

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL COMPANIES ACT 2013

Managing Director is Key Managerial Personal of utmost importance. He is face of a company and its decision-making mechanism. A person gain significant advantages as Managing Director which may not be there, in case of his appointment as Manager or Chief Executive Officer. While Chief Executive Officer has no special advantage except his clubbing as Key Managerial Personnel with Manager and Managing Director, Manager has some. Their definitions speak themselves. Appointment of Managing Director, Whole – Time Director and Manager is governed by provision of Section 196 of the Act. They all are a different class of Key Managerial Personnel and has specific provision of appointment in addition of Section 203, will discuss in another post.

Note:

- This Section is Applicable on Both Public and Private Company.
- A company can appoint Either Managing Director or Manager not both.

Tenure:

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

Re-appointment:

- The company may re-appointment 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 FOR APPOINTMENT OF MD, MANAGER OR MANAGER: No Company shall appoint or continue the employment of any person as

Explanation:

- Words used in this Section are “shall appoint or continue the employment of”. A company may appoint a person on these positions, who has attained the age of 70 years, by passing a Special Resolution. The explanatory statement annexed to the notice of such appointment shall justify such appointment.

CONDITIONS FOR APPOINTMENT OF MD, MANAGER OR WTD:

1. By passing of Resolution in Board Meeting (BOD decide Terms and Condition of such appointment) and
2. Approval of Shareholders by passing Resolution in Next General Meeting and
3. Appointment should accordance with the Section- 197 and Schedule- V.
4. If appointment is not accordance with the Schedule – V, Central Government permission require.

Explanation: The NOTICE convening Board or General Meeting for such appointment shall include terms and conditions of such appointment, remuneration payable and other matter including interests of directors in such appointment.

* 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.

MANAGERIAL REMUNERATION:

Managerial remuneration is one of major corporate governance issue in India. Promoters and controlling shareholders consider themselves owner of company and get maximum remuneration. Difference between corporate tax rate and income tax rate also priority to withdraw much money from “owned” company. Indian concept of “owned company” and corporate governance has co – existence in last two decades.

Note:

- There is No Restriction relating to managerial remuneration for a Private Company.

Explanation:

- If company wants to pay remuneration exceeding 11%, can pay by approval of Share holders in General Meeting with the Central Government
- Approval. (only schedule- V IS required to be follow or we have to take approval of CG)
- The Percentage aforesaid shall be exclusive of SITTING FEES paid under sub Section- 5.

- Net profit for this section shall be computed as per method given in Section 198.
- *In case of no profit or inadequate profit, the company shall pay remuneration to directors, Managing Directors, Whole Time Directors and Managers in accordance with Schedule V OR with previous approval of Central Government.
- The remuneration payable to any director shall be determined either by articles of the company or by resolution or by special resolution passed by the company where its articles required for special resolution.

The remuneration payable to directors shall be inclusive of all remuneration payable to him for services rendered by him in any other capacity

EXCEPT

- Services rendered are of Professional in Nature and in opinion of Nomination and Remuneration Committee or of Board of Directors as the case may be, director has requisite qualification for practice of profession.

Sitting Fees to Directors:

- Director may receive remuneration by way of fee for attending meetings of the Board or committee thereof. The amount of such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees.
- Provided that sitting fees to Independent Directors and Women Directors shall not be less than the sitting fee payable to other directors.

Manner of Payment of Remuneration: Remuneration of Director or Manager may be paid below mention ways

- a) Monthly Payment
 - b) Specified Percentage Of Profit
 - c) Partly By One And Partly By Specified Percentage Of Profit
- If any director receives directly or indirectly by way of remuneration any sum in excess of prescribed limit, he shall refund such sum. Until refund, he will keep this sum in trust for the company. Without Central Government permission, the company shall not waive recovery of any such sum.
 - Every listed company shall disclose Ratio of Remuneration Of each Director to The Median Employees' remuneration and such other details as prescribed.

- Where any insurance is taken by company for “Key Managerial Personnel Liability Insurance” Premium of such insurance shall not be included to the remuneration of any key managerial personnel. However, if such person found guilty, such premium shall be treated as part of their remuneration.
- Any director, receiving commission from the company and Managing Director or Whole Time Director may receive any remuneration or commission from holding company or subsidiary company. This information shall be disclosed by company in the Board’s Report.

SCHEDULE- V

Section 197 of the Companies Act, 2013 in its sub section (3) and (11) say that in case of no profit or inadequate profit, the company shall pay remuneration to directors, Managing Directors, Whole Time Directors and Managers in accordance with Schedule V OR with previous approval of Central Government.

