

Key Managerial Personnel (KMP's) and their Remuneration

Lesson 17

KEY CONCEPTS

- Management ■ Key Managerial Personnel ■ Managing Director ■ Whole-time Director ■ Company Secretary
- CFO ■ CEO ■ Manager ■ Remuneration ■ Officer who is in default

Learning Objectives

To understand:

- Appointment procedure and conditions for appointment of KMP
- Filling of vacancies in office of Key Managerial Personnel
- Role of KMP
- Role and duties of a Company Secretary as Key Managerial Personnel
- Provisions related to appointment of Managing Director, Whole Time Director or Manager
- Provisions related to Managerial Remuneration

Lesson Outline

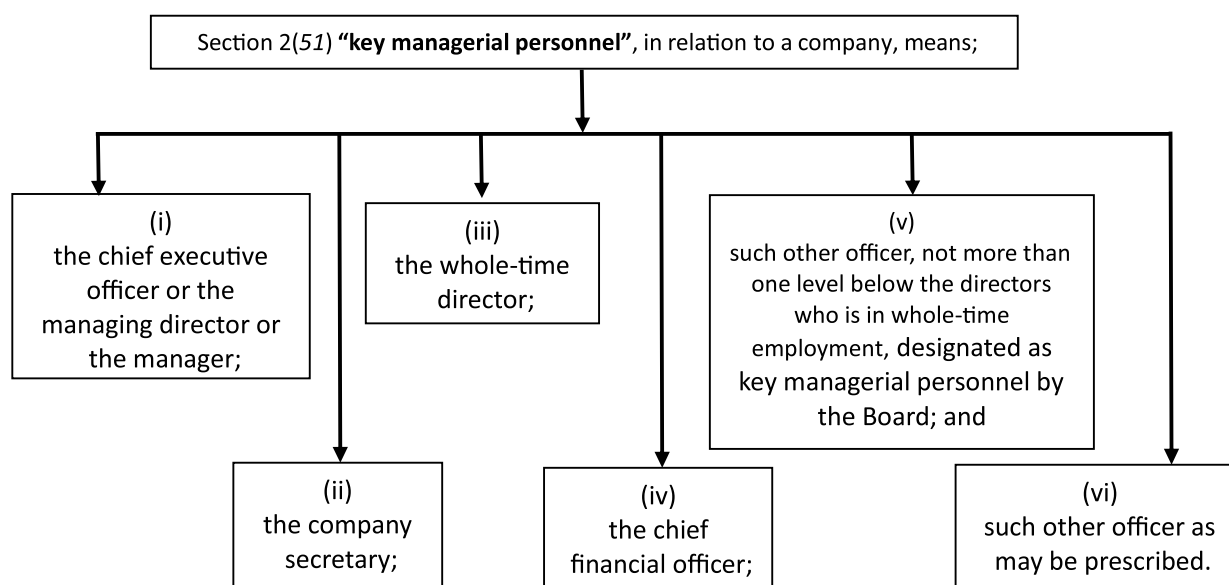
- Appointment of Key Managerial Personnel
- Managing and Whole-Time Directors
- Chief Executive Officer
- Chief Financial Officer
- Company Secretary – Appointment, Roles and Responsibilities
- Company Secretary as a Key Managerial Personnel
- Functions of Company Secretary
- Provisions related to remuneration of managerial personnel
- Officer who is in default
- Remuneration of Managerial Personnel
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 (Sections 196 to 205)
- The Companies (Appointment and Qualification of Managerial Personnel) Rules, 2014
- Schedule V - Provisions related to Appointment & Remuneration of MD/WTD/Manager
- The SEBI (LODR) Regulations, 2015

INTRODUCTION

Key Managerial Personnel (KMP) or Key Management Personnel refers to whole time employees of a company who are vested with the most important roles and functionalities. They are the first point of contact between the company and its stakeholders and are responsible for the formulation of strategies and its implementation. KMP is a group of people in charge of the company's operations. They are the decision-makers and responsible for the company's smooth functioning. They are employees vested with certain essential functionalities and roles. Accounting Standard 18(AS-18) states that Key Managerial Personnel (KMP) are people who have authority and responsibility for planning, directing, and controlling the activities of the reporting enterprise. Chief Executive Office, Chief Financial Officer, Company Secretary, Whole Time Director are the Key Managerial Personnel.



Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 deal with the legal and procedural aspects of appointment of key managerial personnel including managing director, whole-time director or manager, managerial remuneration, etc.

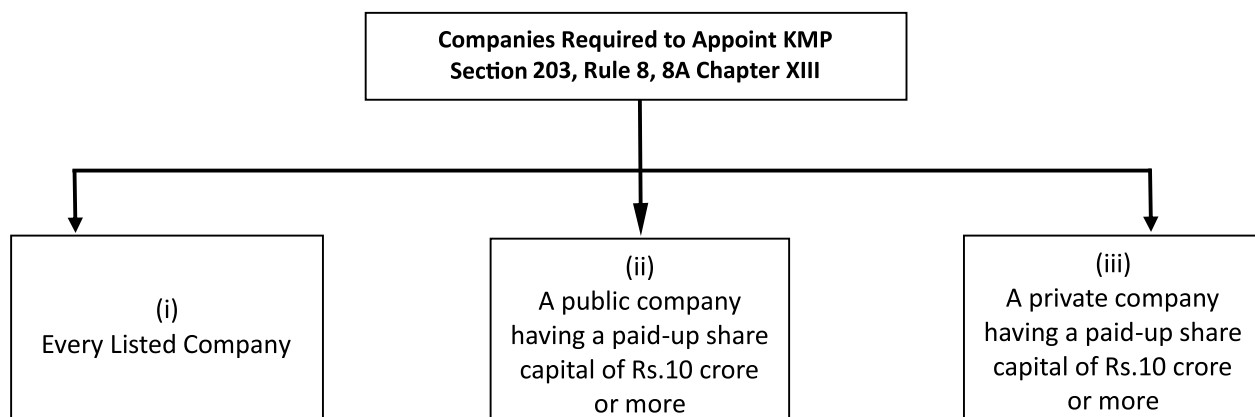
Section 196 and 197 read with schedule V of the Companies Act, 2013 provides for conditions for appointment and remuneration of Managing Director, Whole-time Director or Manager.

VARIOUS KMP'S POSITIONS & DEFINITION THEREOF UNDER THE COMPANIES ACT, 2013

S. No.	Particulars	Section	Definition
1.	Chief Executive Officer (CEO)	Section 2(18)	"Chief Executive Officer" means an officer of a company, who has been designated as such by it.

S. No.	Particulars	Section	Definition
2.	Chief Financial Officer (CFO)	Section 2(19)	"Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company.
3.	Company Secretary (CS)	Section 2(24)	"Company Secretary" or "Secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.
4.	Manager	Section 2(53)	"Manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.
5.	Managing Director (MD)	Section 2(54)	<p>"Managing Director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.</p> <p>Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.</p>
6.	Whole Time Director (WTD)	Section 2(94)	"Whole-time director" includes a director in the whole-time employment of the company.

APPOINTMENT OF KEY MANAGERIAL PERSONNEL



As per section 203(1) of the Companies Act, 2013 read with the Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies are required to appoint KMP-

- Every listed company, and
- Every other public company having paid up share capital of Rs. 10 Crores or more.

Such Companies shall have the following whole time key managerial personnel, -

- Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- Company secretary; and
- Chief Financial Officer.

CASE LAW

The Hamlin Trust and Others vs. Rattan India Finance Private Limited (RFPL) and Others Company Appeal (AT) No. 77 of 2022

According to Section 203 of the Companies Act, 2013, every listed company and every other public company having a paid-up share capital of ten crore rupees shall have the CFO as whole-time key managerial personnel.

Provided a whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

As per Article of Association of RFPL the right to appoint CFO is with Rose Investments however other 50% of shareholder have the right to reject such candidates.

Provided candidates proposed by the Rose Investments were those individuals who were associated with other entities and were not available full time for RFPL.

The remaining 50% of shareholders object the appointment of such candidates on the grounds that this is not in adherence to the provision of Section 203 of the Companies Act, 2013.

In this matter NCLAT held that in the absence of any specific mention regarding eligibility and the method of selection of the CFO in the Article of Association, it would be logical to take reference to Section 203 of the Companies Act, 2013 even by a private company, in the selection and appointment of CFO, as Section 203 prescribes the appointment of KMP which includes a CFO of the company.

NCLAT, after hearing the arguments of both the parties, held that even if RFPL is a private company the provisions of Section 203 shall apply to a company that voluntarily appoints a CFO.

Since, the CFO is a key managerial personnel (KMP) in terms of Section 2(51) of Companies Act, 2013, directed that eligibility for appointment of CFO as mentioned in Section 203 of the Companies Act, 2013 would apply between the parties.

Further, as per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every private company which has a paid-up share capital of ten crore rupees or more shall have a whole-time Company Secretary.

Illustrations:

1. ABC limited, is a listed company having paid up share capital of twelve cores rupees and more. It is mandatory for the ABC company to have following whole time KMP:
 - i. MD or CEO or Manager and in their absence, a WTD;
 - ii. Company Secretary; and
 - iii. CFO.
2. ABC Limited is a public company having paid up share capital of five crore rupees. It is not compulsory for the company to have following whole time KMP:
 - i. MD or CEO or Manager and in their absence, a WTD;
 - ii. Company Secretary; and
 - iii. CFO.

No Person shall act as Chairman and Managing Director/CFO at the same time

First proviso to section 203(1) states that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless-

- a) the articles of such a company provide otherwise; or
- b) the company carries only a single business; or
- c) the company is engaged in multiple businesses and has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government. [Second Proviso to Section 203(1)]

Exception under second proviso to section 203(1)

MCA notification [S.O. 1913(E)] on 25th July, 2014- In exercise of the powers conferred by the second proviso to sub-section (1) of Section 203 of the Companies Act, 2013, the Central Government hereby notifies that-

- public companies having paid-up share capital of rupees one hundred crore or more; and
- annual turnover of rupees one thousand crore or more

which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.

MCA further explained for the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

Manner of Appointment of KMP

As per Section 203 (2) every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Under Section 203 (3) a Whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.

Further, key managerial personnel may become a director of any company with the permission of the Board. A company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

Illustrations:

1. ABC Limited, is a listed company having paid up share capital of rupees 15 crores. It is compulsory for the company to have whole time KMP. They shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
2. ABC Limited, is a listed company having paid up share capital of Rs. 15 crores. Mr. A is the CEO of the company. Mr. A cannot hold office in XYZ Limited.
3. ABC Limited, is a listed company having paid up share capital of Rs. 12 crores. Mr. A is the managing director of the company. Mr. A can hold office in XYZ Limited which is a subsidiary of ABC Limited.
4. Mr. A is a managing director of the ABC Limited. He is appointed as managing director of XYZ Limited. Such appointment must be made or approved by a resolution passed at a meeting of the Board with the consent of all directors present at the meeting. Also, a specific notice of such meeting, and a resolution to be moved thereat must be given to all the directors.

Provisions as Specified Under the SEBI (LODR) Regulations, 2015

As per Regulation 30 read with Schedule III Part A of the SEBI (LODR) Regulations, 2015, the listed entity shall disclose to the stock exchange:

- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), senior management, Auditor and Compliance Officer;
- Fraud or defaults by a listed entity, its promoter, director, key managerial personnel, senior management or subsidiary or arrest of key managerial personnel, senior management, promoter or director of the listed entity, whether occurred within India or abroad.

