



Appointment + Remuneration of Managerial Personal by Corporate in India

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(A) Appointment of Managerial Personal
(Under Section 196 of the Companies Act (CA) 2013)

1. Introduction on Appointment of Managerial personal

- (i) Appointment of Managerial Personal is covered under the section 196 of the CA 2013 and definition of Managerial Personal is covered under section 2(53) + 2(54) of the CA, 2013.
- (ii) **Managerial Personal is including:**
 - (a) Managing Director (MD)
 - (b) Whole-time Director (WTD)
 - (c) Managers
 - MD, WTD and Manager are commonly known as managerial personal
- (iii) Managerial Remuneration + computation of managerial remuneration are covered under section 197 and 198 of the CA, 2013 respectively.
- (iv) Appointment of Managerial Personal under section 196 of the CA, 2013 is applicable for the private limited companies + public limited companies (both)
- (v) Managerial Remuneration under section 197 and 198 along with Part II of the schedule V of the CA, 2013 are not applicable for the private limited companies
- (vi) Managerial Remuneration under section 197 and 198 along with Part I and Part II of the schedule V of the CA, 2013 are applicable for the public limited companies only.

2. Appointment of Managerial personal

- (i) **Not Permitted appointments as managerial personal**
 - (a) Companies are not permitted to appoint a MD + a Manager (both) at the same time. Hence companies are permitted to appoint either a MD or a Manager at a same time.
 - (b) Companies are not permitted to appoint or re-appoint a managerial personal for a term exceeding 5 years at a time. Hence re-appointment is



permitted for renewal further for a term not exceeding 5 years therefore in multiple of not exceeding 5 years can be appointed even for 50 years.

- (c) Companies are *not permitted* to appoint a managerial personal having *age below 21 years or exceeding age 70 years*
- (d) Companies are *not permitted* to appoint a managerial personal those are an *un-discharged insolvent* or have already been *adjudged* as an *insolvent*.
- (e) Companies are *not permitted* to appoint a managerial personal those have at any time *suspended the payments to their creditors* or have any time made the *composition with the creditors*.
- (f) Companies are *not permitted* to appoint a managerial personal those have at any time already been *convicted by the court against an offence + sentenced for imprisonment even for 1 day*.

(ii) ***Permitted appointments as managerial personal***

- (a) Companies are *permitted* to appoint a managerial personal having *age exceeding 70 years* through passing a *special resolution* in the annual general meeting (AGM) or extra ordinary general meeting (EOGM) with the *justification of appointing* having age exceeding 70 years.
- (b) Companies are *permitted* to appoint a managerial personal *after satisfaction* of the provision under *section 197* or *schedule V* of the CA, 2013.
- (c) Companies are *permitted* to appoint a managerial personal with the *terms and conditions for appointment + remunerations* as duly *approved by Board of directors + further approved by an ordinary resolution* at the *next AGM or EGM*
- (d) Companies are *permitted* to appoint a managerial personal with the *approval* of the *Central Govt.* where the *terms and conditions* under *section 197 or schedule* of the CA, 2013 are *different*.



- (e) Companies are *permitted* to appoint a managerial personal with the *filling* of prescribed form (MR-1) with the office of the *ROC* and also filling period is *not exceeding 60 days* from the date of appointment
- (f) Companies are *permitted* to appoint a managerial personal and also permitted for the *actions* as *executed till date* of the *next AGM* or EGM where appointment of a managerial personal is *not approved* by the *next AGM* or EGM

3. **Definition of Managerial Personal**

(i) **Manager**

- (a) Definition of the *Manager* is covered under section 2(53) of the CA, 2013 where an *individual* is *managing 100%* or *substantially* the *affairs* of a *company*
- (b) Manager is *managing* under the *superintendence*, control and *direction* of the *Board of Directors*
- (c) Manager *includes* a *director* or *any* other *person* who is *occupying* the *position* of a manager *with* or *without* a *contract* of service.

(ii) **Managing Director (MD)**

- (a) Definition of the *MD* is covered under section 2(54) of the CA, 2013 where MD means a *director* in *accordance* to *articles* of a company or an *agreement* with the company or through an *ordinary resolution* passed in *next AGM* or EGM or by its *Board of Directors* which is *entrusted* with *substantial powers* of management of the *affairs* of the *company*.
- (b) And also *includes* a *director* who is *occupying* the *position* of *MD* by *whatever* name *called*.

