misleading statement.
- Class action suits cannot be filed against banking company.

Analysis

- The inclusion of separate provision with such wide amplitude and stringent consequences for fraud can be reckoned as strong message and deterrent against such acts.
- It seems to include all the wrongful acts, whether or not, they lead to any wrongful gain or loss.
- CAS will help in improving the quality of financial reporting as well as the quality of corporate governance.

Other Important Provision

51

Fraud and Class Action

- It will prevent company from frivolous and multiple suits.
- It will empower small investors to file collective suits with low litigation costs due to aggregation of fragmented claims.

Draft Rules

- The draft rules provide that 10% of the total number of member or members holding not less than 10% issued share capital of the company OR 10% of the total number of depositors besides the 100 members and 100 depositors can file class action suits.

Other Important Provision

52

Declaration & Payment of Dividend

Key changes

- Transfer of prescribed sum to reserves before declaration of any dividend left to Companies discretion;
- Limitation on amount of interim dividend that can be paid in case loss in the last quarter.

Analysis

- Consist with the global practices
- Statutory prudence to prevent interest of the Company

Other Important Provision

53

NCLT

Key changes

National Company Law Tribunal

- NCLT to have jurisdiction for approval of merger, corporate reorganisation, capital reduction, granting relief in case of mismanagement and oppression etc.
- Appeals against the order of NCLT shall lie to NCLAT and appeal arising out of order of NCLAT on any question of law shall lie to Supreme Court.

Other Important Provision

54

NCLT

Analysis

- NCLT to have exclusive jurisdiction to deal with Companies Act cases which will speed up the process of restructuring, winding up and other matters and will replace:
  - Company Law Board
  - Board for Industrial & Financial Reconstruction
  - Appellate Authority for Industrial and Financial Reconstruction; and
  - District Court or High Court jurisdiction relating all matters under the Companies Act.

Other Important Provision

55

NCLT

Draft Rules

- The draft rules relating to NCLT which are available for public comment proposes that the rules shall also be applicable for the proceedings before the NCLT in case of limited liability partnerships under LLP Act, 2008

56

INTRODUCTION OF

CSR PROVISIONS

IN COMPANIES ACT 2013

Corporate Social Responsibility

57

- Before Corporate Social Responsibility (CSR) found a place in corporate lexicon, it was already textured into Indian Corporate Culture.
- As early as the 1940s, founding chairman Shri G. D. Birla espoused the trusteeship concept of management. Simply stated, this entails that the wealth that one generates and holds, is to be held as in a trust for our multiple stakeholders. With regard to CSR, this means investing part of our profits beyond business, for the larger good of society.
- Mr. Aditya Birla, weaved in the concept of 'sustainable livelihood', which he would say, "Give a hungry man fish for a day, he will eat it and the next day, he would be hungry again. Instead, if you taught him how to fish, he would be able to feed himself and his family for a lifetime."

Corporate Social Responsibility

58

- The Wipro chairman Aziz Premji himself has donated 8.7 per cent from his personal stock holding in Wipro as endowment for the Azim Premji Foundation and has gone on to pledge more.
- Speaking at the All-India Management Association's (AIMA) 40th Management Convention in New Delhi, he said: "My worry is the stipulation should not become a tax at a later stage ... Spending two per cent on CSR is a lot, especially for companies that are trying to scale up in these difficult times. It must not be imposed."

What is CSR?

59

- As a layman if we explain it than CSR is " The Corporate belief that a company needs to be responsible for its actions – socially, ethically, and environmentally."
- Companies have a lot of power in the community and in the national economy. They control lot of assets, and may have billions in cash at their disposal for socially conscious investments and programs. Some companies may engage in "greenwashing" or pretend interest in corporate responsibility, but many large corporations are devoting real time and money to environmental sustainability programs and various social welfare initiatives to benefit employees, customers, and their community at large. This is CSR.
- *In other words, CSR may also be referred to as "corporate citizenship" and can involve incurring short-term costs that do not provide immediate financial benefit to the company, but instead promote positive social and environmental change.*

CSR Provisions

60

- Corporate Social Responsibility (CSR) Obligations have been introduced under Clause 135 of the Companies Bill, 2013. Under the new law, the CSR spending would be the responsibility of companies. The Bill seeks to make CSR spending compulsory for companies that meet certain criteria. The companies will have to mandatorily spend 2% of their average net profit for CSR activities.
- **CSR Provisions in Companies Act 2013:**