Vacancy of KMP

Section 203 (4) of Companies Act 2013 states that if the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months from the date of such vacancy.

CASE LAW

In Re Alpur Solar Private Limited (Petitioner) vs. Registrar of Companies, NCT of Delhi & Haryana, (Respondents) ROC/D/Adj/2022/Section 203/Alpur/6982-6988 dated 19.12.2022

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

Facts of the Case:

The previous CS of the Company vacated the office on 28.01.2021 and such vacancy was filled on 24.01.2022 after a period of one year.

Decision:

The Company's officials pleaded that because of the COVID pandemic and the lockdown situation company faced difficulties in the appointment of CS. Under the circumstances, the ROC determined that the failure to appoint CS constituted a violation, and as a result, penalties were levied. Total Penalty of Rs. 16,50,000/- imposed on the company.

CASE LAW

In the case of *Achutha Rai vs. Registrar of Companies [1995 SCC Online Ker 90: (1906) 36 Comp Cas 598: 1966 Cri LJ 478]*, the Kerala High Court held that the petitioner (being the managing director) has two capacities combined in him, one that of a director and the other that of a manager or an officer. His capacity as manager cannot be terminated by mere sending of two resignations but it must be duly accepted by the company and he should be relieved of his duties and responsibilities.

In case a Managing Director who is also acting as Key Managerial Personnel under Section 203 of the Act vacate his position for any reason, such vacancy pursuant to provisions of section 203 (4) of the Act.

Non applicability of Section 203

As per Section 203 (4A) the provisions of sub-section (1), (2), (3) and (4) of this section shall not apply to a Managing Director or Chief Executive Officer or Manager and in their absence, a whole-time director of the Government Company.

Penalty for Contravention

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

Intimations Regarding appointment of KMP

File with the Registrar the e-Form MGT-14 [Private Companies are exempted from filing e-form MGT-14 regarding appointment of KMP under section 117(3)(g) vide exemption notification dated June 5, 2015].

All companies need to file a return containing the particulars of appointment of key managerial personnel with the Registrar in e-form DIR-12 along with specified fees within thirty days of such appointment.

In case of listed entity, intimation to Stock Exchange about appointment of KMP as soon as reasonably possible and not later than twenty-four hours from the occurrence of event. [Regulation 30 SEBI (LODR) Regulations, 2015].

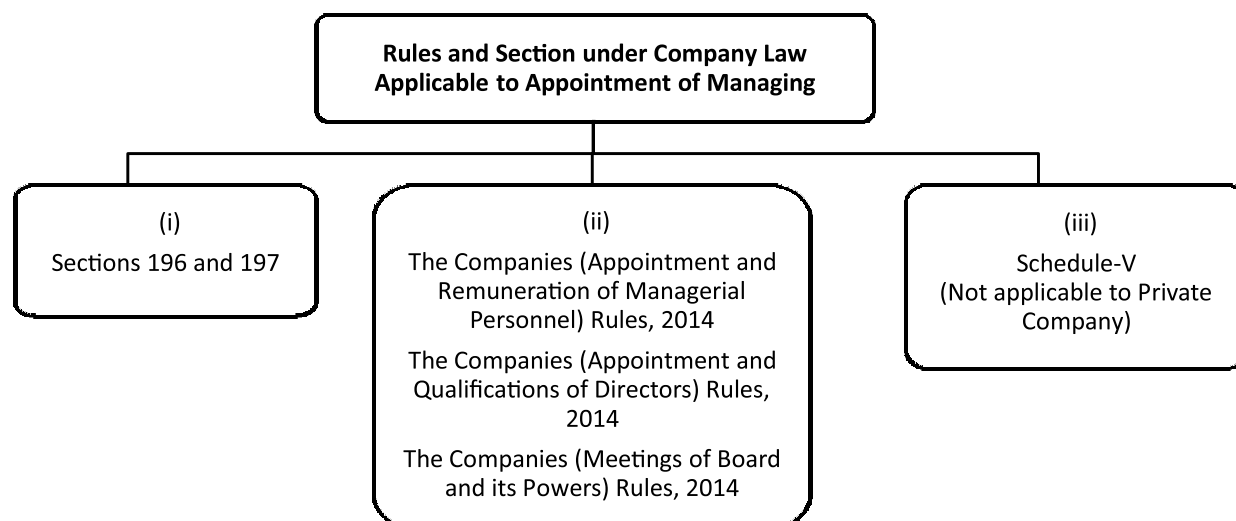
Role of KMP

The KMPs are responsible for taking crucial company decisions. They are also liable when the company does not follow the mandatory compliances laid down by the statutory provisions. The primary roles and responsibilities of the KMP are:

- Financial statement to be signed by CEO, if any, if director & by CFO & by CS.
- Prohibited from insider trading/forward dealing in securities.
- Included in officer/officer in default/related party along with relatives.

- Sign document/ proceedings/contract on behalf of company.
- Disclosure in annual return about KMP.
- Names fall under register of KMP & their shareholding in holding/subsidiary/associate.
- Disclose interest/concern & changes to company within 30 days of appointment/relinquishment.
- KMP has right to be heard in Audit Committee meetings when the committee considers auditor's report, but KMP shall not have right to vote.
- Nomination & Remuneration Committee to recommend policy for remuneration of KMP.
- Disgorgement of asset/personal liability, if undue benefit proved in inspection of company.
- Statement annexed to notice of general meeting to contain items of special business to show financial/ other interest. If such item relates to other company & KMP holds more than 2% shares in other company, disclosure of shareholding to be made. In case of Non-disclosure, KMP has to compensate company benefit received. Default punishable with Rs. 50000 or 5 times of benefit, whichever is higher.

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER



Section 196 of the Companies Act, 2013 provides the provision for appointment of Managing Director, Whole-Time Director, and Manager

Appointment of MD & Manager at the same time is not possible – Section 196 (1)

No company shall appoint or employ at the same time a managing director and a manager. If we go through the definition of Manager Sec 2(53) and Managing Director Section 2(54), we can infer that responsibilities, duties, and powers of both these positions are almost the same. The only difference is where these powers are coming from. In case of Manager, it is coming from board and in case of managing director it is coming from Articles or agreement.

Hence, it makes no sense to have two different people managing company having the exact same powers and duties. It will create conflicts, which will in turn lead to mismanagement.

Tenure - Section 196 (2)

Appointment of Managing Director, Whole-Time Director or Manager shall not be for a term exceeding five years at a time.

Re-appointment - Proviso to Section 196 (2)

The company may re-appoint them for next term before expiry of their present term but not earlier than one year before expiry of the current term. This means, company may re-appoint them for next term in last one year of current term.

Disqualification of managing Director, Whole-Time Director or Manager - Section 196 (3)

No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who –

- is below the age of twenty-one years or has attained the age of seventy years.

However, the appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

- is an undischarged insolvent or has at any time been adjudged as an insolvent;
- has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

CASE LAW

In the case of *Sridhar Sundararajan vs. Ultramarine and Pigments Ltd. (2016) 4 Mah LJ 590*, the division bench of High Court of Bombay decided on the matter of disqualification for appointment or continuation as Managing Director of company. It held that a person who is below age of 21 years or who has attained age of 70 years cannot be appointed or could not be continued as MD and that a person who has been appointed as Managing Director before he was 70 years old is prohibited from continuing as Managing Director once he attained the age of 70 years.

Central Government approval - Section 196 (3) Second Proviso

Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

This simply means that if a company wants to appoint a person as MD, WTD or manager but is unable to pass a special resolution as stated in Section 196 (3) First Proviso, in that case company may do so by passing an ordinary resolution along with consent of Central Government.

Approval for appointment of MD, WTD and Manager -Section 196 (4)

Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule specified in Part I of Schedule V.

Content of Notice - First proviso to Section 196 (4)

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.

Return of Appointment - Second proviso to Section 196 (4)

A return in the e-form MR-1 shall be filed within sixty days of such appointment with the Registrar along with prescribed fees.

Consequence of irregular appointment - Section 196 (5)

Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Exemption to private company for section 196 (4) & (5)

Vide notification dated 05.06.2015 Section 196(4) and Section 196(5) is not applicable to Private Company. Exemption is given to the private companies for Section 196(4) and Section 196(5). It may be further noted that filing of Form MR-1 is also not applicable.

Exemption to Government Company for section 196 (2), (4) & (5)

Vide notification dated 05.06.2015 Section 196 (2), (4) & (5) shall not apply to Government Company. Therefore, a Government Company may appoint Managing Director, Whole time Director or Manager in the manner prescribed in its Articles of Association. The term of appointment of Managing Director, Whole time Director or Manager may exceed five years.

Exemption to Specified International Financial Services Centres (IFSC) public company for section 196 (4)

Vide notification dated 04.01.2017 Section 196 (4) shall not apply to Specified IFSC public company. Therefore, a Specified IFSC public company may appoint Managing Director, Whole time Director or Manager in the manner prescribed in its Articles of Association.

Conditions to be fulfilled for the Appointment of Managing or Whole-Time Director or a Manager without the approval of the Central Government as Per Schedule V of the Companies Act, 2013 (Part I-Schedule V of the Companies Act, 2013)

No person shall be eligible for appointment as a managing or whole-time director or a manager of a company unless he satisfies the following conditions, namely:-

- The person had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the Acts as specified under Schedule V of the Companies Act, 2013.
- The person had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained mentioned above, as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

- The person is resident of India.
- He has computed the age of 21 years and not attained the age of 70 years.

Appointment with the Approval of Central Government

In case the provisions of Part I of Schedule V of the Companies Act, 2013 are not fulfilled by company, an application seeking approval to the appointment of a managing director, whole-time director or manager shall be made to the Central Government, in E-Form No. MR-2 and shall be accompanied by fee as may be specified for the purpose.

Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment [Rule 7 of the Companies (Appointment and Remuneration of managerial Personnel) Rules, 2014].