(iii) **Whole Time Director (WTD)**

- Definition of the *WTD* is covered under section 2(94) of the CA, 2013 where *WTD* *includes* a *director* who is in the *whole time employment* of the company. Hence a *person* who is *not* a *part time director* is *called* *WTD*



(B) Remuneration of Managerial Personal

(Under Section 197 of the Companies Act (CA) 2013)

1. Introduction on Remuneration of Managerial personal

- (i) *Remuneration of the Managerial Personal by Corporate in India is covered under the section 197 of the CA 2013 + definition of Managerial remuneration is covered under section 2(78) of the CA, 2013*
- (ii) **Remuneration of Managerial Personal is applicable on:**
- (a) *Public Limited Companies*
- (b) *Private Limited Companies which are subsidiaries of Public Limited Companies*
- (iii) *Remuneration of the Managerial Personal is not applicable on Private Limited Companies.*
- (iv) **Permitted routes for managerial remuneration**
- (a) **Automatic Route for managerial remuneration where adequate profits**
- *Automatic route for managerial remunerations is permitted where adequate profits are existed + managerial remunerations are not exceeding limits like 11%, 5%, 3% or 1% of the "adjusted" net profits of the companies*
- (b) **Shareholders' Approval Route for managerial remuneration**
- (ba) *Shareholders' Approval Routes is needed through passing an ordinary resolution in the next AGM or EGM for managerial remuneration to the managerial personal where the managerial remuneration is not exceeding the limits as permitted under the section 197 of the CA, 2013 against the adequate profits*
- (bb) *Shareholders' Approval Route is needed through passing an ordinary resolution in the next AGM or EGM for managerial remuneration to the managerial personal where managerial remuneration is not exceeding the limits as permitted under the part II of the schedule V of the CA, 2013 against the loss or inadequate profits*



(bc) Shareholders' **Approval Route** is needed through **passing** an **special resolution** in the **next AGM** or EGM for managerial remuneration to the managerial personal **where** managerial remuneration is **not exceeding 200%** of the **limits** as permitted **under** the part **II** of the schedule **V** of the CA, 2013 **against** the **loss** or **inadequate profits**

(c) **Shareholders approval route + Central govt. approval route (both)**

- **Shareholders Approval Routes + central govt. approval routes (both)** are **required** for managerial remuneration to the managerial personal **where** the managerial remuneration is **exceeding** the **limits** as permitted **under** the section **197** of the CA, 2013 **against** the **adequate profits** + as **permitted** under the schedule **V** of the CA, 2013.

2. Not Permitted Managerial Remuneration where profits are adequate

(i) Companies are **not permitted** to pay managerial remuneration to managerial personal **exceeding 11%** of the **adjusted net profits** for the financial year as **computed** in accordance to the provisions as prescribed under section **198** of the CA, 2013.

(ii) (a) Companies are **not permitted** to pay managerial remuneration to **1** managerial personal **exceeding 5%** of the **adjusted net profits** for the financial year as **computed** in accordance to the provisions as prescribed under section **198** of the CA, 2013 where companies have **more than 2** managerial personal

(b) Companies are **not permitted** to pay managerial remuneration to **2** or **more** managerial **exceeding 10%** of the **adjusted net profits** for the financial year as **computed** in accordance to the provisions as prescribed under section **198** of the CA, 2013 where companies have **more than 2** managerial personal.

(iii) Companies are **not permitted** to pay managerial remuneration to the **non** managerial personal commonly known as **Independent Directors exceeding 1%** of the **adjusted net profits** as computed under section 198 of the CA, 2013.

(iv) Companies are **not permitted** to pay managerial remuneration to the **non** managerial personal commonly known as **Independent directors exceeding 3%**



of the *adjusted net profits* as computed under section 198 of the CA, 2013 where companies are *not having* managerial personal.