Every company having;

1. **Net worth** of **Rs. 500 Crore** or more, or
2. **Turnover** of **Rs. 1,000 Crore** or more or
3. **Net profit** of **Rs. 5 Crore** or more

[Section 135(1)]

- During any financial year shall **constitute** a **Corporate Social Responsibility Committee** of the Board consisting of **3 or more directors**, out of which **at least 1** director shall be an **independent director**. The **Board's report** under clause 134(3) shall **disclose** the **composition** of the Corporate Social Responsibility Committee. [section 135(2)]

CSR Provisions

61

- **CSRC** shall **formulate** & recommend **CSR policy, recommend** the **amount** of expenditure on CSR policy & monitor it from time to time. [section 135(3)]
- **BOD approve** CSR policy, disclose it in board's report and also **place on website.** [section 135(4)]
- **BOD** shall **ensure** that co. spends at least 2% of average net profit (see section 198) made during the 3 immediately preceding financial years. The **Co.** shall **give preference** to **local areas** around where it operates. [section 135(5)]

Activities under CSR:

62

- Schedule VII gives list of activities which can be undertaken by the company who is mandated to spend on CSR. They include:
  - Eradicating extreme hunger and poverty
  - Promotion of education
  - Promoting gender equality and empowering women
  - Reducing child mortality and improving maternal health.
  - Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases
  - Ensuring environmental sustainability
  - Employment-enhancing vocational skills
  - Social Business Projects
  - Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief and funds for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; and
  - Such other matters as may be prescribed

CSR- under Income Tax Act, 1961

63

- Expenditure on CSR may be allowed as deduction under the I.T. Act depending on the facts. While the draft CSR rules suggest that tax treatment of CSR spend will be in accordance with the Income-tax Act, 1961 as may be notified by the Central Board of Direct Taxes (CBDT), one have to wait and watch for notification from CBDT and whether the same provides adequate certainty on tax treatment of CSR spend.
- Format of CSR presentation in Board's report:
  - Brief outline of the company's CSR policy
  - Indicate web-link to the CSR policy
  - Composition of the CSR committee
  - Average Net Profit of the company for the last 3 financial years.
  - Threshold limit- (2% of this amount as above)
  - Details of CSR activities/ projects undertaken during the year

CSR

64

- Format for Annual report on CSR initiatives:

Sr No.	CSR project /activity identified	Sector in which the project is covered	Projects/Programmes 1. Local area/others- 2. specify the state/district (Name of the District/s, State/s where project/programme was undertaken	Amount outlay (budget) project /programmewise	**Amount Spent on the Project /Programme <u>Subheads:</u> 1. Direct expenditure on project, 2. Overheads**	Cumulative spend upto the reporting period	Amount spent: Direct/through implementing agency*
1							
2							
3							
	TOTAL						

65

RELATED PARTY TRANSACTIONS UNDER COMPANIES ACT 2013 [Section 188]

Differences between Companies Act 1956 & Companies Act-2013

66

Particulars	Companies Act 1956	Companies Act 2013
	HOLDING-SUBSDIARY COMPANY	
Restriction on Step down Subsidiary	No Restriction	Class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
	CONSOLIDATION OF FINANCIAL STATEMENTS	
Consolidation of Financial Statements	No existing provisions	In case a company has one or more subsidiaries, it shall in addition to stand-alone financials, prepare a consolidated financial statement of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the AGM of the Company. Further, such companies shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiaries in such form as may be prescribed. For the purpose of above, subsidiary shall include associate company and joint venture.

Differences between Companies Act 1956 & Companies Act-2013

67

Particulars	Companies Act 1956	Companies Act 2013
	Exemption from granting Inter-corporate loan, guarantee, security and investments	
Exemptions	Any loan made, guarantee given or any security provided or any investment made by- ▪Banking co., or ▪Insurance co., or ▪Housing finance Co., or ▪Company established with the object of financing industrial enterprises or providing infrastructural facilities, or ▪Any company whose principal business was acquisition of shares, stocks, debentures or other securities; ▪A private co., unless it is a subsidiary co.; ▪Holding Co. to its WOS Any investment made in shares allotted pursuant to further issue of capital	Any loan, guarantee or security provided by- Banking co.; or insurance co.; or housing finance co., in ordinary course of their business; Co. engaged in the business of financing of companies or of providing infrastructural facilities Investment and lending by NBFC whose principal business is acquisition of securities Acquisition by companies having principal business of acquisition of securities Acquisition of shares pursuant to further issue of capital