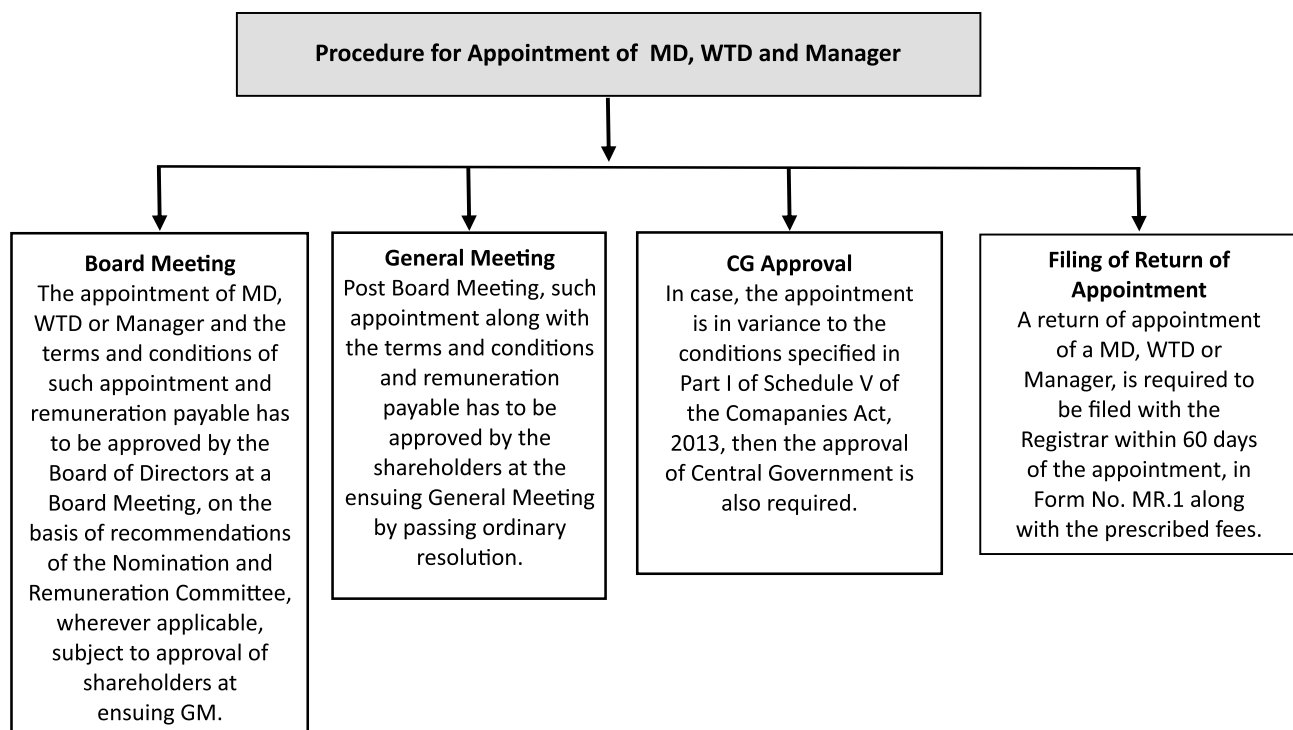
Issue of General Notice before making Application to Central Government

As per Section 201, before any application is made by a company to the Central Government under Section 196 of the Companies Act, 2013, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating nature of application proposed to be made.

Such general notice shall be published in at least once in a newspaper in the principal language of the district in which registered office of the company is situated and circulating in that district, and at least once in English in an English newspaper circulating in that district indicating the nature of application proposed to be made to the Central Government.

The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Procedure for appointment of Managing Director, Whole Time Director & Manager



1. Convene and hold a Board meeting after giving to all the directors due notice as required under Section 173 of the Companies Act, for transacting, inter alia, the following business:-
 - (a) take a decision on the person to be appointed, on the basis of recommendations of the Nomination and Remuneration Committee, wherever applicable as managing director after fully ensuring that he does not suffer from any disqualification in Sections 164, 196, 203, Schedule V and any other provision of the Companies Act, 2013;

The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board regarding their appointment.
 - (b) approve the draft agreement to be signed and executed by and between the company and the proposed managing director (it is not mandatory);
 - (c) fix time, date and venue for holding a general meeting of the company;
 - (d) approve notice of the general meeting along with the explanatory statement as required by Sections 101 and 102 of the Act after keeping in mind the requirements of Section 190 of the Act.
 - (e) notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
 - (f) authorise company secretary to issue notice of the general meeting on behalf of the Board.
2. Hold the general meeting and get the resolution passed approving appointment of the managing director/ Whole time Director/Manager.
3. In case the appointment of the Managing Director/Whole time Director/Manager is not in accordance with the provisions of Schedule V of the Act, the company is required to obtain approval of the Central Government as per Section 201 of the Act.
4. For getting the approval of the Central Government under Section 201 certain formalities are to be complied with:
 - (a) As required by Section 201 of the Act, the Company shall give a general notice to the members of the company indicating the nature of the application proposed to be made.
 - (b) This notice has to be published at least once in the principal language of the district in which the registered office of the company is situated and circulating in that district and also once in English in an English newspaper also circulating in that district.
 - (c) The company shall attach a copy of this notice with the application together with certificate as to the due publication thereof.
 - (d) The application should be filed electronically in E-Form MR-2 as per rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 accompanied by the prescribed fees.
 - (e) The application should be made within 90 days from the date of such appointment with regard to compliance of Section 196 of Companies Act, 2013.
5. Execute the agreement, as approved by the Board, with the Managing Director.
6. Make necessary entries in the register of directors etc. and other records and registers of the company.

7. File the following documents with the ROC:

- (a) The company should file with the ROC return of appointment of the managing director, whole time director or manager in Form MR-1, within sixty days as per Section 196(4) of the appointment and the return must be certified by the auditors of the company or the company secretary or a secretary in whole-time practice.

The Mandatory attachments for Form MR-1:

- i. Copy of Board Resolution;
 - ii. Copy of Shareholders Resolution along with explanatory statement is mandatory in case passed for such appointment;
 - iii. Copy of letter of consent to act as managing director, whole time director, or manager;
 - iv. Copy of Central Government Approval;
 - v. Copy of certificate by Nomination and Remuneration Committee.
- (b) Form DIR – 12 is to be filed with Registrar for particular of appointment of a key managerial personnel, within thirty days of the appointment.
- (c) Form MGT-14 to be filed with the Registrar.

8. Inform all concerned about the appointment of the managing director. It is advisable to issue a general notice in newspapers about the appointment of the managing director.

POWERS, DUTIES, AND RESPONSIBILITIES OF THE MANAGING DIRECTOR

Managing director oversees a company's business operations, liaise with stakeholders, drive strategic company growth, and are responsible for the overall performance of the business. Following are some powers, duties and responsibilities for which the managing director is entrusted with:

- Being a member of the board of directors participates in policy-making functions and formulating the objectives of the Board;
- Execute policies laid down by the Board of Directors;
- Act as the intermediary officer between the organization and the Board of Directors;
- Communicate and interpret the policies of the company to sub employees;
- To review and present the operations of the company to the Board periodically accounts and statistics showing the progress and the present position of the company;
- Appoint high officials of the company;
- Formulate the compensation and employment plan by the accepted policies of the company;
- Plan the expansion and development of the business;
- Organize meetings with department heads;
- Promote high morale among the employees of the company by creating a sense of belonging;
- Maintain contact with the government, trade unions, and community, chamber of commerce, at large;
- Maintain a balanced relationship between line and staff managers;

- Approve or disapprove development plans submitted by the senior executives and place before the Board for final approval;
- Build a system of budgetary control by which the actual performance of the company may be evaluated against the planned course of action;
- Supervise production and sales activities of the company;
- Give due attention to consumer satisfaction which is ensured by the continued supply of goods and services to the market.

CASE LAW

[In the matter of Shiv Kumar Jatia (Appellant) vs. State of NCT of Delhi (Respondent), The Supreme Court of India, dated 23/08/2019]

Shiv Kumar Jatia is the Managing Director of M/s. Asian Hotels which looks after Hyatt Regency Hotel. He had authorized Mr. PR. Subramanian to apply for lodging license of the hotel.

There was a contravention the condition of the lodging license which led to a hotel guest enter into a semi lit under-construction terrace for smoking. The guest fell from the terrace of 6th floor to the 4th floor and got injured. Case was brought before the High Court which ordered for prosecution of the Managing director along with the other three accused by relying on the case of *Sushil Ansal vs. State through CBI*.

The Apex Court held that vicarious liability on the part of Managing Director and the Directors would arise provided any provision exists in that behalf in the statute. Further, the allegations made on the Managing Director could not establish any active role coupled with criminal intent having direct nexus with the accused.

Court observed that an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

Though there are allegations of negligence on the part of hotel and its officers who are incharge of day-to-day affairs of the hotel, so far as appellant Mr. Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. There is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent

The Court has held that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. The allegations made on the Managing Director was vague in nature and the criminal proceedings against Shiv Kumar Jatia as passed by the High Court, New Delhi were quashed.

Chief Executive Officer [Section 2(18)] and Chief Financial Officer [Section 2(19)]

“Chief Executive Officer” means an officer of a company, who has been designated as such by it.

It is a borrowed concept from United States of America (USA). The chief executive officer (CEO) is a top level executive of a company, who is responsible for developing and implementing strategies, taking major corporate decisions, managing the overall operations and resources of a company.

The term CEO is defined for the first time in the Act. Any person appointed as a CEO of the company shall be one of the key managerial personnel (KMP) as per definition of clause (51) of section 2 of the Act when such person is designated /appointed under section 203 the Act. Such officer shall be one of the officers who is in default under clause (60) of section 2 of the Act in the event of violation of provisions of the Act.

As per sub-section (1) of section 134 of Act, if CEO is also a director in the company, CEO is required to sign financial statements whether he is KMP or not.

On the other hand, “Chief Financial Officer” means a person appointed as the chief financial officer of a company. The CFO may be appointed either by the board of directors or by the managing director unless such person is designated as a key managerial person under section 203. He shall be a person who is occupying the position as CFO having involved in day to day financial affairs of the company. He has been also included as an officer in default due to his role and responsibility in the company.

As per the provisions of section 203 every public Company having a paid up share capital of Rs. 10 Crores or more shall have a whole time key managerial personnel, which includes whole time Chief financial officer.

The CFO need not be a director of the company. However, he has been recognised as a KMP under Section 203 and his designation is equated with other managerial personnel such as the managing director, the manager or in their absence, the whole time director. The remuneration payable to CFO shall not be subject to regulation under Section 197 of the Act read with Schedule V in the Act, unless he is part of the Board or he is appointed as a manager in addition to his designation as CFO. The Act does not prescribe any qualification for the appointment of CFO. Sub-section (1) of section 134 of the Act, requires the CFO to sign the financial statements whether he is KMP or not, as he is responsible for overseeing the financial activities of an entire company.

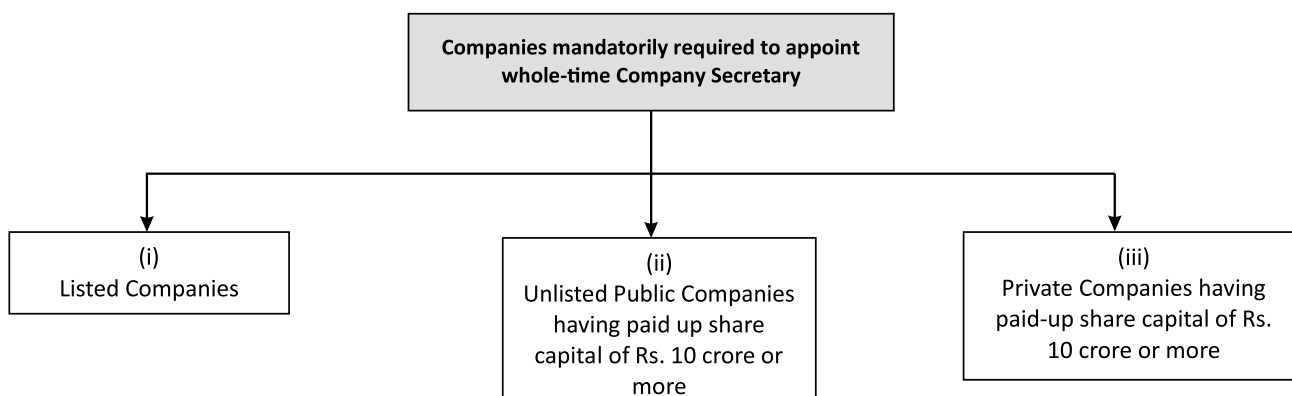
Some of the duties of CFO include the following:

- Financial planning and monitoring cash flow;
- The CFO being an internal person in the organization has responsibility towards presenting the financial statements truly and fairly which are subsequently audited by the statutory auditors of the Company;
- CFOs are required to protect the vital assets of the company, ensure compliance with financial regulations, close the books correctly, and communicate value and risk issues to investors and boards;
- CFOs have to operate an efficient and effective finance organization providing a variety of services to the business such as financial planning and analysis, treasury, tax, and other finance operations;
- To formulate financial strategies and influence the future direction of the company;
- CFOs are required to stimulate and drive the timely execution of change in the finance function of the Company;
- To discharge such other duties as have been specified under the Companies Act, 2013 or rules made thereunder.

