

KEY MANAGERIAL PERSONNEL

As per **section 2(51)**, key managerial personnel, in relation to a company, means—

- (i) the Chief Executive Officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the Chief Financial Officer;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed

Managing Director [Section 2(54)]

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.

Following shall not be considered as 'substantial powers of management'

- Power 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

Whole Time Director [Section 2 (94)]

Whole-time Director means a director in the whole-time employment of the company.

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.

Company Secretary [Section 2(24)]

Company secretary or secretary means a company secretary as defined in Section 2(1)(c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

Appointment of key managerial personnel [Section 203]

Requirement to appoint KMP [Sub Section 1]

Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—

- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
- (ii) company secretary; and
- (iii) Chief Financial Officer

According to Rule 8 of Appointment and Remuneration of Managerial Personnel Rules, 2014,

Every listed company and every other public company having a paid-up share capital of 10 crore rupees or more shall have whole-time key managerial personnel.

According to Rule 8A of Appointment and Remuneration of Managerial Personnel Rules, 2014,

Every private company which has a paid up share capital of 10 crore rupees or more shall have a whole -time company secretary.

Chairman of the company shall not be the MD or CEO except in certain cases

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 does not carry multiple businesses.

It means only in 2 cases, chairman can be appointed or reappointed as the MD or CEO of the company at the same time:

1. If authorised by AOA, or
2. Company carries on single business

Notification S.O. 1913(E) dated 25-7-2014 issued by MCA

Public companies having

- paid up Share capital of Rs. 100 Cr or more and
- annual turnover of Rs. 1000 Cr or more

which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business can appoint same individual as Chairperson and Managing Director.

KMP shall be appointed by Board Resolution (Subsection 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.

Whole-time key managerial personnel shall not hold office in more than 2 companies at a time [Sub Section 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.

But a key managerial personnel may be a director of any other company with the permission of the Board.

Appointment of a person as MD who is MD or manager of one, and of not more than one, other company –

Unanimous voting in the Board Meeting

A company may appoint or employ a person as its MD, if he is the MD 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.

Filling of Intermittent Vacancy – Within 6 months [Sub Section 4]

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.

Punishment for contravention [Sub Section 5]

If any company makes any default in complying with the provisions of this section,

- such company shall be liable

- to a penalty of Rs. 5 lakh and
- every director and key managerial personnel of the company who is in default shall be liable
 - to a penalty of Rs. 50,000 and
 - where the default is a continuing one, with a further penalty of Rs. 1000 for each day after the first during which such default continues but not exceeding Rs. 5 lakh.

The Provisions of section 203 relating to appointment of KMP shall not apply to MD/CEO/Manager or in their absence a whole time director of the Government Company.

Appointment of managing director, whole-time director or manager [Section 196]

Either MD or Manager [Sub Section 1]

No company shall appoint or employ at the same time a managing director and a manager.

Maximum term 5 Years [Sub Section 2]

No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding 5 years at a time.

But no re-appointment shall be made earlier than 1 year before the expiry of his term.

Disqualifications [Sub Section 3]

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

- (a) is below the age of 21 years or has attained the age of 70 years:
But appointment of a person who has attained the age of 70 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;
Provided further that 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 70 years may be made.
- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (d) has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

More disqualification are provided in Schedule V. According to Part I of Schedule V, a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government shall satisfy following conditions:

- (a) he had not been sentenced to imprisonment for any period, or to a fine exceeding Rs. 1000, for the conviction of an offence under any of the following Acts, namely:-
 - (i) the Indian Stamp Act, 1899,
 - (ii) the Central Excise Act, 1944,
 - (iii) the Industries (Development and Regulation) Act, 1951,
 - (iv) the Prevention of Food Adulteration Act, 1954,
 - (v) the Essential Commodities Act, 1955,
 - (vi) the Companies Act, 2013 or any previous company law,
 - (vii) the Securities Contracts (Regulation) Act, 1956,
 - (viii) the Wealth-tax Act, 1957,
 - (ix) the Income-tax Act, 1961,
 - (x) the Customs Act, 1962,

- (xi) the Competition Act, 2002,
- (xii) the Foreign Exchange Management Act, 1999,
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985,
- (xiv) the Securities and Exchange Board of India Act, 1992,
- (xv) the Foreign Trade (Development and Regulation) Act, 1992,
- (xvi) the Prevention of Money Laundering Act, 2002.
- (xvii) the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
- (xviii) the Goods and Services Tax Act, 2017 (12 of 2017)
- (xix) the Fugitive Economic Offenders Act, 2018 (17 of 2018)
- (xx) the Insolvency and Bankruptcy Code, 2016 (31 of 2016)
- (xxi) the Goods and Services Tax Act, 2017 (12 of 2017)
- (xxii) the Fugitive Economic Offenders Act, 2018

- (b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- (c) he has completed the age of 21 years and has not attained the age of 70 years.
Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;
- (d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II of schedule V.
- (e) he is resident in India.