Part- I of Schedule- V

1. A person should satisfy following conditions for appointment as managerial person:

- He had not been sentenced to imprisonment for any period or to a fine exceeding Rs. 1000 for the conviction of an offence under 26 Acts listed in schedule.
- He had not been detained for any period under COFEPOSA, 1974.

*If 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.

- Example: {If a person is in a Managerial person in only Company ‘A’ he can take 20 Lakh as Remuneration. And if he is Managerial person in Company ‘B’ as per section 197 he can take 30 lakh remuneration. But if same person is Managerial person in both Company A & B. Then maximum remuneration he can get all together is 30Lakh.}
- He is resident of India.
 - a) for taking up employment in India; or
 - b) for carrying on a business or vacation in India

RESIDENT IN INDIA: Resident in India include a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person .

A non-resident in India shall enter India only after obtaining a proper Employment Visa.

PART- II Section- II of SCHEDULE- V: Remuneration in case of inadequate or no profit

In case of inadequate or no profit, a company may pay to a managerial person without central government approval HIGHER OF THE FOLLOWING TWO OPTIONS (A or B):

A. As per following table with approval of company by Ordinary Resolution in General Meeting:

Where Effective Capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
Negative or less than Rs. 5 Crore	30 lakhs
5 crores and above but less than 100 crores	42 lakhs
100 crores and above but less than 250 crores	60 lakhs
250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

*IF, SHAREHOLDERS PASSES SPECIAL RESOLUTION THIS LIMIT WILL BE DOUBLE.

B. The managerial person who was Not A:

a) Security Holder holding Securities of the company of nominal value of rupees five lakh or more or

b) An employee or

c) A director of the company or

d) Related to any director or promoter, at any time During The Two Years

Prior To His Appointment as a managerial person 2.5% OF THE CURRENT RELEVANT PROFIT

*IF, SHAREHOLDERS PASSES SPECIAL RESOLUTION THIS LIMIT WILL BE DOUBLE.

CONDITIONS:

1. This remuneration should be approved by resolution of Board of director and also by Nomination and Remuneration committee (where it is)
2. The remuneration shall be approved by a resolution of shareholders in general meeting.
3. The company has not made any default in repayment of its debt or debenture or interest thereon for a continuous period of 30 days in preceding financial year
4. The approval of remuneration by special resolution should be for not more than three year. (SR is require only when we are giving remuneration double to limit mention.)
5. The statement along with the notice of this resolution should provide information mentioned in schedule.
6. The Auditor or Company Secretary of company or company secretary in practice certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar.

PART- II Section- III of SCHEDULE- V: Remuneration in case of inadequate or no profit:

In these cases, the company may pay remuneration in excess of section ii:

a) Where Remuneration in excess of these limit is Paid By Any Other Company, Condition:

- That other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment,
- That other company treats this amount as managerial remuneration for the purpose of section 197.
- The total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

b) In these cases, the company may pay remuneration in excess of Section II: where—

(i) The company is a newly incorporated company, for a period of Seven Years From The Date Of Its Incorporation, or

(ii) The company Sick Company within five years from sanction of scheme of revival.

c) Where Remuneration exceeds the limit in section- II but Remuneration fixed by BIFR & NCLT.

d) An unlisted company in SEZ may pay up to Rs. 240 Lakh yearly if, company has not raised any money by

- Public issue of shares in India
- Public issue of Debentures in India
- Has not made any default in repayment of any of its debt or debenture or interest payable thereon for a continues period of 30 days

THE CONDITIONS FOR SECTION III ARE:

1. An auditor or Company Secretary of the company or company secretary in practice has certifies that:

A. 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

B. There is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

2. For Para (b) and (c), the managerial person is not receiving remuneration from any other company.

PART- II Section- IV of SCHEDULE- V: PERQUISITES NOT INCLUDED IN MANAGERIAL REMUNERATION

1. A managerial person shall be eligible for:



VASHISTA & ASSOCIATES
ADVOCATES & SOLICITORS

a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act.

b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service

c) Encashment of leave at the end of the tenure

2. A expatriate managerial person shall be eligible for:

a) Children's education allowance

b) Holiday package studying outside India or family staying outside India

c) Leave travel concession

PART- II Section- V of SCHEDULE- V: REMUNERATION PAYABLE TO A MANAGERIAL PERSON IN TWO COMPANIES

A managerial person shall draw remuneration from one or both companies. The total remuneration drawn should not exceed the higher maximum limit admissible from any company of which he is a managerial person.

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