APPOINTMENT OF COMPANY SECRETARY

A Company Secretary (CS) is the key managerial personnel of a company. A CS is entrusted with the compliance and legal aspects of a company. The Institute of Company Secretaries of India (ICSI) is the body that regulates and maintains the profession of Company Secretaries. As per clause (c) of Sub-section (1) of Section 2 of the Company Secretaries Act, 1980, a Company Secretary means a person who is a member of the Institute of Company Secretaries of India.

The primary role of the CS is maintaining the company's statutory books, registers, records, advising the board of directors relating to the legal and financial risks of the company and ensuring that the company complies with statutory regulations. A CS is also responsible for ensuring that the company adheres to all the corporate laws, taxes, and economic and industrial laws that apply to the business.



Areas where Company Secretary render services

Corporate Governance Services

- Advising on good governance practices and compliance of Corporate Governance norms as prescribed under various Corporate, Securities and Other Business Laws and regulations and guidelines made thereunder.

Corporate Secretarial Services

- Promotion, formation and incorporation of companies and matters related therewith
- Filing, registering any document including forms, returns and applications by and on behalf of the company as an authorized representative
- Maintenance of secretarial records, statutory books and registers
- Arranging board/general meetings and preparing minutes thereof
- All work relating to shares and their transfer and transmission

Secretarial/Compliance Audit and Certification Services

- Secretarial Audit
- Internal Audit
- Signing of Annual Return
- Other declaration, attestations and certifications under the Companies Act, 2013

Corporate Laws Advisory Services

Advising companies on Compliance of legal and procedural aspects, particularly under –

- SEBI Act, SCRA and rules and regulations made thereunder
- Foreign Exchange Management Act
- Consumer Protection Act
- Depositories Act
- Environment and Pollution Control Laws
- Labour and Industrial Laws
- Co-operative Societies Act
- Mergers and Amalgamations and Strategic Alliances
- Foreign Collaborations and Joint Ventures
- Setting up subsidiaries abroad
- Competition Policy and Anti-Competitive Practices
- IPR Protection, Management, Valuation and Audit
- Drafting of Legal documents.

Representation Services

Representing on behalf of a company and other persons before-

- National Company Law Tribunal
- Competition Commission of India
- Securities Appellate Tribunal
- Registrar of Companies
- Labour Courts
- Consumer Forums
- Telecom Disputes Settlement and Appellate Tribunal
- Tax Authorities
- Other quasi-judicial bodies and Tribunals

Arbitration and Conciliation Services

- Advising on arbitration, negotiation, and conciliation in commercial disputes between the parties
- Acting as arbitration/conciliator in domestic and international commercial disputes
- Drafting Arbitration/Conciliation Agreement/Clause

Financial Markets Services

- Public Issue, Listing and Securities Management
- Advisor/consultant in issue of shares and other securities
- Preparation of Projects Reports and Feasibility Studies
- Syndication of Loans from banks & financial institutions

- Drafting of prospectus/offer for sale/letter of offer/other documents related to issue of securities and obtaining various approvals in association with lead managers
- Loan Documentation, registration of charges, status and search reports
- Listing of securities/delisting of securities with recognized stock exchange
- Private placement of shares and other securities
- Buy-back of shares and other securities
- Raising of funds from international markets – ADR/GDR/ECB

Takeover Code and Insider Trading

- Ensuring compliance of the Takeover Regulations and any other laws or rules as may be applicable in this regard
- Acting as Compliance Officer and ensuring compliance with SEBI (Prohibition of insider Trading) Regulations, 1992 including maintenance of various documents.

Securities Compliance and Certification Services

- Compliance with rules and regulations in the securities market particularly –
- Internal Audit of Depository Participants
- Certification under SEBI (DIP) Guidelines
- Audit in relation to Reconciliation of shares
- Certificate in respect of compliance of Private Limited and Unlisted Public Company (Buy Back Securities) Rules

Finance And Accounting Services

- Internal Audit
- Secretary to Audit Committee
- Working capital and liquidity management
- Determination of an appropriate capital structure
- Analysis of capital investment proposals
- Business valuations prior to mergers and/or acquisitions
- Loan syndication
- Budgetary controls
- Accounting and compilation of financial statements

Taxation Services

- Advisory services to companies on tax management and tax planning under Income Tax, Excise and Customs Laws
- Preparing/reviewing various returns and reports required for compliance with a the tax laws and regulations
- Representing companies and other persons before the tax authorities and tribunals

International Trade And WTO Services

- Advising on all matters related to IPRs and TRIPs Agreement of WTO
- Advising on matters relating to antidumping, subsidies and countervailing duties
- International Commercial Arbitration
- Advising on and issuing certificates on Exim Policy and Procedures
- Advising on Intellectual Property licensing and drafting of Agreement
- Acting as registered Trade Mark Agent

Management Services

- General/Strategic Management
- Advising on Legal Structure of the organization
- Business policy strategy and planning
- Formulation of the organizational structure
- Acting as management representative to obtain ISO Certification

Corporate Communications and Public Relations

- Communication with shareholders, stakeholders, Government and Regulators, Authorities, etc.
- Advisory services for Brand equity and image building

Human Resources Management

- Manpower planning and development
- Audit of the HR function
- Performance appraisal
- Motivation and remuneration strategies
- Industrial relations
- Office management, work studies and performance standards
- Advising on industrial and labour laws

Information Technology

- Compliance with cyber laws
- Conducting Board Meetings through video-conferencing and teleconferencing
- Advising on software copyright and licensing
- Development of management reports and controls
- Maintenance of statutory records in electronic form
- Sending notices to shareholders by electronic mode
- Filing of forms/documents in electronic form with Registrar of Companies and other statutory authorities

COMPANY SECRETARY AS KEY MANAGERIAL PERSONNEL (KMP)

The Company Secretaries play an important role as governance professionals in all types of corporates, whether it is a private company, public company, section 8 company, government company or so. In the recent international development in corporate governance, the role of Company Secretaries is not limited to the doing compliance with laws, regulations, standards, and codes; it is also about creating cultures of good practice.

The Company Secretary acts as a bridge for information, communication, advice, and arbitration between the board and management and between the organization and its stakeholders including shareholders.

To fulfill this role, the Company Secretary needs to be fully aware of the powers, rights, duties, and obligations of his entire business portfolio. In addition to providing advice and communication, the corporate secretary often called on to create and manage relationships between these different players in the corporate governance system. To carry out this role effectively, a Company Secretary needs to act with the highest integrity and independence in protecting the interests of the organization, its shareholders, and others with a legitimate interest in the organization's affairs. This level of responsibility calls for a thorough knowledge of the business environment in which the organization operates as well as of the laws, rules, and regulations that govern its activities. Company Secretaries typically provide practical support to the chairman of the organization to ensure that board meetings are managed effectively. This typically would entail assisting the chairman with agenda development, ensuring that meetings are conducted in line with good governance and statutory and regulatory requirements, drafting minutes, and following up on implementation of decisions made by the board.

Company Secretary has been recognized as Key Managerial Personnel and has placed along with Managing Director (MD) or Chief Executive officers (CEO) or Manager, Whole time director(s) or Chief Financial Officer (CFO) under Section 203 of the Companies Act, 2013. Accordingly, every company having paid-up share capital of ten crore rupees or more is required to appoint the whole time Company Secretary as the Key Managerial Personnel.

Test Yourself

Question: Which of the following rule of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides the requirement of appointing a company secretary under Companies Act, 2013?

Options: (a) Rule 8; (b) Rule 8A; (c) Both (a) & (b); (d) None of these

Answer: (c)

Company Secretary as Compliance Officer

Under Regulation 6 of the SEBI (LODR) Regulations, 2015, a listed company is required to appoint a qualified company secretary as the compliance officer. The compliance officer of the Company is responsible for:

- (a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit;
- (b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in the manner as specified from time to time;
- (c) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations;
- (d) monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors:

However, the company secretary is also entrusted with the duties for ensuring compliance with SEBI (Prohibition of Insider Trading) Regulations, 2015 including maintenance of various documents and also to ensure compliance of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. The requirement for appointment of Compliance officer is not applicable in case of units issued by mutual funds which are listed on recognised stock exchange(s) governed by the provisions of the Securities and Exchange Board of India (Mutual Funds) Regulations 1996.

Company Secretary as a part of Senior Management

The Regulation 16 of the SEBI (LODR) Regulations, 2015 provides that the “senior management” shall mean the officers and personnel of the listed entity who are members of its core management team, excluding the Board of Directors, and shall also comprise all the members of the management one level below the Chief Executive Officer or Managing Director or Whole Time Director or Manager (including Chief Executive Officer and Manager, in case they are not part of the Board of Directors) and shall specifically include the functional heads, by whatever name called and the Company Secretary and the Chief Financial Officer.

Accordingly, the role of Company Secretary in the various segments, is performed in different capacities. Broadly the Company Secretary is having the opportunities in the following two domains:

1. Company Secretary in Employment
2. Company Secretary in Practice

ROLE OF COMPANY SECRETARY

CS as a Business Supporter

The Companies Act gives specific right to a company secretary— to exercise promotion and incorporation of companies; to handle company audit and certification services; to sign annual returns; to handle corporate restructuring and takeovers; to scrutinize reports and voting procedures in a transparent manner; to administer revival of sick companies; to become a technical member of Company Law Tribunal; to investigate cases of taxation and corporate affairs.

CS as an Advising Agent

CS works as advising agent in cases of – issue of shares; drafting of prospectus/sale letter/issues related to securities/private placement and buyback of shares; raising funds from international markets; loan syndication and documentation; income tax planning; drafting of legal documents; in matters of intellectual property rights; guiding in policies of merger; amalgamation and joint ventures, etc.

Company Secretary Audit

A CS makes sure that the company is following the laws and guidelines explained in the memorandum in order to make the easy functioning of the organization, as per the rules mentioned in Section 204 of the Companies Act, 2013. It is not only a role, but the duty of the CS to execute such audits of prescribed and listed companies.

Legal Advisor for Business

The Company Secretary knows the laws of the company very well and works as a legal advisor for the executives. During court of law matters, he advises on the company rights by taking the deep subject knowledge from the expert.

Link Between Inter and Intra Company Works

A Company Secretary plays a role of connectors between the investors, board of directors, and authorities who work in the direction of the company's functioning and regulation.

Keep Record Of Legal Works

The professional company secretary of India maintains the information regarding investors, shares, directors, and members in a record.