Explanation : For the purpose of above, resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India:

- (i) for taking up employment in India, or
- (ii) for carrying on a business or vocation in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad.

Appointment of MD/WTD/Manager in Board Meeting and approval in next General Meeting [Sub Section 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.
- Such appointment shall be subject to approval by a resolution at the next general meeting of the company.
- If the terms and conditions of such appointment and remuneration payable is at variance to the conditions specified in Part 1 of Schedule V, approval of by the Central Government is required (in e-Form MR2 within 90 days from the date of such appointment).

According to Rule 3 of Appointment and Remuneration of Managerial Personnel Rules, 2014,

- a company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, ~~Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO)~~ within 60 days of the appointment, with the Registrar in Form No. MR.1.

Validity of act of MD/WTD/Manager, if appointment not approved in general meeting [Sub Section 5]

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.

Section 196(4) and Section 196(5) is not applicable to Private Company. Therefore a private company may appoint managing director, Whole time Director or Manager in the manner prescribed in its Articles of Association.

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.

Compliance under SEBI (LODR) Regulations, 2015

As per Regulation 30 of SEBI (LODR) Regulations, 2015, the listed entity shall disclose to the stock exchange

- Appointment or change in key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.)
- Fraud/defaults by key managerial personnel or by listed entity or arrest of key managerial personnel

The listed entity shall first disclose to stock exchange as soon as reasonably possible and not later than 24 hours from the occurrence of event. However in case the disclosure is made after 24 hours of occurrence of the event, the listed entity shall, along with such disclosures provide explanation for delay.

Forms of, and Procedure in Relation to, Certain Applications [Section 201]

Every application made to the Central Government under Section 196 shall be in e-Form MR2 and shall be made within 90 days from the date of such appointment.

General notice to the members

- (a) Before any application is made by a company to the Central Government under Section 196, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.
- (b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.
- (c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

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Managerial Remuneration [Section 197]

Total Managerial Remuneration payable by a Public Company [Sub-section 1]

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.

However, company (in general meeting) may authorise the payment of remuneration exceeding 11% of the net profits of the company, subject to the provisions of Schedule V.

Maximum remuneration payable to any single MD, WTD or Manager

Except with the approval of the company in general meeting by passing Special Resolution, the remuneration payable to any one

- managing director; or
- whole-time director or
- manager

shall not exceed 5% of the net profits of the company.

Maximum remuneration payable to all MD, WTD or Manager

Except with the approval of the company in general meeting by passing Special Resolution, the remuneration payable to all

- managing director; or
- whole-time director or
- manager

shall not exceed 10% of the net profits.

Maximum remuneration payable to non-executive directors

Except with the approval of the company in general meeting by passing Special Resolution, the remuneration payable to directors who are neither MD nor WTD shall not exceed,—

- (A) 1% of the net profits of the company, if there is a MD, WTD or manager;
- (B) 3% of the net profits, in any other case.

Note: The percentages aforesaid shall be exclusive of any sitting fees payable to directors for attending Board's Meeting.

Note: 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.

Managerial remuneration in case company has no profits or its profits are inadequate [Sub-section 3]

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 MD, WTD or manager **or any other non-executive director, including an independent director [Inserted by the Companies (Amendment) Act, 2020. - Effective from 18th March 2021]**, by way of remuneration any sum (exclusive of sitting fee) except in accordance with the provisions of Schedule V.

What is not included in the remuneration [Sub-section 4]

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:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

- (a) the services rendered are of a professional nature; and
- (b) in the opinion of the Nomination and Remuneration Committee or the Board of Directors (if the committee is not required in the company),
 - the director possesses the requisite qualification for the practice of the profession.

Sitting Fee [Sub-section 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.

According to Rule 4 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

The amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees 1 lakh per meeting.

But sitting fees of Independent and Women Directors shall not be less than the sitting fees payable to other Directors.

