CHAPTER 3

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL.

CONTENTS OF THE CHAPTER:

❖ Provisions related appointment of Managing Director, Whole Time Director or Manager.

❖ Provisions of appointment of Key Managerial Personnel.

❖ Analyze overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

❖ Calculating the profits and recovery of managerial remuneration in certain cases.

❖ The concepts of compensation for loss of office of managing or whole-time director or manager.

❖ The functions of Company Secretary and Secretarial audit requirements.
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SECTION 196: APPOINTMENT OF MANAGING DIRECTOR, WHOLE TIME DIRECTOR OR MANAGER.

(1) **196(1) : MD + manager both at the same time = NOT ALLOWED**
No company shall appoint or employ at the same time a managing director and a manager.

(2) **196(2) : TENURE.**
Maximum 5 years.
Can be reappointed for another 5 years and so on.
Provided that no re-appointment shall be made earlier than one year before the expiry of his term.
i.e.

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<tr>
<th>Appointed</th>
<th>1yr</th>
<th>2yr</th>
<th>3yr</th>
<th>4yr</th>
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End of term.
Reappointment can be
Made only in this year.
*Not before this.*

{*Not applicable to : a) Government companies.*}

(3) **196(3) : QUALIFICATION IN BECOMING MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER:**

(a) Age : At least 21 years but less than 70 years → Ordinary Resolution.
    If more 70 years or more → Special resolution. Explanatory statement must specify justification for appointing such person
(b) Should not be undischarged insolvent or at any time been adjudged as an insolvent;
(c) has not at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
(d) has not at any time been convicted by a court of an offence and sentenced for a period of more than six months.

(4) **SCHEDULE V PART I: ADDITIONAL QUALIFICATIONS FOR APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER:**
Schedule V to the Companies Act, 2013, has prescribed additional conditions for managing or whole-time director or a manager to be eligible for appointment, without approval of Central government:

(1) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under 16 Acts + 3 Acts as specified under Schedule V.
(2) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974:

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under para (1) or para (2), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.

(3) He has completed the age of twenty-one years and has not attained the age of seventy years:
Provided that where he has attained the age of seventy 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;

(4) OMITTED. (#Amendment.)

(5) He is resident of India.

Explanation 1: Here, resident in India includes 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 and who has come to stay in India, -
(a) for taking up employment in India; or
(b) for carrying on a business or vacation in India.

(5) 196(4) : APPOINTMENT PROCEDURE.
A. 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.
B. The terms and conditions and remuneration approved by Board of Directors as above shall be subject to the approval of shareholders by a resolution at the next general meeting of the company.
C. In case such appointment is at variance to the conditions specified in the Schedule V of the Companies Act, 2013, the appointment shall be approved by the Central Government.
D. Form MR-2 has been prescribed by Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 in which application for seeking approval from the Central Government shall be made within ninety days of such appointment of MD or WTD or manager in the company.
E. The notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any.
F. A return in the prescribed form (Form No. MR.1) along with the prescribed fee shall be filed with the Registrar within sixty days of such appointment.
(6) **196(5) : PRIOR ACTS VALID.**

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 prior to such approval shall remain valid.

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**Exemptions**

<table>
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<tr>
<th>Case</th>
<th>Exemption</th>
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</thead>
<tbody>
<tr>
<td>Government Companies</td>
<td>Section 196(2), (4) and (5) shall not apply (Notification No. G.S.R. 463(E) dated 5th June, 2015).</td>
</tr>
<tr>
<td>Private Companies</td>
<td>Section 196(4) and (5) shall not apply (Notification No. G.S.R. 464(E) dated 5th June, 2015).</td>
</tr>
<tr>
<td>Specified IFSC Public Company</td>
<td>Sub-section (4) of section 196 shall not apply (Notification Dated 4th January, 2017).</td>
</tr>
</tbody>
</table>

List of 16 acts + 3 ACTS for reference: SFM SEW ICICI & FCC.