PROCEDURE FOR APPOINTMENT OF A WHOLE TIME COMPANY SECRETARY

The following procedural steps should be taken for appointing a whole-time company secretary:

1. Advertise the post, collect applications, hold interview, short list the individuals for the position and finalise the terms of appointment.
2. Convene a Board meeting after giving notice to all the directors of the company as per section 173 of the Act. At the board meeting, place the proposal of appointing Company Secretary with the details of the person finalized and pass a resolution appointing the company secretary and approving the terms and conditions of his appointment.
3. File return of appointment of company secretary with the Registrar in Form DIR-12 within thirty days from the date of appointment (date of joining office) and in case of public company copy of Board Resolution also needs to be filed in Form MGT-14 along with such fee as specified in Companies (Registration of Offices and Fees) Rules, 2014. The particulars of Company Secretary, Income-tax PAN, Membership details (will be validated from ICSI records), residential details, date of appointment, e-mail ID of the person for communication purpose are required to be filled in the Form.
4. A Company Secretary shall not hold office in more than one company except in its subsidiary company at the same time.
5. Make entries in the Register of directors and key managerial personnel under Section 170 of the Act.
6. Inform the Stock Exchange(s) where the company is listed.
7. Since key managerial personnel are included in 'related party' as defined in section 2(76) of the Act, verify whether the company secretary so appointed involved in any related party transactions within the provisions of Section 188 of the Act. If yes, then comply with the requirements in this regard.

Duties of a Company Secretary in India

According to section 205 of the Companies Act, 2013 and rule 10 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the company secretary must perform the following functions and duties:

1. to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
2. to ensure that the company complies with the applicable secretarial standards;
3. to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
4. to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

5. to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
6. to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
7. to assist the Board in the conduct of the affairs of the company;
8. to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
9. to discharge such other duties as have been specified under the Act or rules; and
10. such other duties as may be assigned by the Board from time to time.

REMOVAL OF COMPANY SECRETARY

A company secretary can be removed or dismissed like any other employees of the organization. Since he is appointed by Board, the Board of directors of a company has absolute discretion to remove a company secretary or to terminate his services at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

Procedure for Removal/Resignation of Company Secretary

1. A Company Secretary can be removed in accordance with the terms of appointment and the Board can record the same.
2. Convene a Board meeting after giving notice to all the directors of the company as per section 173, place the matter of removal/resignation of the Company Secretary and pass a resolution to the effect.
3. Obtain Resignation Letter duly dated and signed and in case of removal a reasonable opportunities of being heard shall be giving.
4. File Form DIR-12 in electronic mode within thirty days with the Registrar of Companies together with requisite filing fees. Evidence of Cessation (for example Resignation Letter) is an optional attachment.
5. Inform the stock exchange where the company is listed within 24 hours of Board Meeting.
6. Make entries in the Register maintained for recording the particulars of Company Secretaries under section 170.
7. Issue a general public notice, if it is so warranted, according to size and nature of the company.
8. The resulting vacancy shall be filled up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

OFFICER WHO IS IN DEFAULT

Officer [Section 2(59)]

“Officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

One of the key concepts of the Companies Act is the meaning of the term “officer who is in default.” Under the act, liability for default by a company has been imposed on an officer who is in default.

By virtue of their positions in the company, the managing director, the whole-time director, and the company secretary directly fall within the scope of this term.

Officer who is in Default [Section 2(60)]

As per Section 2(60), “officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- (i) whole-time director;
- (ii) key managerial personnel;
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;
- (vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
- (vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

REMUNERATION OF MANAGERIAL PERSONNEL

“Remuneration” section 2(78)

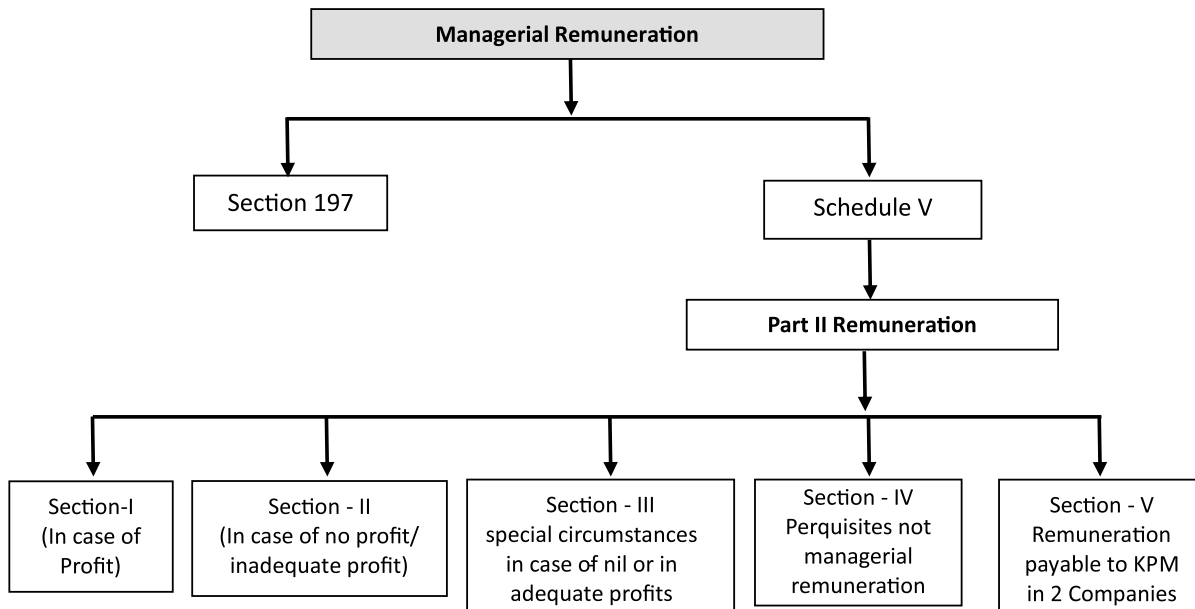
“Remuneration” means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961.

In simple words, remuneration is any type of compensation that an individual or employee receives as payment for services rendered to organization or company.

Managerial Remuneration

Though the term Managerial Remuneration is not defined anywhere in the Companies Act, 2013, the term is used interchangeably with remuneration to a managerial person. In general parlance Managerial remuneration means remuneration paid by the company to its Key Managerial Personnel (KMPs) and other directors. Section 197 of the Act provides provisions relating to overall maximum managerial remuneration

payable by a public company and the managerial remuneration payable by it in case of inadequate profits.



Overall Maximum Managerial Remuneration - Section 197 (1)

Section 197(1) of the Companies Act, 2013, lays down the provisions for overall maximum managerial remuneration. The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed 11% of the net profits of that company for that financial year computed in the manner laid down in section 198 of the Companies Act, 2013, except that the remuneration of the directors shall not be deducted from the gross profits.

The Company may pay the remuneration to the managerial personnel exceeding total limit of 11% of net with the approval of members at the general meeting. However, limit of remuneration shall be as per Schedule V.

Note: The Section applies only to Public Companies and hence Private Companies are free to pay remuneration at any rate to such directors in case of adequacy or inadequacy of profits.

Remuneration in excess of Section 197(1)- First Proviso to Section 197 (1)

Provided that the company in general meeting may, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V.

Individual Limit for each director- Second Proviso to Section 197 (1)

Provided further that, except with the approval of the company in general meeting, by a special resolution—

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,-

- A. one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
- B. three per cent. of the net profits in any other case.

S. No.	Persons entitled for remuneration	Maximum remuneration in any financial year	If remuneration exceeds maximum remuneration in any financial year as provided under column (b)
	(a)	(b)	(c)
(i)	Directors including Managing Director, Whole time Director and Manager of public companies	11% of the net profits of the company for that financial year	Company in general meeting subject to provisions of Schedule V may pay remuneration in excess of 11% of the net profits of the company.
(ii)	One Managing director/ Whole time director/ manager	5% of the net profits of the company for that year	With the approval by a special resolution of the company in general meeting this limit may be exceeded.
(iii)	More than one Managing Director/ Whole time Director/ Manager	10% of the net profits to all such Directors and Manager taken together	With the approval by a special resolution of the company in general meeting this limit may be exceeded.
(iv)	Directors who are neither Managing Director nor Whole time Directors	1% of the net profits of the company if there is a Managing Director or a Whole time Director or Manager	Approval by a special resolution of the company in general meeting is required.
(v)	Directors who are neither Managing Director nor Whole time Directors	3% of the net profits of the company if there is no Managing Director or Whole time Director or Manager	Approval by a special resolution of the company in general meeting is required.

Remuneration payable by companies having profits- Schedule V, Part II, Section I

It states that subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons or other director or directors not exceeding the limits specified in such section.

Consent from Creditors in case of default in payment – Third Proviso to Section 197 (1)

Provided also that, 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, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

Sitting Fees not to be included in % Limit of Managerial Remuneration - Section 197 (2)

Section 197 (2) states that the percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

Sub Section 5 talks about sitting fees. Sitting fees is payment of a fee to a director of the company for attending a meeting of the board of directors or committee thereof.

Remuneration in case of Absence or Inadequacy of Profits - Section 197 (3)

Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, or any other non-executive director, including an independent director by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.

Remuneration payable by companies having no profit or inadequate profit. Schedule V, Part II, Section II

Where in any financial year during the currency of tenure of a managerial person or other director, a company has no profits or its profits are inadequate, it may, pay remuneration to the managerial person not exceeding, the limits under (A) and (B) given below:-

(A)

	(1)	(2)	(3)
Sl. No.	Where the effective capital (in rupees) is:	Limit of yearly remuneration payable shall not exceed (in rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other Directors
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

If Company wants to make payment of remuneration more than above mentioned limit than company can do the same by passing of "Special Resolution" in General Meeting of the Company.

Explanation – It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

Illustration:

Ms. Jyoti is the Managing Director of Wise (India) Ltd. incorporated under the Companies Act 2013. Board of Directors of the company presents the following financial data extracted from the company's financial statements as 31st March, 2023:

<i>Particulars</i>	<i>(INR in Crore)</i>
Authorised equity share capital	60
Paid-up equity share capital	10
Debenture redemption reserve	10
Securities premium account	20
Profit & loss (Loss)	(10)
Revaluation Reserve	20

Due to loss in the financial year 2022-23, the company is not in a position to pay any remuneration to Ms. Jyoti, Managing Director of the company. As per the agreement of service between Ms. Jyoti & the company, in case of losses or inadequacy of profits in any financial year, she is to be paid remuneration on the basis of effective capital of the company.

Based on provisions of Companies Act 2013, decide the maximum remuneration payable to Ms. Jyoti for the financial year 2022-23 without the approval of Central Government.

Considering the Provisions of Companies Act 2013 & Schedule V Ms. Jyoti, Managing Director of Wise (India) Limited can be remunerated in the following ways without approval of Central Government.

- i) The Company's effective capital is between INR 5 crores and above but less than INR 100 crores, Ms. Jyoti can be paid annual remuneration of 84 lakhs i.e. monthly remuneration of 7 lakhs.
- ii) If Company pass a Special Resolution, remuneration can be doubled i.e. INR 168 lakhs per annum, i.e. INR 14 lakhs per month can be paid.

(B) In case of a managerial person or other director who is functioning in a professional capacity:

If a managerial personnel or other director is functioning in professional capacity, remuneration as per item (A) may be paid, if the following conditions is satisfied:

- They are not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures; and
- not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment; and
- possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates.

Any employee of the company will not be deemed to be a person having interest in the capital of the company in the following circumstances:

- (i) if he holds shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan; or
- (ii) by way of qualification shares.