(v) Companies are *not permitted* to pay managerial remuneration to the managerial personal *exceeding* the monetary *limits* as prescribed in accordance to *schedule V* of the CA, 2013 where companies have *no profits* or *inadequate profits*

(vi) **Stock Options to Independent Directors (IDs)**

- Companies are *not permitted* to allow *stock options* to the independent directors (*IDs*). Hence companies are *permitted* to allow *stock options* to managerial personal.

(vii) **Refund of Extra paid of Managerial Remuneration**

Companies are *not permitted* to *waive* the *recovery* of the refund from extra paid *managerial remuneration* as covered under section *197(9)* of the CA, 2013 *without approval* from the *central govt.*

(viii) **Managerial remunerations where no profits or inadequate profits**

(a) Companies are *not permitted* to pay managerial *remunerations* where *no profits* or *inadequate profits* as *exceeding* the *limit* prescribed under *schedule V* of the CA, 2013 *without approval* from the *central govt.*

However companies are permitted to pay *managerial remuneration* not *exceeding 200%* with passing a *special resolution* in the *next AGM* or *EGM*. Hence companies are *required* to obtain an *approval* from the Central govt where managerial remuneration is *exceeding 200%*

(b) Companies are *not permitted* to pay managerial *remunerations* where *no profits* or *inadequate profits* as *exceeding* the *limit* prescribed under *schedule V* of the CA, 2013 *without fulfilling* of the *compliances* in accordance to the *provisions* as already existed in the *memorandum*, articles, the agreement as enter + an *ordinary resolution* as passed in the *next AGM* or *EGM*

3. **Permitted Managerial Remuneration where profits are adequate**

(i) Companies are *permitted* to pay managerial remuneration to managerial personal *not exceeding 11%* of the *adjusted net profits* for the financial year as



computed in accordance to the provisions as prescribed under section 198 of the CA, 2013 with the provisions of section 197 of the CA, 2013 to pass an *ordinary resolution* in the *next AGM* or EGM.

- (ii) Companies are *permitted* to pay the *fee* commonly *known* as *meeting fee* for attending the *meetings* of *Board* of directors + management *committees* *without* any monetary *limits* like *11%, 5%, 3% or 1%*. Hence companies are permitted to pay the meeting fee *over* and *above* the monetary *limits* like *11%, 5%, 3% or 1%*
- (iii) Companies are *permitted* to pay managerial remuneration to the managerial personal *exceeding* the monetary *limits* as prescribed in accordance to *schedule V* of the CA, 2013 + *approval* from the *Central Govt.* of India where companies are *having no profits* or *inadequate profits*
- (iv) (a) Companies are *permitted* to pay managerial remuneration to the managerial personal in *accordance* to the provisions as prescribed under section 197 of the CA, 2013 + in *accordance* to the *Article* of the *companies*.
- (b) Companies are required to *pass* a *special resolution* in the *next AGM* or EGM where *articles* of the *companies* are *mandatory* requiring of passing *special resolution*.
- (c) Companies are *permitted* to pay managerial remuneration to the *professional* for providing *professional services* where *nomination* and Remuneration *Committee* or Board of directors have *approved* the requisites *professional qualification* of the directors *without* any monetary *limit* like *11%, 5%, 3% or 1%*.
- (v) Companies are *permitted* to pay *fee* for attending the *meetings* of Board of directors or different committees *not exceeding* the amount as *prescribed* for *different fees* for *different* class of *companies* and fee for *independent directors*.
- (vi) Companies are *permitted* to pay *remuneration* on *monthly basis*, on *specified percentage* of *adjusted net profit* basis, *partly* on *monthly basis* or *partly* on *specified percentage* basis.
- (vii) **Managerial Remuneration to Independent Directors (IDs)**



- (a) Companies are *permitted* to pay *fee* for *attending meetings* of Board of *directors + committees* on different matters.
- +
- (b) Also *permitted* to pay for *reimbursement* of *expenses* against attending *meetings* of Board of *directors + committees* on different matters
- +
- (c) Also permitted to pay *percentage* of *adjusted net profits* as *commission not exceeding 1% or 3%* as case may be. Payment of commission is to be approved by *passing an ordinary resolution* in the *AGM*
- (viii) Companies are *permitted* to pay managerial remuneration *not exceeding* the amount as *computed* in accordance to the section *198* of the CA, 2013.
- (ix) **Refund of Extra paid of Managerial Remuneration**
- (a) Companies are permitted to *take a refund* of *extra* paid managerial remuneration from managerial personal which were *paid over* and *above* the *limits* prescribed under section *197* of the CA, 2013
- or
- (b) Companies have *paid* the managerial remuneration *without approval* from the *central govt.* wherever it's required.
- (c) Companies are permitted to *treat* amount of *refund* as managerial personal is *holding* as a *trustee* to the companies.