1. the Securities and Exchange Board of India Act, 1992 (15 of 1992);
2. the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
3. the Foreign Exchange Management Act, 1999 (42 of 1999);
4. the Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
5. the Prevention of Money-Laundering Act, 2002 (15 of 2003);
6. the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
7. the Central Excise Act, 1944 (1 of 1944);
8. the Wealth-tax Act, 1957 (27 of 1957);
9. the Income-tax Act, 1961 (43 of 1961);
10. the Customs Act, 1962 (52 of 1962);
11. the Industries (Development and Regulation) Act, 1951 (65 of 1951);
12. the Competition Act, 2002 (12 of 2003);
13. the Indian Stamp Act, 1899 (2 of 1899);
14. the Prevention of Food Adulteration Act, 1954 (37 of 1954);
15. the Essential Commodities Act, 1955 (10 of 1955);
16. the Companies Act, 2013 (18 of 2013) or any previous company law.

**17. INSOLVENCY AND BANKRUPTCY CODE, 2016**

**18. GOODS AND SERVICE TAX ACT, 2017.**

**19. THE FUGITIVE ECONOMIC OFFENDERS ACT, 2018**
Question 1.
A complaint was received by the Central Government from some shareholders of a public company that a person had been appointed as the Managing Director of the company without seeking the approval of the Central Government when such approval was required. State as to what action can be taken by the Central Government under the Companies Act, 2013. Also examine the validity of the acts of the Managing Director, if the complaint is found true.

Answer
In terms of section 196 (4) of the Companies Act, 2013, the appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

However, in case such appointment is at variance to the conditions specified in Schedule V, the appointment and the remuneration used to be approved by the Central Government also. It is to be noted that the approval of the Central Government was necessary only if the appointment was not made in accordance with the conditions specified in Schedule V to the Act, which has now been removed.

In the given case, the approval of the Central Government is no more possible. It means that the terms and conditions are at variance with Schedule V of the Act. In such a situation the appointment of the managing director is void. The central government may on receipt of the notice refer the matter to the Registrar to take necessary action against the company.

Question 2
‘X’ was appointed as Managing Director for life by the Articles of Association of a private company incorporated on 1st June, 2014. Examine in this connection
(a) Can ‘X’ be appointed for life as Managing Director?
(b) Is it possible for the company in general meeting to remove ‘X’ from his office of directorship during his life time?

Answer
(a) Under section 196(2) of the Companies Act, 2013 lays down that no company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time. No concession or exception is allowed by the Act to private companies. Hence, ‘X’ cannot be appointed as Managing Director for life in a private company.

(b) Section 169(1) of the Companies Act, 2013 empowers the company to remove a director, by ordinary resolution before the expiry of his period of office after giving him an opportunity of being heard. This section applies to both public and private companies. It applies to all directors except a director appointed by the Tribunal under section 242 of the Act. The above provision applies to the Managing Director also as he is a director of the company and the member of its Board of Directors. Hence, it is possible for the company in general meeting to remove ‘X’ before the expiry of his term of office by an ordinary resolution.
SECTION 197: OVERALL MAXIMUM MANAGERIAL REMUNERATION AND MANAGERIAL REMUNERATION IN CASE OF ABSENCE OR INADEQUACY OF PROFITS.

Section 197 of the Companies Act, 2013 lays down the provisions for overall maximum managerial remuneration by every public company and managerial remuneration in case of absence or inadequacy of profits. The section read with Schedule V defines maximum remuneration payable to KMPs. This section does not apply to the private company. According to this section:

197(1): OVERALL MAXIMUM MANAGERIAL REMUNERATION:
The overall managerial remuneration to the Directors including managing director, whole time director and manager in respect of any financial year is summarized as under:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Conditions</th>
<th>Maximum remuneration in any financial year</th>
<th>Conditions when remuneration can exceed as referred in column (b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Overall limit.</td>
<td>11% of the net profits of the company for that financial year.</td>
<td>SPECIAL RESOLUTION OF THE COMPANY IN GENERAL MEETING. (#AMENDMENT)</td>
</tr>
<tr>
<td>2.</td>
<td>If there is one Managing director/ Whole time director/ manager.</td>
<td>5% of the net profits of the company for that year.</td>
<td>With the special resolution of the company in general meeting this limit may be exceeded.</td>
</tr>
<tr>
<td>3.</td>
<td>If there is more than one Managing director/ Whole time director/ manager.</td>
<td>10% of the net profits.</td>
<td>With the special resolution of the company in general meeting this limit may be exceeded.</td>
</tr>
<tr>
<td>4.</td>
<td>If there are directors who are neither Managing director nor whole time directors. (Non-executive Directors) And the Company also has a managing director or a whole-time director.</td>
<td>1% of the net profits of the company.</td>
<td>Special resolution of the company in general meeting is required.</td>
</tr>
<tr>
<td>5.</td>
<td>If there are directors who are neither Managing director nor whole time directors. (Non-executive Directors) Where there is no</td>
<td>3% of the net profits of the company.</td>
<td>Special resolution of the company in general meeting is required.</td>
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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.

(#AMENDMENT)

★ Notification No. G.S.R. 465(E) dated 5th June, 2015 for Nidhi Companies:
Nidhi companies may pay to non-executive directors MONTHLY REMUNERATION (within limits of 197) if following conditions are satisfied:

a) Performing special services to the Nidhi specified in AOA AND
b) O.R. in general meeting *

* O.R. not required if:
i) NO MD / WTD / Manager. AND
ii) Total Remuneration to all directors does not exceed lower of :
   10% of Net Profits or
   15,00,000/
   AND
iii) Remuneration payable under (ii) is approved by SR of shareholders.

197(2): THE PERCENTAGES NOT TO INCLUDE SITTING FEES.
The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

197(3): NO REMUNERATION INCASE OF INADEQUATE OR NO PROFITS:
If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, except fees payable to directors under sub-section (5) UNLESS by complying with conditions of schedule V (Amendment)

197(4): REMUNERATION PAID FOR OTHER SERVICES TO A DIRECTOR.
The remuneration payable to the directors of a company, shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity.
Exception: Any remuneration for services rendered by 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 (if any) or the Board of Directors otherwise, the director possesses the requisite qualification for the practice of the profession.

**Question 3.**
M/s Star Health Specialities Ltd. owns a Multi-specialty Hospital in Chennai. Dr. Hamilton, a practising Heart Surgeon, has been appointed by the company as its director and it wants to pay him fee, on case to case basis, for surgery performed on the patients at the hospital. A question has arisen whether payment of such fee to him would amount to payment of managerial remuneration to a director subject to any restriction under the Companies Act, 2013.
Advise the company, which seeks to ensure that the same does not contravene any provision of the Companies Act, 2013.

**Answer**
In the given case, Dr. Hamilton has been appointed as a director. He has to be paid a fee for surgeries performed by him; it shall be fully possible under section 197(4) which states that the remuneration payable to the directors including managing or whole-time director or manager shall be inclusive of the remuneration payable for the services rendered by him in any other capacity except the following:
(a) the services rendered are of a professional nature; and
(b) in the opinion of the Nomination and Remuneration Committee (if applicable) or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.
The company can therefore, pay a remuneration to Dr. Hamilton a fee for surgeries performed by him as a professional fee which shall not be construed as a Managerial Remuneration under the Act.

**197(5): SITTING FEES.**
(a) 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.
(b) The sitting fees shall not exceed ₹1,00,000/- per meeting of the Board or committee thereof. [As per the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014]
(c) However, for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.
(d) Different fees for different classes of companies and fees in respect to independent directors may be such as may be prescribed.

