

MANAGING DIRECTOR

APPOINTMENT AND ITS REMUNERATION

WHO IS A MANAGING DIRECTOR?

- * As per Section 2(54) CA,2013:

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.

- * Is he a Key Managerial Personnel?

Yes. A KMP is defined under Section 2(51) of the CA, 2013 and includes Managing Director.

APPLICABLE PROVISIONS FOR APPOINTMENT AND REMUNERATION

- * Chapter XIII -Section 196 to Section 202
- * Schedule V
- * Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014

Note: Applicability of these provisions with respect to appointment is applicable to all Companies, however provisions with respect to remuneration of Managing Director are applicable to only Public Companies .

TENURE AND ELIGIBILITY

- * No Company to employ at the same time a managing director and a Manager for a period not more than 5 years.
- * **Ineligibility for appointment or continuance of appointment:**
 - (i) Age less than 21 years or more than 70 years
 - (ii) is an undischarged insolvent or has at any time been adjudged as an insolvent.
 - (iii) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them.
 - (iv) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.

Note: Person aged more than 70 years may be appointed by passing SR & explanatory statement accompanying notice states justification for appointment or, by passing OR and obtaining CG approval

Conditions of appointment as laid in Part I of Schedule V

- * Imprisonment for any period, or fine exceeding rs.1000/-for the conviction of an offence under any of the laws enumerated under Schedule V Part I.
- * Detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
- * He is resident of India.

Note: Resident in India means a person staying in India for a continuous period of not less than 12 months preceding his appointment and who has come to stay in India for

(a) taking up employment in India or

(b) for carrying on business or vacation in India.

IMPORTANT NOTE

Central Government approval is only required now if the appointment is in variance to the conditions specified in part I of Schedule V. Application to be made in Form MR-2. However the Central Government approval with respect to remuneration of Managing Director is totally done away with the Notification of Companies (Amendment) Act, 2017.

Limits of Remuneration of Managing Director Section 197

- * Total managerial remuneration- Not to exceed 11% of Net Profits
- * Remuneration payable to any one MD/WTD/manager -Not to exceed 5% of Net Profits
- * Remuneration payable to more than one MD/WTD/manager-Not to exceed 10%net profits for all such .
- * Remuneration payable to Directors -Not to exceed 1% of net profit if there is a MD/WTD/Manager and remuneration to directors -Not to exceed 3% of net profit if there is no MD/WTD/Manager.

Note:

(i) Net Profits definition and calculation as per Section 198 of the Companies Act, 2013

(ii) Remuneration above not to include sitting fees . Sitting fees as per Rule 4 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014 not to exceed Rs.1 lacs per meeting of Board or Committee for all directors.

Additional Provisions With Respect To Remuneration

- * Remuneration shall not include services that are rendered in professional Capacity and which in the opinion of Nomination and Remuneration Committee the director concerned possesses the requisite qualification for practice of the profession.
- * In case any remuneration drawn is in excess of the limits specified the same is to be refunded unless waived by special resolution and prior approval of lenders.
- * Mandatory disclosures for listed company with respect to remuneration, ratio of remuneration of each director to median employee remuneration and other details as prescribed.
- * In case any Insurance taken on behalf of managerial personnel the same not be taken as part of remuneration unless he is found guilty of such negligence, default or breach of duty.
- * Penalty for non compliance of provisions: Rupees One lac for managerial personnel and in case of company 5 lacs

IMPORTANT NOTE

Until now, any managerial remuneration in excess of 11% required government approval. However, now a public company can pay its managerial personnel remuneration in excess of 11% without prior approval of the Central Government in accordance with the provisions of Schedule V. A special resolution approved by the shareholders will be sufficient. In case a company has defaulted in paying its dues or failed to pay its dues, permission from the lenders will be necessary.

Additional provisions

Section 200 and Rule 6 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 lays down the parameters for consideration of remuneration:

- * Financial and operating performance of the Company during three preceding financial years.
- * Relationship between remuneration and performance
- * Principle of proportionality between remuneration of directors to that of other directors on board who receive remuneration and employees of the Company.
- * Whether remuneration policy for directors differs remuneration policy for other employees and explanation thereto.
- * Details of securities held by director.

Remuneration as per Schedule V

Part II : Remuneration

- * Remuneration payable by companies having profits: Not exceeding the limits specified in section 197.

Remuneration payable by companies having no profit or inadequate profit- Not exceeding the limits under A:

Sl no.	Where the effective capital (in Rs.) is	Limit of yearly remuneration payable shall not exceed (in Rs.) in case of a managerial person
(i)	Negative or less than 5 crores	60 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

Remuneration payable by companies having no profit or inadequate profit:

(B) In case of a managerial person functioning in a professional capacity, remuneration as per item (A) may be paid, if:

(i) No direct or indirect *interest in the capital* of the company or its holding company or any of its subsidiaries or through any other statutory structures

(ii) *Not 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*

(iii) possesses graduate level qualification with expertise and specialized knowledge in the field in which the company operates:

Note: (i) Interest means holding more than 0.5% of its paid up share capital.

(ii) “Statutory Structure” means any entity which is entitled to hold shares in any company formed under any statute.

IMPORTANT NOTE

**REMUNERATION OUTSIDE THE LIMITS OF A
AND B MAY BE PAID BY PASSING A SPECIAL
RESOLUTION.**

Important proviso

The limits under this Section shall be applicable subject to the following additional conditions:—

- * The managerial person is not receiving remuneration from any other company;
- * 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 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.
- * 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.

THANKS!

CS MONIKA MOORJANI

(09811970129) [monikamoorjani@gmail.com/](mailto:monikamoorjani@gmail.com) info@csmonika.com