4. **Miscellaneous Provisions for Managerial Remuneration**

- (i) *100% listed companies* are required to *disclose* in the *Board report* the *ratios* of remuneration to each *directors* and other *details* as prescribed
- (ii) **Insurance on behalf is not treated as managerial remuneration**
- (a) Companies are *not permitted* to *treat* as managerial remuneration against the amount of *insurance premium* as paid on *behalf* of managerial personal for *indemnifying* against any *liability* for any *negligence*, default, misfeasance, *breach of duty* or breach of trust for the *purpose + welfare* of the companies.
- (b) Companies are *permitted* to *treat* as managerial remuneration against the amount of *insurance premium* paid on *behalf* of managerial



personal for *indemnifying* against any *liability* for any *negligence*, default, misfeasance, breach of duty or breach of trust for the *purpose + welfare* of the companies where its *proved* that managerial personal was *guilty*.

(c) Managerial personals are *not* to be *disqualified* from receiving any *remuneration* or *commission* from *holding* company or *subsidiary* companies where companies have *made* its *disclosure* in the *Board's* report

(iii) **Penalties for contraventions**

- Every person is responsible to pay a *minimum penalty 1 lac* and *maximum penalty 5 lacs* for the *contravention* of the provisions as covered under section *197* of the CA, 2013



(C) Computation of Maximum Managerial Remuneration

(Under Section 198 of the Companies Act (CA) 2013)

1. Introduction on Computation of Managerial Remuneration

- (i) Now days *computation* for working *maximum* mandatory *amount* of *CSR + Managerial remunerations* are 2 important *calculations* being carried out by the *corporate* in India.
- (ii) Section 198 of the CA, 2013 is *guiding* the companies for *computing* of *adjusted net profit* through *adding 2 items* and *subtracting 20 items* in the *net profit* as *worked out* in accordance to *schedule III* of the CA, 2013 as on *March 31st* each year.
- (iii) Companies are required to *compute* the *adjusted net profit* through *CAs, CSs ICWA* and *other professionals* to assist the *Board of directors* to *decide* the *maximum amount* of *CSR + managerial remuneration*.

2. Computation of "Adjusted" Net Profits

- (i) **Profits in accordance to schedule III of CA, 2013 as on March 31st :**
 - (+)
 - (a) Amount received as *bounties + subsidies* from the *govt., public authority* as *constituted* or *authorized* on behalf of *govt.*
 - (b) Amount received as *profits* against *sale* of *fixed assets* over and above the written down value (*WDV*)
 - (-)
 - (a) Amount received as *premium* on *shares* or *debentures* against the *shares* or *debentures* as *issued* or *sold* by the companies
 - (b) Amount received as *profits* against *forfeiture* of *shares* by the companies
 - (c) Amount allowed as *loss* of *capital nature* including *loss* on *sale* of *undertaking*.
 - (d) Amount received as *profits* against *sale* of *immovable property* or *fixed assets*
 - (e) Amount as being *carried* out as *liability* under the head *equity reserves* including *surplus* in *profit and loss* account against *measurement* of the *asset* or the *liability* at *fair market value (FMV)*.



- (f) Amount paid as *expenses* as usual working charges
- (g) Amount paid as *director's remuneration*
- (h) Amount paid as *bonus* or *commission* to the staffs
- (i) Amount paid as *tax notified* by the Central Government
- (j) Amount paid as *tax paid* on business profits as imposed by the Central Govt.
- (k) Amount paid as *interest* on debentures
- (l) Amount paid as *interest* on secured loans
- (m) Amount paid as *interest* on unsecured loans and advances
- (n) Amount paid as *expenses* on repairs
- (o) Amount paid as *contributions* under section 181
- (p) Amount allowed as *depreciation* under section 123
- (q) Amount paid as *excess of expenditure* over incomes
- (r) Amount paid as *compensation* or *damages* against legal liability
- (s) Amount paid as *insurance premium*
- (t) Amount as allow debts considered bad and also *written off* or *adjusted*