In case of excess remuneration

- 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 2 years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company. [Subsection 9]
- 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. [Subsection 10]

Disclosures in Board's Report [Sub-section 12]

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.

Insurance taken by a company on behalf of its Directors – Not forming part of remuneration, unless found guilty [Sub-section 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.

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

Remuneration or commission from any holding company or subsidiary company – Allowed [Sub-section 14]

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.

Fine for contravention for the provisions of this section [Sub-section 15]

If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.

Statement in Auditor's Report [Sub-section 16]

The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed

Note: Section 197 is not applicable in case of Government Companies

Special Provisions in case of Nidhi Companies

Remuneration of a director who is neither managing director nor whole time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197: Provided that no approval of the company in general meeting shall be required where,-

- (a) a Nidhi does not have a managing director or a whole-time director or a manager;
- (b) the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and
- (c) a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi.

Second proviso to Section 197(1) limits the remuneration payable to directors who are neither managing directors nor whole-time directors to one percent of the net profits of the company, if there is a managing or whole-time director or manager; three percent of the net profits in any other case. However, Nidhi companies are allowed to pay remuneration to directors who are neither managing directors nor whole-time directors, for performing special services subject to conditions as laid down.

REMUNERATION PAYABLE BY COMPANIES HAVING NO PROFIT OR INADEQUATE PROFIT (SCHEDULE V- PART II -SECTION II)

- A. 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 [or other director] not exceeding, the limits under (A) and (B) given below:-

(1)	(2)	(3)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rs) in case of Managerial Person	Limit of yearly remuneration payable shall not exceed (Rs) 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
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Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a **special resolution**.

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

Other director shall mean a non-executive director or an independent director.

- B. In case of a managerial person **or other director** who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person **or other director** is 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:

Provided that any employee of a company holding 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 by way of qualification shall be deemed to be a person not having any interest in the capital of the company;

Provided further that the limits specified under items (A) and (B) of this section shall apply, if-

- 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.

Section III.— Remuneration payable by companies having no profit or inadequate profit in certain special circumstances

Subject to some conditions, in the following circumstances a company may pay remuneration to a managerial person **or other director** in excess of the amounts provided in Section II above:—

- (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) where the company—
 - (i) is a newly incorporated company,
 - for a period of seven years from the date of its incorporation, or
 - (ii) is a 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) is a 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, it may pay "any remuneration to its managerial persons or other directors".
- (c) where remuneration of a managerial person or other director exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal.
- Provided that the limits under this Section shall be applicable subject to meeting 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.

Explanation I.—For the purposes of Section II of this Part,
“effective capital” means

- the aggregate of the paid-up share capital (excluding share application money or advances against shares);
- amount, if any, for the time being standing to the credit of share premium account;
- reserves and surplus (excluding revaluation reserve);
- long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements)

as reduced by

- the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities),
- accumulated losses and
- preliminary expenses not written off.

Explanation II.—

- (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment;
- (b) In any other case the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.



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Factors to be considered by Central Government or Company while fixing the remuneration [Section 200]

While fixing the remuneration under Section 196 or Section 197, 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.

According to Rule 6 of Appointment and Remuneration of Managerial Personnel Rules, 2014, the company shall have regard to the following matters, namely:-

1. the financial and operating performance of the company during the 3 preceding financial years.
2. the 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.

Recovery of Managerial Remuneration in certain cases [Section 199]

Where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, 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.

Compensation for loss of office of managing or whole-time director or manager [Section 202]

General Permission [Sub Section 1]

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.

Restriction in certain cases [Sub Section 2]

No payment shall be made under sub-section (1) in the following cases, namely:—

- (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;
- (b) where the director resigns from his office;
- (c) where the office of the director is vacated under section 167(1);
- (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;
- (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

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

Maximum Compensation [Sub Section 3]

Any payment made to a managing or whole-time director or manager in pursuance of sub-section (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, calculated on the basis of the average remuneration actually earned by him during a period of 3 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.

No Compensation in case of insufficient funds on the event of winding up

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 12 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.

Remuneration for services shall be payable even in case of loss of office [Sub Section 4]

Nothing in this section shall 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.

Functions of company secretary (Section 205)

The functions of the company secretary shall include,—

- (a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- (b) to ensure that the company complies with the applicable secretarial standards;
- (c) to discharge such other duties as may be prescribed.

According to Rule 10 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014, the duties of Company Secretary shall also discharge, the following duties, namely:-

- (1) 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;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the Board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

Note:

- The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.


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

Who is an “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.

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