



**MCA notifies
amendments to
Managerial
Remuneration and
CSR provisions of the
Companies
(Amendment) Act,
2017
C N K & Associates LLP**

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Managerial Remuneration

The MCA has notified the below mentioned Sections of the Companies (Amendment) Act, 2017 (**Amendment Act**) pertaining to Managerial Remuneration which has **come into force from 12th September 2018**. Additionally, [Companies \(Appointment and Remuneration of Managerial Personnel\) Amendment Rules, 2018](#) has also been notified.

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Amendments
66	196 Appointment of MD, WTD or Manager	<ul style="list-style-type: none">▲ A person beyond the age of 70 years can be appointed as Managing Director (MD) or Whole Time Director (WTD) or Manager even when such appointment has not been approved by special resolution provided that the votes cast in favour of the motion exceed the votes cast against the motion and the Central Government (CG) is satisfied, on an application made by the Board, that such appointment is most beneficial to the company.▲ In respect of appointment of MD, WTD or Manager, approval of CG will only be required in case the appointment is not in accordance with the matters specified in Part I of Schedule V.
67	197 Overall Maximum Managerial Remuneration (MR) and MR in case of absence or inadequacy of profits	<ul style="list-style-type: none">▲ The approval of the CG will not be required at the time of the payment of remuneration exceeding 11% of the net profits of the company.▲ Company with the approval of shareholders by way of special resolution can pay the remuneration in excess of individual limits provided for payment of MR to MD, WTD or Manager.▲ Where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Amendments
		<p>approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor should be obtained by the company before obtaining the approval in the general meeting.</p> <ul style="list-style-type: none"> ▲ In case of loss or inadequacy of profits, remuneration can only be paid in accordance with Schedule V. No approval of CG is required ▲ Excess MR received by a director should be refunded to the company, within 2 years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. ▲ No CG approval is required for waiver of the recovery of any sum refundable to company by the director. Only a special resolution has to be passed within 2 years from the date the sum becomes refundable. However, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor should be obtained by the company before obtaining approval of such waiver. ▲ The Auditor’s Report should include 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. ▲ All existing applications to the CG will abate and the company has to get the members’ approval within 1 year of the Amendment Act coming into force
68	198 Calculation of profits for MR	<ul style="list-style-type: none"> ▲ While computing net profits only Investment companies shall give credit to profits by way of premium on shares or

Sections of the Amendment Act	Corresponding Sections of the 2013 Act	Amendments
		<p>debentures which are issued or sold by the company</p> <ul style="list-style-type: none"> ▲ While computing net profits no credit will be given to any amount representing unrealised gains, notional gains or revaluation of assets. ▲ Deduction will be allowed in respect to sums in excess of expenditure over income, which had arisen in computing the net profits in accordance with this Section in any year, in so far as such excess has not been deducted in any subsequent year proceeding the year in respect of which the net profits have to be ascertained.
69	200 CG or company to fix limit with regard to remuneration	The power of the CG to fix the remuneration within the limits specified in the Act, at such amount or percentage of profits as it may deems fit has been omitted.
70	201 Forms of, and procedure in relation to certain applications	Section as a consequential change to amendment in Section 196 has been amended.

In line with the aforesaid notification, **Schedule V has been amended.**

Schedule V pertains to conditions to be fulfilled for the appointment of a MD or WTD or a manager without the approval of the CG. Among other matters, amendment to Schedule V pertains to –

- ◆ Offence under the various Acts to be considered for disqualification of appointment now includes the following Acts-
 - ▲ Insolvency and Bankruptcy Code, 2016
 - ▲ Goods and Services Tax Act, 2017
 - ▲ Fugitive Economic Offenders Act, 2018
- ◆ If any person is a managerial person in more than one company he will be eligible to be appointed as a MD, WTD or Manager in the company.

- ♦ If any special resolution has been passed by the shareholder, they can fix any remuneration (*earlier double*) in excess of the limit prescribed in Section II of part II of Schedule V
- ♦ If any company makes any default in repayment of its debt, then the company should obtain prior approval from secured creditor before obtaining the approval in the general meeting.
- ♦ A sick company for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, may for a period of 5 years from the date of sanction of scheme of revival, may pay any remuneration to its managerial persons
- ♦ A company in a Special Economic Zone can pay any amount of remuneration to its managerial person.

Corporate Social Responsibility (CSR)

The MCA has notified **Section 37** of the Companies (Amendment) Act, 2017 which corresponds to Section 135 (CSR) of the Companies Act, 2013. This section has come into **force from 19th September 2018**. Major amendments are-

- ♦ Eligibility criteria for incurring expenditure towards CSR and constituting CSR committee to be calculated based on figures of **immediately preceding Financial Year (FY)** (*earlier any FY*).
- ♦ Amendments in composition of CSR Committee whereby if a company is not required to appoint an independent director, then it shall have 2 or more directors in the committee
- ♦ Areas or subjects in Schedule VII in which CSR activities could be taken up is modified.
- ♦ CG has been empowered to prescribe sums which will not be included for calculating 'net profit' of a company under Section 135.

The computation of the **amount to be spent on CSR remains same** i.e. *average net profits* made during 3 immediate preceding FYs. *Average net profit* should be computed in accordance with Section 198 (as amended).

In line with the above notification, [Companies \(Corporate Social Responsibility Policy\) Amendment Rules, 2018](#) has been notified.

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