(D) Appointment + Remuneration of Managerial Personal
(Under Schedule V of the Companies Act (CA) 2013)

1. Appointment of Managerial Personal

(Under Part-I of Schedule-V)

(i) **Appointment of managerial personal is permitted without approval of Central govt. subject to satisfaction of certain terms and conditions:**

(a) Where the managerial personal have *not* been sentenced to imprisonment for minimum 1 day or the fine exceeding 1 thousand for the conviction of an offence under any of the followings 21 Acts:

(aa) Fugitive Economic Offenders (FEO) Act, 2018

(ab) Goods and Services Tax (GST) Act, 2017

(ac) Insolvency and Bankruptcy Code (IBC), 2016

(ad) Companies Act (CA) 2013 and 1956

(ae) Prevention of Money-Laundering Act (PMLA), 2002

(af) Competition Act, 2002

(ag) Foreign Exchange Management Act (FEMA) Act 1999

(ah) Securities and Exchange Board of India (SEBI) Act, 1992

(ai) Sick Industrial Companies (Special Provisions) Act, 1985

(aj) Customs Act, 1962

(ak) Income-tax Act, 1961

(al) Wealth-tax Act, 1957

(am) Securities Contracts (Regulation) Act, 1956

(an) Essential Commodities Act, 1955

(ao) Prevention of Food Adulteration Act, 1954

(ap) Industries (Development and Regulation) Act, 1951

(ar) Central Excise Act, 1944

(as) Foreign Trade (Development and Regulation) Act, 1922

(at) Indian Stamp Act, 1899

(b) Where the person had *not* been detained for minimum 1 day under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.



- Central Govt. *approval* is *not needed* for *subsequent appointment* where *original appointment* was made *with the approval* of the central *govt.* against conviction or detention.
- Central Govt. *approval* is *needed* for *subsequent appointment* where *original appointment* was made *with the approval* of the central *govt.* against conviction or detention *but* the person has *further convicted* or detained *after* the *approval* of central *govt.* for appointment of managerial personal.
 - (c) (ca) Where the person has *completed* the *age* of *21 years* or *not attained* the *age* of *70 years*
 - (cb) *Approval* from the *central govt.* is *not required* for *age exceeding 70 years* where company has *passed* a *special resolution* at the *next AGM* or *EGM*.
 - (d) Where the managerial personal is *appointed* + drawing *remuneration* from *1 or more* companies *not exceeding* the monetary *ceiling* as provided under section *V* of Part *II*
 - (e) Where the person is *non resident* of India + certain *terms* and conditions are to be *satisfied* for *treating* a *resident* of India as under:
 - (ea) Where the person is *staying* in India for *minimum 12 months* from immediate *preceding* to the date of his *appointment* as managerial personal + the person is *staying* with *VISA* for taking *employment* or carrying on a *business* or *vocation* in India.
- Above mentioned *condition* is *not applicable* to the *companies* as *conducting business* in special economic zones (*SEZ*) as notified by the deptt. of commerce.
- *Non resident* of India is *permitted* to enter in India *after* obtaining a proper *employment VISA* from the Indian mission outside India.

2. Remuneration of Managerial Personal (Under Section-I of Part-II of Schedule-V)

- (i) **Remuneration by companies having adequate profits**
(Under Section I of Part II, of Schedule V of the CA, 2013)
 - Companies are *permitted* to pay managerial *remuneration* to the managerial personal *within* the prescribed *limit* like *11%, 5%, 3% or 1%* under section 197 of the CA, 2013



(ii) **Remuneration by companies having no profits or inadequate profits**
(Under Section II of Part II, of the Schedule V of CA, 2013)

- Companies are *permitted* to pay managerial remuneration to the managerial personal *within* the following limits