Differences between Companies Act 1956 & Companies Act-2013

68

Particulars	Companies Act 1956	Companies Act 2013
	RELATED PARTY TRANSACTIONS	
Scope of Section	A co. cannot enter into the contracts relating to- •Sale, purchase or supply of any goods or materials; •Sale, purchase or supply of any services; •Underwriting the subscription of any shares, debentures of a co.	A co. cannot enter into contracts relating to- •Sale, purchase or supply of any goods or materials; •Selling or disposing of ,or buying, property of any kind; •Leasing of property of any kind; •Availing or rendering of any services; •Appointment of any agents for purchase or sale of goods, materials, services or property; •Appointment to any office or place of profit in the company, its subsidiary co. or associate co.; •Underwriting the subscription of any securities or derivatives thereof , of the co.
Approval required	• Prior consent of the BoD by resolution passed at Board meeting • Prior approval of Regional Director, in case the paid-up capital of company is exceeding Rs.1 crore.	• Prior consent of the BoD by resolution passed at Board meeting • Prior approval of Shareholders, in case the paid-up capital of co. or transaction amount exceeds prescribed limit.(Special Resolution)

Differences between Companies Act 1956 & Companies Act-2013

69

Particulars	Companies Act 1956	Companies Act 2013
	RELATED PARTY TRANSACTIONS	
Specified persons with whom contracts are covered	• Director of the Co. • Relative of such Director • A firm in which such Director or Relative is a partner • Any other partner of such firm in which Director or Relative is a partner • Private co. in which such director is a director or member	Related Party-Director or his relative • KMP or his relative • Firm, in which a director, manager or his relative is a partner • Private Co. in which a director or manager is a member or director • Public Co. in which a director or manager is a Director or holds along with his relatives, more than 2% of its paid-up share capital • Any body corporate whose BoD, MD, or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager • Any person under whose advice, directions or instructions, a director or manager is accustomed to act • Any Co. which is- -a holding, subsidiary or associate Co. of such Co. -a subsidiary of a holding co. to which it is also a subsidiary .such other persons as may be prescribed.
Exemptions	Purchase/Sale of goods and materials for cash at prevailing market price. Purchase/Sale of goods and materials or services, the cost of which does not exceed Rs.5000/- in any year during the period of contract. Any transaction of banking/insurance company in the ordinary course of such company.	Any transaction entered by company in its ordinary course of business other than transactions which are not an arm's length basis.

Differences between Companies Act 1956 & Companies Act-2013

70

Particulars	Companies Act 1956	Companies Act 2013
	LOAN TO DIRECTORS	
Applicability of Section	Public Companies	Public & Private Companies
Scope of Section	No Public Co. shall directly or indirectly make any loan or give any guarantee or provide any security to its directors and other certain specified persons, except with the approval of CG.	No Public Co. shall directly or indirectly make any loan including book debt or give any guarantee or provide any security to its directors or to any other persons in whom the director is interested.
Exemptions	This section does not apply to- •Private Cos. •Holding to its subsidiary •Banking Cos	This section does not apply to- •Loan to MD/WTD -as a part of contract of services extended to all its employees -pursuant to scheme approved by members by special resolution. •A Co. which in the ordinary course of its business provides loan, guarantee or security for due repayment of any loan and charges interest thereon being not less than bank rate declared by RBI.

Related Party Transaction

71

1956 Act	2013 Act
•Limited scope of transactions and persons covered under Co Act (S. 297)	•Enhanced scope of transactions (includes property lease and sale also) •Enhanced scope of related parties to include KMP and relatives, directors with certain shareholding, persons in advisory capacity (other than professional advice) to board
•Prior approval of CG required in case paid-up capital exceeds INR 10 million (INR 1 crore)	•Prior approval of shareholders by SR if: (Rule 12.14) - paid-up capital exceeds Rs 1 Cr - Trx exceeding higher of 5% of T/O or 25% of N/W as per last audited FS - Appt. exceeding Remuneration of Rs. 1 Lac pm -Underwriting etc. exceeding Rs. 10 lac - No member shall vote if he is a related party

72

Thank You

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