The benefits of the limits specified under items (A) and (B) can be availed if the following further conditions are satisfied-

- (i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) The company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting;
- (iii) an ordinary resolution or a special resolution, as the case may be, has been passed for payment of remuneration as per item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:-

I. General information:

- (i) Nature of industry;
- (ii) Date or expected date of commencement of commercial production;
- (iii) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus;
- (iv) Financial performance based on given indicators;
- (v) Foreign investments or collaborations, if any.

II. Information about the appointee:

- (1) Background details;
- (2) Past remuneration;
- (3) Recognition or awards;
- (4) Job profile and his suitability;
- (5) Remuneration proposed;
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be with respect to the country of his origin);
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel or other director, if any.

III. Other information:

- (1) Reasons of loss or inadequate profits;
- (2) Steps taken or proposed to be taken for improvement;
- (3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the Financial statements:

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) details of fixed component and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees; and stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Explanation: For the purposes of Section II of this part, "Statutory Structure" means any entity which is entitled to hold shares in any company formed wider any statute.

Determining Remuneration of Director, MD, WTD and Manager - Section 197 (4)

The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.

Exception to Section 197 (4) - Proviso

It states that any remuneration for services rendered by any such director in other capacity shall not be so included in remuneration if following conditions are satisfied:

- the services rendered are of a professional nature; and
- in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Illustration:

Heal Limited owes a chain of hospitals in Mumbai. Dr. Aman, a practicing surgeon, has been appointed by the company as its non- executive ordinary director and want to pay him fees on case to case basis for surgeries performed by him on patients at hospital. In the view of above facts, Heal Limited can pay fees to Dr. Aman for his professional services if Nomination & Remuneration Committee is of the opinion that the director possess the requisite qualification for the practice of the profession for which additional remuneration is payable.

Sitting Fees - Section 197 (5)

A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 states that a company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

Manner of Payment of Remuneration- Section 197(6)

A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

Computation of Net Profit For Calculating Remuneration- Section 197 (8)

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

Consequence of Remuneration in Excess of Prescribed Limit- Section 197 (9)

If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two 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.

Waiving off Amount Receivable under Sub Section 9- Section 197 (10)

The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable.

Provided that 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, as the case may be, shall be obtained by the company before obtaining approval of such waiver.

Increasing Amount of Remuneration in case of Inadequacy of Profit- Section 197 (11)

In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule.

Remuneration payable by companies having no profit or inadequate profit in certain special circumstances – Schedule V, Part II, Section III

Section III of Part II of Schedule V envisages further special circumstances where remuneration can be payable to a managerial person or other director in excess of the amounts provided in Section II above. These circumstances are enumerated as below:

- (a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either
 - a foreign company; or
 - has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons or other director including such amount or amounts is within permissible limits under section 197.
- (b) Managerial remuneration up to any amount permissible under Section II can be paid to the managerial persons or other directors of the following class of Company:

- (i) newly incorporated company, for a period of seven years from the date of its incorporation, or
 - (ii) sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or
 - (iii) company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval.
- (c) Where remuneration of a managerial person or other director exceeds the limits in Section II but the remuneration has been fixed by the BIFR or the NCLT, provided that the limits under this section shall be applicable subject to meeting of all the conditions specified under Section II and the following additional conditions:—
- (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
 - (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person or other director as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
 - (iii) the auditor or Company Secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

For the purpose of Section I, II and III, the term “or other director” shall mean a non-executive director or an independent director.

Disclosure by Listed Companies- Section 197(12)

Section 197(12) provides that every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

Disclosure in Board's Report [Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]

- (1) Every listed company shall disclose in the Board's report-
- (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
 - (ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;
 - (iii) the percentage increase in the median remuneration of employees in the financial year;
 - (iv) the number of permanent employees on the rolls of company;
 - (v) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;
 - (vi) affirmation that the remuneration is as per the remuneration policy of the company.

Explanation.- For the purposes of this rule.- (i) the expression “median” means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one; (ii) if there is an even number of observations, the median shall be the average of the two middle values.

- (2) The board's report shall include a statement showing the names of the top ten employees in terms of remuneration drawn and the name of every employee, who-
- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than one crore and two lakh rupees;
 - (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than eight lakh and fifty thousand rupees per month;
 - (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.
- (3) The statement referred to in sub-rule (2) shall also indicate -
- (i) designation of the employee;
 - (ii) remuneration received;
 - (iii) nature of employment, whether contractual or otherwise;
 - (iv) qualifications and experience of the employee;
 - (v) date of commencement of employment;
 - (vi) the age of such employee;
 - (vii) the last employment held by such employee before joining the company;
 - (viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) of Rule 5 above; and
 - (ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Provided further that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders:

Provided also that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

Disclosure of Remuneration in Board's Report Under the SEBI (LODR) Regulations, 2015

Regulation 17(6)(ca)- Remuneration payable to a single Non Executive Director

Approval of shareholders by special resolution shall be obtained every financial year, in which the annual remuneration payable to a single non-executive director exceeds fifty per cent of the total annual remuneration payable to all non- executive directors, giving details of the remuneration thereof.

Regulation 17(6)(e)- Remuneration payable to executive directors who are promoters or members of the promoter group

Requires the listed entity to obtain the approval of the shareholders by Special Resolution in General Meeting, in case of fees or compensation payable to executive directors who are promoters or members of the promoter group, if-

- (i) the annual remuneration payable to such Executive Director exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher; or
- (ii) where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity. Also, the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.

Explanation: For the purposes of this clause, net profits shall be calculated as per section 198 of the Companies Act, 2013.

The following disclosures are required to be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the Financial statement as per Schedule V of the Companies Act, 2013:

- (i) all elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the Directors;
- (ii) details of fixed component. and performance linked incentives along with the performance criteria;
- (iii) service contracts, notice period, severance fees; and
- (iv) stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Insurance Premium not part of Remuneration- Section 197(13)

Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel.

However, if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

Receipt of any Commission from the Company- Section 197 (14)

Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

Illustrations:

1. A Managing Director of a company stood as a surety for repayment of Loan taken by such company for which he was paid guarantee commission. Does this Commission amounts to Managerial Remuneration?

In a decided case Law of *Sussen Textile Bearing Ltd v. Union of India (1984)*, it was held that the guarantee commission received by the director is for personal liability which the director undertakes and hence it should not be considered as remuneration within the meaning of Sec 197 of Companies Act 2013.

2. A is the Manager of ABC Limited and he has received a commission of Rs 2 Lacs in the capacity of a Director. He is also Managing Director of that company. He can received remuneration of Rs. 2 Lacs from XYZ Limited, i.e. subsidiary company of ABC limited, provided that it shall be disclosed in the company in its Boards Report.

Penalty For Contravention - Section 197 (15)

If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Statement by the Auditor- Section 197 (16)

The auditor of the company shall, in his report under section 143, make a statement as to whether:

- (i) the remuneration paid by the company to its directors is in accordance with the provisions of Section 197;
- (ii) 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.

Calculation of Net Profit for the Purpose of Managerial Remuneration (Section 198)

Section 198 of the Companies Act, 2013 lays down the manner of calculations of net profits of a company any financial year for purposes of Section 197. Sub- Section (2) specifies the sums for which credit shall be given and sub-section (3) specifies the sums for which credit shall not be given while calculating the net profit.

Similarly, sub-section (4)/(5) of Section 198 specifies the sums which shall be deducted/not deducted while calculating the net profit.

Recovery of Managerial Remuneration in Certain Cases (Section 199)

Section 199 of the Companies Act, 2013 provides for recovery of remuneration including stock options received by the specified Managerial Personnel, where the benefits given to them are found to be in excess of what is reflected in the restated financial statements.

It states that without prejudice to any liability incurred under the provisions of the Companies Act, 2013 or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under the Companies Act, 2013 and the rules made there under, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

Additional compliances for payment of Managerial Remuneration in Case of No Profits/ Profits are Inadequate (Section 200)

In respect of cases where the company has inadequate or no profits, a company may fix the remuneration within the limits specified in the Companies Act, 2013, at such amount or percentage of profits of the company, as it may deem fit. While doing so, the company shall have regard to —

- (a) the financial position of the company;
- (b) the remuneration or commission drawn by the individual concerned in any other capacity;
- (c) the remuneration or commission drawn by him from any other company;
- (d) Professional qualifications and experience of the individual concerned;
- (e) such other matters as may be prescribed.

As per Rule 6 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 for the purpose of item (e) of section 200, the company shall have regard to the following matters while granting approval.

Parameters for consideration of remuneration

The company shall have regard to the following matters, namely:-

- (1) Financial and operating performance of the company during the three preceding financial years.
- (2) Relationship between remuneration and performance.
- (3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
- (4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
- (5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

Compensation for Loss of Office of Managing or Whole-Time Director or Manager (Section 202)

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:—

- (a) where the director resigns from his office as a result of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

Example: Mr. A is a manager of ABC Limited, who resigns as a result of the amalgamation of it with XYZ Limited, and is appointed as manager of XYZ Limited. No compensation shall be given to Mr. A.

- (b) where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;

Example: Mr. A is a manager of ABC Limited, who resigns. As there was neither reconstruction of the company to its amalgamation so no compensation shall be given to Mr. A.

- (c) where the office of the director is vacated under Section 167(1);

Example: Mr. A is a director of ABC Limited, and his office is vacated on the ground that he incur any disqualification, or he remains absent from all meeting of Board or at the order of Tribunal, etc. No compensation shall be given to Mr. A.

- (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;

Example: Mr. A is a director of ABC Limited, which is being wound up, whether by an order of Tribunal or voluntarily and the winding up was due to the negligence or default of the director. No compensation shall be given to Mr. A.

- (e) where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and

Example: Mr. A is a director of ABC Limited, and he guilty of fraud or breach of trust in relation to, or of gross negligence or gross mismanagement of the conduct of the affairs of the company etc. No compensation shall be given to Mr. A.

- (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Any payment made to a managing or whole-time director or manager shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period. (Sub-section 3 of Section 202)

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

However, Section 202 not prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity. (Sub-section 4 of Section 202)

Illustration:

A whole time Director of a company made an invention during the course of his employment with the Company. He patented the invention in his own name and appropriated the benefits to himself. Can he do so?

In the decide case of *Cranleigh Precision Engineering Ltd. v. Bryan (1964)* it was held that the directors are liable to the company for all personal profits or gain made by them taking advantage of their position as a directors.

A director was held liable when a director patented and registered in his own name an invention made during the course of his employment with the company.

Amount of Compensation {Section 202(3)}

Any payment made to a managing or whole-time director or manager in pursuance of section 202 (1) shall not exceed the remuneration which he would have earned if he had been in office for:

- the remainder of his term; or
- for three years,

whichever is shorter.

Also, such amount of compensation shall be calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.

Example: Mr. A is a manager of ABC Limited, who retires under the normal circumstances on 31.03.2022 where 2 years period was left. The average remuneration earned by him during the period of three years is Rs. 25 Lacs p.a.. The company shall give sum Rs. 50 Lacs as compensation.

However, no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

Example: Mr. A is a manager of ABC Limited, who retires under the normal circumstances on 31.03.2022 and where 4 years period was left. The average remuneration earned by him during the period of one year is Rs. 25 lacs p.a.. The winding up of the company started in July 2022 and the assets of the company on the winding up, after deducting the expense thereof, are not sufficient to repay to the shareholders the share capital including the premiums. The company shall not be liable to give Mr. A any compensation.