SL. No.	Amount of <i>effective capital</i>	Maximum Remuneration for Managerial Personal	Maximum Remuneration for Non Managerial Personal like part time director + Independent director
(a)	Where losses or <i>profits</i> are not exceeding 5 crores.	60 lakhs	12 Lakhs
(b)	Where <i>profits</i> are not exceeding 100 crores.	84 lakhs	17 Lakhs
(c)	Where <i>profits</i> are not exceeding 250 crores.	120 lakhs	24 Lakhs
(d)	Where <i>profits</i> are exceeding 250 crores.	120 lakhs + 0.01% of effective capital where profits are <i>exceeding</i> 250 crores	24 Lakhs + 0.01% of effective capital where profits are <i>exceeding</i> 250 crores

- Companies are *permitted* to pay managerial remuneration not *exceeding* 200% the above mentioned monetary *ceiling* where the companies have *passed* a *special resolution* in the *next AGM* or EGM
- Companies are *permitted* to pay managerial remuneration on *proportionate basis* where the managerial personal is *appointed* for the period *less than 1 year*.

3. **Remuneration of Managerial Personal working in professional capacity**
(Under Section-II of Part-II of Schedule-V)

(i) (a) Companies are permitted to pay the remuneration to the managerial personal *working* in a *professional capacity* + managerial personal is *not having* any *interest* in the *capital* of the company or its *holding company* or any of its *subsidiaries* as *directly* or *indirectly* or *through* any other *statutory structures*

+

(b) Managerial personal as working in a professional capacity is *not having* any direct or indirect *interest* or *related* to the *directors* or *promoters* or its *holding company* or its *subsidiaries* at any time *during* the *last 2 years* before or on or after the date of *appointment* + *possesses* minimum *graduate level qualification* along with the *expertise* + *specialized knowledge* in the field where company is working.



- Managerial personal working in a professional capacity is *not having* any *interest* in the capital of the company *includes*:
 - (a) Where managerial personal is *holding not exceeding 0.5%* of its paid up *share capital* under any scheme as *formulated* for *allotment* of shares to the managerial personal *including* Employees Stock Option Plan (*ESOP*) or by way of *qualification* is *deemed* to be a managerial personal *not having* any *interest* in the capital of the company
 - (b) Where companies have *approved* the payment of *remuneration* as approved through an *ordinary resolution* as *passed* by the *Board* of directors or by the *nomination* and *remuneration committee* where formation of nomination and remuneration committee is *mandatory* under section *178 (1)* of the CA, 2013
 - (c) (ca) Where companies have *not committed* any *default* in payment of *dues to the banks*, public financial institution, non convertible debenture holder or any other secured creditors
 - (cb) Companies are *required* to obtain no objection certificate (*NOC*) from the lenders *before* passing an *ordinary resolution* in the *next AGM* and EGM where companies have *defaulted* in payment of dues to the lenders.
 - (iii) Companies are *required* to pass an *ordinary* or a *special resolution* as case may be for payment of remuneration in the *next AGM* or EGM for a period *not exceeding 3 years*.

4. Remuneration to Managerial Personal having no Profits or inadequate Profits (Under Section-III of Part-II of Schedule-V)

- (i) Companies are permitted to *pay* the *managerial remuneration* to the managerial personal *having no profits* or *inadequate profits* in *excess* of *limits* as permitted under section *I* and *II* of the part *II* of the schedule *V* subject to satisfaction of certain terms and conditions:
 - (a) Where the companies *including the foreign companies* have passed a *special resolution* in the *next AGM* and EGM where remuneration is being *paid in excess* of the limits as specified in Section *I* or Section *II* of Part *II* of the Schedule *V*



(b) Companies are required to **treat** the amount as **paid** as managerial remuneration in **accordance** to the section **197** and **exceeding** the **100%** managerial **remuneration** as **paid** to the managerial personal is to be **treated** as within **permissible limits** under section 197.

(ii) **Special circumstances for payment of excess managerial remuneration**

(a) Where the companies are **newly incorporated** and also the **excess managerial remuneration** is **not permitted** for **exceeding 7 years** from the **date of incorporations**

(b) Where the companies are **sick + schemes of revival or rehabilitation** have been **ordered** by the Board for Industrial and Financial Reconstruction (**BIFR**) for the period **not exceeding 5 years** from the date of sanction of scheme of revival

(c) Where the **resolutions** plans have been **approved** by the National Company Law Tribunal (**NCLT**) under the Insolvency and Bankruptcy Code (**IBC**) **2016** (31 of 2016) for the period **not exceeding 5 years** from the date of approval of resolution plan.