**Question 4.**
The Article of Association of a listed company have fixed payment of sitting fee for each Meeting of Directors subject to maximum of ₹ 30,000. In view of increased responsibilities of independent directors of listed companies, the company proposes to increase the sitting fee to ₹ 45,000 per meeting. Advise the company about the requirement under Companies Act, 2013 to give effect to the proposal.
Answer
Section 197(5) of the Companies Act, 2013 provides that a director may receive remuneration by way of fee for attending the Board/Committee meetings or for any other purpose as may be decided by the Board, provided that the amount of such fees shall not exceed the amount as may be prescribed. The Central Government through rules prescribed that 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 of the Board or committee thereof. Further, the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.
From the above, it is clear that fee to independent directors can be increased from Rs. 30,000 to Rs 45,000 per meeting by passing a Board Resolution.

Question 5.
A company wants to include the following clause in its Articles of Association:
“Each director shall be entitled to be paid out of the funds of the company for attending meetings of the Board or a Committee thereof including adjourned meeting such sum as sitting fees as shall be determined from time to time by the Directors but not exceeding a sum of ₹30,000 for each such meeting to be attended by the Director.”
You are required to advise the company as to the validity of such a clause and the correct legal position under the provisions of the Companies Act, 2013.

Answer
The Companies Act, 2013 vide section 197 (5) provides that the sitting fee payable to directors for attending meetings of the Board or committees thereof will be decided by the Board subject to limits prescribed by the Central Government in rules framed in this behalf. The limit prescribed by the Central Government is ₹ 1 Lakh per meeting and may be different for independent and non-independent directors.
Hence, the clause in the Articles proposed in the case given, does not make any sense under the Companies Act, 2013.

197(6) : MODE OF PAYMENT.
A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

197(7) : REMUNERATION TO INDEPENDENT DIRECTOR:
OMITTED.

197(8) : CALCULATION OF NET PROFITS:
Section 197(8) further provides that the net profits shall be computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

197(9) : DIRECTOR RECEIVES REMUNERATION EXCEEDING LIMITS WITHOUT
REQUISITE APPROVAL:
If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without approval required under this section, he shall refund such sums to the company, within two years or such lesser period as may be allowed by the company, and until such sum is refunded, hold it in trust for the company.

197(10): WAIVER OF EXCESS REMUNERATION RECOVERABLE U/S 197(9):
The company shall not waive the recovery of any sum refundable to it, 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.

197(11): INCREASE IN REMUNERATION IN THE YEAR OF INADEQUATE OR NO PROFIT:
In cases of no profits or inadequate profits, any provision relating to the remuneration of any director, to increase remuneration, in the company’s memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in Schedule V ONLY.

197(12): DISCLOSURES BY A LISTED COMPANY:
Every listed company shall disclose in the Board’s report,
(a) The ratio of the remuneration of each director to the median employee’s remuneration and such other details as may be prescribed. The details are prescribed under the Rule 5 of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

(b) Rule 5 of the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014: The board’s report shall include a statement showing the name of every employee of the company, who-
   (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than One crore eight lakh rupees;
   (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than Eight lakh fifty thousand rupees per month;
   (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by
himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

(c) The statement referred to in above para (b) shall also indicate some particulars of the above employees like designation, remuneration received, nature of employment, qualification and experience, date of commencement of employment, age, last employment held by such employee before joining the company, the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of para (b) above, and whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager.

197(13): DEFAULT INSURANCE OF KEY MANAGERIAL PERSONNEL

➢ Where any insurance is taken by a company on behalf of its MD, WTD, 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.**

197(14): RECEIVING REMUNERATION FROM HOLDING OR SUBSIDIARY COMPANY:

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

197(15): PUNISHMENT FOR CONTRAVENTION:

If any person contravenes the provisions of this section, he shall be punishable with **fine of flat ₹1,00,000 and company shall be punishable with flat ₹5,00,000/-**.

197(16): AUDITOR TO REPORT:

_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._

197(17): APPLICATIONS PENDING FOR GOVERNMENT APPROVAL:

_On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the Central Government under the provisions of this section [as it stood before such commencement], which is pending with that Government shall abate, and the company shall, within_
in accordance with the provisions of this section, as so amended.