Any remuneration for services rendered by him to the company in any other capacity {Section 202(4)}

This section shall not be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

Example: Mr. A is a manager of ABC Limited, who retires under the normal circumstance on 31.03.2022. Before, retirement Mr. A has given a legal advice to the company. He is entitled for remuneration for the services rendered by him.

SPECIMEN RESOLUTIONS:**Resolution for Appointment of Whole Time Directors**

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS (No. _____) OF _____ HELD ON _____ AT THE REGISTERED OFFICE OF THE COMPANY AT _____ A. M. /P.M

“RESOLVED THAT pursuant to Sections 196, 203 and other applicable provisions of Companies Act, 2013 (including corresponding provisions, if any of the Companies Act, 1956) and the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, approval of the Board be and is hereby accorded for the appointment of Mr. _____ as Whole Time Director of the Company for a period of _____ years from _____, on the remuneration and on such terms and conditions as set out below with liberty and authority to the Board of Directors to alter and vary the terms and conditions of the said appointment from time to time within the scope of Schedule V of the Companies Act, 2013, or any amendments thereto or any re-enactment thereof as may be agreed to between the Board of Directors and Shri

- i. Salary at the rate of Rs. _____ (Rupees _____ only) per month w.e.f _____, which may be reviewed by the Board.

- ii. The company shall provide the rent free furnished accommodation and will pay electricity and water charges;
- iii. The Whole Time Director shall be entitled to use the company's car, all the expenses for maintenance and running of the same including salary of the driver to be borne by the Company.
- iv. The Whole Time Director shall be entitled to participate in provident fund, gratuity fund or such other schemes for the employees, which the company may establish from time to time. Reimbursement of medical and hospitalization expenses of the Whole Time Director and his family in accordance with the Company policy.
- v. Leave Travel Allowance for the Whole Time Director and his family once in a year in accordance with the Company policy.
- vi. Bonus for the financial year, at the discretion of the board.
- vii. Reimbursement of expenses incurred by him on account of business of the Company in accordance with the Company policy.
- viii. Reimbursement of any other expenses properly incurred by him in accordance with the rules and policies of the Company.

The Whole Time Director shall be entitled to such increment from time to time as the Board may by its discretion determine.

RESOLVED FURTHER THAT in the event of loss or inadequacy of profit in any financial year during the currency of tenure of services of Mr. _____, the payment of salary, perquisites and other allowances shall be governed by the limits prescribed under Section II of Part II of Schedule V of the Companies Act, 2013;

RESOLVED FURTHER THAT the Board of Directors of the Company be and is hereby authorized to take such steps as may be necessary, desirable or expedient to give effect to this resolution.”

Resolution For Appointment of Whole Time Company Secretary under Listed Company

RESOLUTION FOR APPOINTMENT OF COMPANY SECRETARY / COMPLIANCE OFFICER OF THE COMPANY FOR LISTED COMPANIES

“RESOLVED THAT Pursuant to the provision of section 203 (1) of the Companies Act, 2013 read with rule 8 and 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 and any other applicable provisions of the Act and Rules framed thereunder, including any amendments thereto or re-enacted thereof from time to time Mr _____ Membership No. _____ be and is hereby appointed as the “Company Secretary” of the company on the terms and condition including the terms of remuneration as per appointment letter placed before the meeting, as recommended by the nomination and remuneration committee.

FURTHER RESOLVED THAT pursuant to regulation 6 and 30 read with clause 7 of para A of part A of schedule III of SEBI (Listing Obligation And Disclosure Requirement) Regulation 2015, Mr. _____ be and is hereby for the designated and appointed as the “Compliance Officer” of the company and authorised to make all the compliances as may be applicable to the company under the SEBI (Listing Obligations And Disclosure Requirement) Regulation 2015 various other SEBI Regulation, Securities Contract Regulation Act 1956 Industrial and labour laws as may be applicable to the company from time to time.

FURTHER RESOLVED THAT the company secretary and compliance officer be and is hereby authorised to sign various documents and file forms returns on behalf of the company as may be necessary and to do all such acts, deeds, things, and matters incidental to the position as per the act and rules made thereunder and under proper instruction/ authorisation from the managing director or chairperson of the company.

FURTHER RESOLVED THAT Mr. _____, managing director of the company be and is hereby authorised to sign and submit necessary forms, returns, for the appointment of company secretary with the Registrar Of Companies _____ to intimate the same to the appropriate authorities regulatory bodies and to do all such acts and deeds as may be necessary in this regard.”

LESSON ROUND-UP

- KMP are included in the definition of 'officer' under section 2 (59) of the Act;
- KMP are included in the definition of 'officer who is in default' under section 2 (60) of the Act;
- The nature of concern or interest of KMP on the matters proposed to be transacted in a meeting, are to be disclosed in the explanatory statement to the notice of such meeting, in terms of section 102 of the Act;
- A KMP or his relative cannot be appointed as an independent director under section 149 of the Act;
- KMP shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote in terms of section 177;
- The Nomination and Remuneration Committee shall formulate and recommend to the Board a policy, relating to the remuneration for the KMP in terms of section 178;
- The appointment or removal of KMP shall be made in a board meeting in terms of section 179 of the Act;
- Every KMP shall, within a period of thirty days of his appointment, or relinquishment of his office, disclose to the company his concern or interest in the other associations or such other information relating to himself as may be prescribed in terms of section 189;
- For appointment of KMP, a return in form DIR-12 & MR-1 is required to be filed with the Registrar of Companies within 60 days of appointment in terms of section 196 r/w section 170 of the Act;
- Appointment of whole-time KMP is mandatorily in certain prescribed class of companies in terms of section 203;
- A whole-time KMP shall not hold office in more than one company except in its subsidiary company at the same time in terms of section 203;
- If the office of any whole-time KMP is vacated, the resulting vacancy shall be filled-up by the Board at a meeting within a period of six months from the date of such vacancy in terms of section 203;
- Every company secretary is expected to adhere not only to the letter of the law but also ensure that the spirit of the law is followed;
- A Company Secretary exercises supervisory and checking role so as to prevent any chance of negligence in implementing various laws applicable to a particular company;
- Role of company secretary is three-fold, namely, as a statutory officer, as a coordinator, and as an administrative officer;
- A director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board. However, the amount of such fees shall not exceed the amount as may be prescribed.

GLOSSARY

Turnover: “Turnover” means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year. [Section 2(91)] of Companies Act, 2013.

Whole-time director: “Whole-time director” includes a director in the whole-time employment of the company; [Section 2(94)] of Companies Act, 2013.

Vis-a-vis: with regard to.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).

1. Explain the term Key Managerial Personnel under the Companies Act, 2013. Is it necessary for every company to appoint a Key Managerial Personnel?
2. If a company proposes to pay remuneration exceeding 5% to one MD or WTD but within the overall limit of 11%, is there a need to obtain shareholder's approval?
3. Discuss the role of Company Secretary.
4. Write a short note on Managerial Remuneration.
5. Can a company pay remuneration to managerial personnel in case of inadequate profits?
6. Can a company pay remuneration to managerial personnel in excess of limits specifies in Section 197?
7. In what circumstances a managerial personnel is required to refund remuneration.
8. The company secretary of a company, having a paid up share capital of more than Rs. 10 crores, resigned and left the company. The company has not appointed his successor. Meanwhile, it has started incurring losses. Its sales have declined and financial position became weak. Can it be a valid reason for not appointing a whole-time secretary ?
 - (a) Company has not appointed a new Company Secretary on the ground that it has started incurring losses, its sales have declined and financial position has become weak. The argument will not find favour with the authorities
 - (b) Company has not appointed a new Company Secretary on the ground that it has started incurring losses, its sales have declined and financial position has become weak, is valid argument
 - (c) Company has to appointed a new Company Secretary when the business becomes profitable
 - (d) None of these.
9. Vishwakarma Ltd. wants to remove Abhay, Company Secretary of the Company because he has cheated to the Company for Rs. 50.00 lakhs during the course of his employment of last three years. Choose the correct option for removing the Company Secretary from his employment:
 - a. Convene a Board meeting and serving notice of termination as per appointment terms or the policy of the company
 - b. Filing of E Form DIR-12 within 30 days of passing the resolution and intimation to stock exchanges
 - c. Filing of E Form MR-1 and MGT-14 to ROC

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ja) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

EXECUTIVE PROGRAMME

COMPANY LAW & PRACTICE – TEST PAPER

GROUP 1 • PAPER 2

(This test paper is for practice and self-study only and not to be sent to the Institute)

Time allowed: 3 hours

Maximum Mark: 100

Total number of questions: 6

Note : 1. Answer all Questions

2. All references to the sections relate to Companies Act 2013, unless stated otherwise.

PART I : COMPANY LAW - PRINCIPLES & CONCEPTS

- 1(a)** Sun Moon Ltd. has registered office at Delhi and branch office in California. The company is mainly working under processed food manufacturing segment. The Board of directors of the company have very sound knowledge of processed food segment, management and finance. The company planned to set up an Agro Cluster Food Park in India in due course of time.

After some time, the board noticed chaos among themselves on the issue of positions and holdings in the company. Consequently, it was observed that the company had not been reporting true and fair view of the state of affairs of its financial statements since more than ten years and the mis-reporting of financial statements had not come to the notice of none of the stakeholders.

The situation of the Company went from bad to worse and it had no option but to file an application for initiating corporate insolvency resolution process with the Adjudicating Authority. Meanwhile one of the director of the company has released a press statement that there is a disparity between actual and reported financial statements due to accounting errors which was prevailing since many years.

The first question from shareholders of the Company was, as to why the auditors of the company had not spotted and corrected the fundamental accounting errors? Subsequently, the shareholders holding 75% of the paid up share capital of the company have approached to the Central Government as per the provisions of the Companies Act, 2013 for investigating into the affairs of the company and Central Government ordered for investigation into the affairs of company.

The investigation report stated that the auditors of the Company (one of the largest audit firms in the country) had compromised its independence by charging a huge amount of audit fee and also consultancy income worth several times the audit fee. Auditors had knowingly signed inaccurate accounts in order to protect the management of the Company. Investigation revealed significant deficiencies in internal control system, external reporting processes and non-adherence of relevant accounting standards.

Based on the above facts, answer the following with reasons:

- (i) Whether the Sun Moon Ltd. required to adhere to provision(s) of the Companies Act, 2013 pertaining to keeping and maintenance of proper books of accounts of branch office situated outside India?
- (ii) Whether the above case highlights importance of independence of auditors?

- (iii) Whether the shareholders holding 75% of the paid-up share capital of the company can approach to the Central Government for order an investigation into the affairs of the company? Whether Central Government *suo-moto* order for an investigation into the of affairs of the company?

(Marks 4+4+4=12)

- (b) XYZ Limited is planning to issue bonus shares. The company hired professionals like Practicing Company Secretaries and other administrative staff in order to execute the plan. Mr. Y finance head working in the company advised that the company shall first pass unanimous board resolution and then call a general meeting to pass the special resolution in order to move ahead for issuance of bonus issue. Referring to the provisions of the Companies Act, 2013, comment on the statement and elucidate the conditions required to be fulfilled before a company can issue bonus shares to shareholders of the company.