(d) Where managerial remuneration have been **fixed by the BIFR** or the **NCLT**

(e) **Additional conditions to be satisfied :**

(ea) Statutory **auditors**, Company **Secretary** appointed as **employees** by the companies or the company **secretaries** as **engaged** in whole-time practice (**WTP**) are required to **certify** that **100%** secured **creditors + terms lenders** have **stated in writing** that **100%** secured **creditors + terms lenders** have **no objection** for the **appointment** of the managerial person + the **quantum of remuneration** and also the **certificates** are to be **filed along with** the **returns** as prescribed under sub-section **196 (4)** for **appointment + remuneration** to the managerial personal.

(eb) Statutory **auditors**, Company **Secretary** appointed as **employees** by the companies or the company **secretaries** as **engaged** in whole-time practice (**WTP**) are required to **certify** that **100%** payments have been **settled** on time to the **100% creditors + depositors** and also the **certificates** are to be **filed along with** the returns as prescribed under sub-section **196 (4)** for **appointment + remuneration** to the managerial personal.



5. **Perquisites included in Managerial Remuneration**

(Under Section-IV of Part-II of Schedule-V)

(i) **Perquisites are treated as managerial remuneration**

- (a) Value of **rent-free accommodation** as provided by the employers.
- (b) Value of **concession rent** as provided by the employers.
- (c) Value of **benefits** or **amenities** as granted or provided at **free of cost** or at **concessional rate** to the managerial personal those are **having** substantial **interest** in the companies **except** certain **exceptions**.
- (d) **Actual amount paid** by the employers **against** the **obligations** of the managerial personal.
- (e) **Actual amount paid** by the employers **against** an **assurance** on the **life** or paid for the **contracts** of **annuities** of the managerial personal.
- (f) Value of the **securities, sweat equity shares** as **allotted** or transferred by the employer or **former employer**.
- (g) **Actual amount paid** by the **employers** as **contribution** against an approved **superannuation fund not exceeding Rs 1 lac**. This provision is **applicable from** the year ending on **March 31, 2010**.
- (h) Value of the other **fringe benefits** or **amenities** as may be **prescribed** under the CA, 2013
- (i) **Actual amount paid** for the **insurance, pension, annuity** or gratuity for **self, spouse and children's**.

(ii) **Perquisites are not treated as managerial remuneration**

- **Perquisites not treated as managerial remuneration to managerial personal as resident of India**

- (a) Perquisites as **contribution** to provident fund (**PF**), superannuation fund or annuity fund as **singly** or **put together**. These perquisites are also **not taxable** under the **ITA, 1961**
- (b) Perquisites as **gratuity** paid **not exceeding 15 days salary per year** against the **completed years** of service where **month** is **treated** for **26 days** instead of **30 days**. This perquisite is also **not taxable** under the **ITA, 1961**



(c) Perquisites as *leave encashment* at the *end* of *contracted term* of employment (*tenure*). This perquisite is also *not taxable* under the *ITA, 1961*.

● **Perquisites are not treated as managerial remuneration to expatriate + NRIs as managerial personal**

(a) Perquisites as Children's education allowance (*CEA*) *not exceeding Rs. 12000 per month* and per child or *actual expenses* incurred *whichever is lower* where children's are *staying outside India*. *CEA is not permitted for more than 2 children's*.

(b) Perquisites as *return Holiday passage* *not exceeding once in a year* in *economic class* or *once in 2 years* in *first class* where children's are *staying outside India* and also *not residing in India*.

(c) Perquisites as *Leave travel concession (LTC)* *Return passage* for *self* and *family* in *accordance* with the rules as *specified* by the companies where it is proposed that the *leave be spent in home country* instead of anywhere in India.

6. Definitions for Managerial Remuneration to Managerial Personal (Under Section-IV of Part-II of the Schedule-V)

(i) **Definition of effective capital**

(a) *Aggregate of the paid-up share capital* excluding *share application money* or *advances* against shares if any.