(3 Marks)

- 2(a) ABC Private Limited was incorporated on 10.04.2023. To understand the working parameters and other legal matters applicable to a private company, the promoters of the company organized a meeting with practicing company secretary Mr. CS. Mr. A one of the director of ABC Private Limited placed below mentioned concerns before Mr. CS:

- (i) Articles of Association of a company limited by guarantee provides that entire income of the company shall be applied towards promotion of the objects of the company.
- (ii) For a company limited by guarantee, the liability of the members is restricted by the amount each member has agreed to contribute at the time of incorporation.

Assuming yourself as Mr. CS, comment on the statements.

(5 Marks)

- (b) Skyhigh Dwellings Private Ltd. is in the business of real estate. It has received an amount of Rs. 90,000/- as an advance from its customers during the course of business on which no interest is payable to its customers. Referring to the provisions of the Companies Act, 2013, decide whether this receipt should be treated as an 'advance' by the company in its books of accounts or note?

(5 Marks)

- (c) Galaxy Ltd. received a transfer deed for registration of transfer of shares to Manu, daughter of Satyam. After registering the transfer, the company sent the certificate to another Manu (similar name), daughter of Tarun. Manu, daughter of Tarun, refused to part with share certificate and pledged the certificate to ISD Bank. Discuss the remedy, if any, available to Manu, daughter of Satyam, in this case.

(5 Marks)

- 3(a) SSS Limited is listed company and going to allot securities to public. The company was not able to receive the minimum amount of subscription as mentioned in the prospectus. A Company Secretary in Practice advised the company that "If a company does not receive minimum subscription, it should refund money received from applicants within such time as may be prescribed". Explain the above statement with suitable comments.

(4 Marks)

- (b) Yamuna Ltd. wants to shift its registered office from Chennai, Tamil Nadu (ROC, Chennai) to Coimbatore, Tamil Nadu (ROC, Coimbatore) since the company is facing operational difficulties due to the current location of the registered office. As a company secretary, apprise the Board of directors about the desired process?

(4 Marks)

- (c) Mr. Raj Kumar a press reporter by profession, holding merely 1.5% shares of the ABC Limited, wishes to inspect the Register of members of the company. Company has declined such demand taking the base that he may use the information for creating some news. Is the contention of ABC Limited is valid?

(4 Marks)

- (d) Town Builders Ltd. is a listed company. The managing director of the company is a company secretary and always intend to follow good governance in the operations and functions of company with a noble belief "People, Profit and Planet". The board of directors wishes to appoint Manager Finance, as an internal auditor also. Referring to the relevant provisions of the Companies Act, 2013 advise the company, whether it can do so or not?

(3 Marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

- 4(a) The name of Success Ltd was struck off by the Registrar of Companies (ROC) during the month of July, 2022 as the company had not been carrying on business or nor in operations for two immediately preceding financial years and the company had not obtained the status of dormant company under Section 455 of the Companies Act, 2013. The Success Ltd filed an appeal before NCLT claiming that it had not been served with Notice under Section 248(1) of the Act and the Registrar of Companies (ROC) had proceeded to issue notice under Section 248(5) of the Act and the name of the Success Ltd was then struck off. The appellant claimed that the company had been doing business and was in operation and audited financial statements for the year financial year 2012-13 to FY 2019-20 were filed. In view of the aforesaid facts, state whether Success Ltd claim is correct or RoC's action is justified? Give reasons in support of your answer.

(4 Marks)

- (b) Section 233 of the Companies Act, 2013 provides a simplified and fast-track procedure for the merger or amalgamation of two or more small companies, or between a holding company and its wholly-owned subsidiary, or any other class of companies as may be prescribed. Briefly explain the provisions of this section.

(4 Marks)

- (c) A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the number of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company.

(4 Marks)

- (d) A newly appointed Company Secretary of BCD Ltd. having its headquarter in Mumbai discovered that, four months ago the company, had created a floating charge on its assets located in Bhutan for raising a new loan and to continue its expansion of business smoothly. However, there was no filing of form CHG-1 and the officers believe that the charge created related to properties in Bhutan and hence no formalities were needed with ROC in India. Evaluate the stand taken and what are the options available with the Company Secretary now in this regard.

(3 Marks)

OR (Alternate question to Q. No. 4)

4A(i) The recognised trade union of Lime Light Ltd. made an application before the Tribunal seeking order for investigation of the company on the ground that the company has defaulted in the payment of dues of the workmen since long and the business of the company is being conducted otherwise for a fraudulent or unlawful purpose. In response, the company objected to the application and claimed that the recognised trade union not being the members or creditors of the company has no locus standi to make such application and is liable for dismissal. Examine the admissibility of the application of recognised trade union submitted before the Tribunal seeking investigation of the company.

(4 Marks)

(ii) ZZZ Ltd. had borrowed Rs. 50 crore from a scheduled bank and repaid entire loan amount along with interest thereon. The company wants to file satisfaction of charge with the Registrar only after receiving no due certificate and a release letter from the bank. If company delays the filing of satisfaction of charge for the default of bank in not issuing these documents, whether the company will be liable for late filing of satisfaction of charge under the Companies Act, 2013 ? Discuss.

(4 Marks)

(iii) Rainbow Limited has on its Board, four directors viz A, B, C and D. In addition, the company has Mr. R as the Managing Director. The company also has a full time Company Secretary, Mr. Ram, on its rolls. The financial statements of the company for the year ended 31st March, 2023 were authenticated by two of the directors, Mr. A and Mr. B under their signatures. Referring to the provisions of the Companies Act, 2023 :

(i) Examine the validity of the authentication of the Financial Statement including Balance Sheet and Statement of Profit & Loss etc. and the Boards Report.

(2 Marks)

(ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Financial Statement including Balance Sheet and Statement of Profit & Loss and the Board's Report ?

(2 Marks)

(iv) The period of 10 years is over from taking over X Ltd. (the transferor company) by Y Ltd. (the transferee company) by acquiring its shares and hence, a Board resolution has been passed by the transferee company in the meeting held in June, 2023 to destroy the books and papers (the record) of the transferor company considering the provisions relating to preservation of books of account of the company. Referring to the provisions of the Companies Act, 2013, Decide the validity of the decision of the Board of the transferee company.

(3 Marks)**PART II: COMPANY ADMINISTRATION AND MEETINGS**

5(a) Apex Global Limited (listed company) was a diversified Company having a complex group structure with more than 20 subsidiaries. Each company had its own Finance department which would report to a Central Finance Team headed by the group CFO Mr. Avnish. All the Companies and different units of Apex Global Limited were functioning in silos, wherein each one was unaware of the performance of other companies. There were inter-corporate loan arrangements between Companies in the group and

related party transactions. The top management consisted of few professionals and family members. All the top executives were being paid higher remuneration in comparison with the industry benchmarks including high number of stock options.

Apex Global Limited had a whistle blower policy monitored by the Audit Committee. Mr. Ravish, a qualified Senior Accountant, working in the Company had approached the Director (Finance) with concerns about the financial statements but he could not get satisfactory answers and so threatened to inform the press. When his threat came to the attention of the Board, he was intimidated to keep quiet.

Another employee Mr. Ram had written to Mr. Shankar (independent director) stating that the books of the Company had been manipulated. Although this letter was circulated to the Board, no action was taken. The audit committee also failed to take any action.

When the group was not able to repay its loan to banks, there were concerns from bank and consequently forensic audit was initiated. The forensic audit revealed a fraud within the Company and the share price of the Company plummeted.

Based on the above facts, answer the following with reasons:

- (a) Whether the role of Independent Directors and Audit Committee is required for effective oversight of matters pertaining to Whistle blower complaints?
- (b) Whether there are challenges for effective implementation of a Whistle blower policy in a company such as Apex Global Limited?
- (c) Whether there are certain provisions to be taken care of before considering for inter-corporate loans and advances under the Companies Act, 2013? Critically examine.
- (d) "Disclosures in respect of fraud to be mentioned in Board's Report and Annual Report". Is the statement true? Explain.

(Marks 2+2+2+2=8)

5(b)(i) The date of approval of Financial Statements by the Board of Directors of XYZ Ltd. is 17th July, 2021 and the date of notice of Annual General Meeting (AGM) is 25th August, 2021. CFO of XYZ Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of Notice of AGM should be 30 days. The Directors have approached you as Company Secretary to advise them regarding the same with specific reference to the provisions of Companies Act, 2013.

(3 Marks)

(ii) Vishwakarma Ltd. wants to remove Mr. A, Company Secretary of the Company because he has cheated to the Company for Rs. 50 lakhs during the course of his employment of last three years. Advise the process for removing the Company Secretary from his employment.

(3 Marks)

(iii) Board of directors of Jagatguru Ltd. proposes to appoint Mr. Sriram as managing director. Mr. Sriram has recently celebrated his 72nd birthday. Mr. Sriram has spent his entire career in the sector in which the company operates and will be a strategic fit for Jagatguru Ltd. The Company Secretary of the company suggests that Mr. Sriram can only be appointed through special resolution. Do you agree with the Company Secretary? Discuss.

(3 Marks)

(iv) Wellness Ltd wants to pay sitting fees to its women directors (Mrs. Anima and Ms. Gauri), less than the sitting fees payable to other directors of the Company and also want to appoint Ganpati Kumar as its Managing Director of the company for a term exceeding five years at a time. Guide the company on the above proposals.

(3 Marks)

Attempt all parts of either Q. No. 6 or 6A

6. (a) Draft the minutes of Annual General Meeting of Green Ltd. at which adoption of accounts, appointment of auditors and the appointment of additional director as regular director featured for consideration and decision.

(5 Marks)

(b) Big Brothers Ltd. wishes to sell one of its undertakings for which it decides to call an Extra-ordinary General Meeting (EGM) and to pass a resolution thereat. State the material facts to be set out in the explanatory statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting.

(5 Marks)

(c) During the financial year 2021-22, the Board of Directors of Huge Power Limited has issued shares to employees under Employees Stock Option Scheme. Ms. Tanu has recently joined the Board of the company and asks you, being the Company Secretary of the company, as to what details are to be disclosed in the Board's Report in this regard. Advise her.

(5 Marks)

(d) Zeba Ltd. has a net worth of Rs. 400 crore, turnover for the financial year 2019-20 at Rs. 1,200 crore and a net profit for the financial year ended 31st March, 2020 at Rs. 25 crore. The company has asked you as a Company Secretary to prepare a check-list of compliances with respect to Corporate Social Responsibility (CSR) as per the provisions contained in the Companies Act, 2013. Also state the circumstances in which a company is required to constitute a CSR Committee?

(5 Marks)**OR (Alternate questions to Q. No. 6)**

- 6A. (i) Companies that trigger any of the conditions of the section 135 must constitute a Corporate Social Responsibility Committee of the Board to formulate and monitor the CSR policy of a company. Mention composition requirement of the CSR Committee for various categories of companies is as under along with its functions.

(5 Marks)

- (ii) According to SS-1 the Company Secretary cannot summon a Meeting on his own, unless authorised by the Board of Directors or the Articles to do so. Comment.

(5 Marks)

- (iii) The Board of directors of Vedic Ltd. desirous of transacting certain matters through video conferencing, seek your advice on the matters which cannot be dealt with through video conferencing. Advise the Board.

(5 Marks)

- (iv) "Listed companies are required to comply with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and should provide a separate section on 'corporate governance' in the annual report of the company". Discuss this statement and suggest list of items related to disclosure pertaining to the Board of Directors to be included in such report?

(5 Marks)