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(b) *Share premium account reserves* and *surplus* excluding the *revaluation reserve* + *long-term loans* + *deposits* as *repayable after 1 year* but excluding *working capital loans, overdrafts, interest due on loans, bank guarantees, etc.*

(c) *Other short-term arrangements* - aggregate of the *investments* excluding the *investments* as made by the *investment companies* those are *having principal business* as *acquisition* of *shares, stock, debentures* or other *securities* - *accumulated losses* and *preliminary expenses* *not written off*.

(ii) **Exemptions from effective capital**



- (a) Effective capital is to be **computed** as on the **date of incorporations** of **new companies** for the appointment of managerial personal **in the year** in which new **companies** have been **incorporated**.
- (b) Effective capital is to be **computed** as on the **last date** of the financial year **preceding the financial year** in which the **appointment** of managerial personal is **made**.
- (iii) **Definition of family**
- Its includes the **spouse + depended children's + depended parents** of the managerial personal
- (iv) **Functions of nomination and remuneration committee**
- The nomination and remuneration **committee** is required to **approve** the **managerial remuneration** as covered under section **II and III** of part-II of schedule-V of the CA, 2013 with the **following criteria's**:
 - (a) **The nomination and remuneration committee is to take in consideration the financial position of company + the followings**:
 - (aa) **Trends** in the industry
 - (ab) Appointee's **qualification**
 - (ac) **Experience**
 - (ad) Past **performance**
 - (ae) Past **remuneration** etc.
 - (b) The nomination and remuneration **committee** is required to **maintain a balance** between the **interest** of the companies and **shareholders** along with objectivity in determining the **remuneration package**.
- (v) **Definition of negative effective capital**
- Negative effective capital is to be **treated** where **net capital** is **less than zero**
- (vi) **Definition of Managerial Remuneration**
- Definition of the managerial remuneration is **defined** under section **2(78)** of the CA, 2013 + **reimbursement** of the **direct taxes** to the managerial personal



(vii) **Maximum Managerial Remuneration from 2 companies**

(Under section V of Part II of schedule V of the CA, 2013)

- Managerial personal is permitted to **take managerial remuneration from 2 companies** where the **total remunerations are not exceeding the higher maximum limit** as permitted from any **1 out of the 2 companies**.

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(E) Conclusion on Appointment + Remuneration

(Under Section 196, 197, 198 and schedule V of the CA, 2013)

1. Conclusion on appointment of managerial personal

(Under Section 196 of the CA, 2013)

(i) *Appointment of Managerial Personal is permitted through passing of a resolution in meeting of Board of directors or in the meeting of nomination and remuneration committee wherever applicable under section 178 (1) of the CA, 2013*

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(ii) *Passing of an ordinary resolution in the next AGM or EGM for appointment of permitted managerial personal.*

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(iii) *Approval from the Central Govt. of India for appointment of not permitted managerial personal.*

2. Conclusion on remuneration of managerial personal against adequate profits

(Under Section 197 of the CA, 2013)

(i) *Remuneration of Managerial Personal is permitted against adequate profits through passing of a resolution in meeting of Board of directors or in the meeting of nomination and remuneration committee wherever applicable under section 178 (1) of the CA, 2013*

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(ii) *Passing of an ordinary resolution in the next AGM or EGM for remuneration of managerial personal.*

+

(iii) *Approval from the Central Govt. of India for remuneration as exceeding the monetary limits are prescribed under section 197 of the CA, 2013 like 11%, 5%, 3% and 1%.*

3. Conclusion on remuneration of managerial personal against inadequate profits

(Under Schedule V of the CA, 2013)

(i) *Remuneration of Managerial Personal is permitted against no profits or inadequate profits through passing of a resolution in meeting of Board of directors or in the meeting of nomination and remuneration committee wherever applicable under section 178 (1) of the CA, 2013*



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(ii) (a) *Passing of a ordinary resolution in the next AGM or EGM for remuneration as not exceeding 100% of the monetary limits are prescribed under schedule V of the CA, 2013*

or

(b) *Passing of a special resolution in the next AGM or EGM for remuneration as not exceeding 200% of the monetary limits are prescribed under schedule V of the CA, 2013*

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(iii) *Approval from the Central Govt. of India for remuneration as exceeding 200% of the monetary limits are prescribed under schedule V of the CA, 2013.*

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