Exemptions:

In case of **Government Companies**, section 197 shall not apply (Notification No. G.S.R. 463(E) dated 5th June, 2015).

In case of **Specified IFSC Public Company** - Section 197 shall not apply (Notification Dated 4th January, 2017)

**SCHEDULE V: MANAGERIAL REMUNERATION AS PER PART II, PART III AND PART IV OF SCHEDULE V**

**Part II of Schedule V:**

(i) **Section I --- Remuneration payable by companies having profits:** Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

(ii) **Section II — Remuneration payable by companies having no profit or inadequate profit:**

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

**(A) Payment based on effective capital:**

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<thead>
<tr>
<th>Where the effective capital is</th>
<th>Limit of yearly remuneration payable shall not exceed (Rupees)</th>
</tr>
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<tbody>
<tr>
<td>(i) Negative or less than 5 crores</td>
<td>60 lakhs</td>
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<tr>
<td>(ii) 5 crores and above but less than 100 crores</td>
<td>84 Lakhs</td>
</tr>
<tr>
<td>(iii) 100 crores and above but less than 250 crores</td>
<td>120 lakhs</td>
</tr>
</tbody>
</table>
| (iv) 250 crores and above | 120 lakhs plus 0.01% of the effective capital in excess of ₹ 250 crores:

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.
(B) Managerial personnel working in professional capacity: Payment within limits of A

BY PASSING SR OF SHAREHOLDERS:

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

- Functioning in a professional capacity,
- 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 specialized 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;

CONDITIONS TO BE SATISFIED FOR (A) AND (B) OF SECTION II PART II OF SCHEDULE V:

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, also by the Nomination and Remuneration Committee (if any);

(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 the limits laid down in item (A) or a special resolution has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.

(iv) A statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely:

1. General information:
   1. Nature of industry
   2. Date or expected date of commencement of commercial production
3. In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.

4. Financial performance based on given indicators.

5. Foreign investments or collaborations, if any.

II. Information about the appointee:

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

(iii) Section III— Remuneration payable by companies having no profit or inadequate profit, in certain special circumstances:

In the following circumstances a company may pay remuneration to a managerial person in excess of the amounts provided in Section II above—

(a) OTHER COMPANY:

- where the remuneration in excess of the limits 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 +this amount <= limits under section 197.

(b) NEW COMPANY OR SICK COMPANY OR COMPANY UNDER IBC, 2016:

May pay any remuneration to its managerial persons.

(i) 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.

(c) REMUNERATION FIXED BY BIFR/ NCLT:

Where remuneration of a managerial person 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.

**ADDITIONAL CONDITIONS FOR SECTION III PART II OF SCHEDULE V (a), (b) and (c)**

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) The managerial person is not receiving remuneration from any other company, except these.

(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 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.

(d) A COMPANY IN A SPECIAL ECONOMIC ZONE:

*OMITTED.*

(iv) Section IV – Effective capital:

For the purposes of Section II of this Part, “effective capital” means

Add: PLS DR. Less: PIA

Aggregate of

Paid-up share capital

*excluding share application money or advances against shares;*

Long-term loans repayable after one year

*excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements*  

Share premium account

Deposits repayable after one year

Reserves and surplus *excluding revaluation reserve;*

As reduced by

Preliminary expenses not written off.
Investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities),

Accumulated losses.

(v) Section V—Remuneration payable to a managerial person in two companies:
Subject to the provisions of sections I to IV, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

Eg: Mr. A is managerial personnel in 2 companies viz, ABC Ltd. and XYZ Ltd.
Net profits of ASC Ltd. Is ₹50,00,000
and that of XYZ Ltd. Is ₹30,00,000
Let’s consider he is the only manager in both companies. No other MD, WTD.
So as per section 197 max allowed to Mr. A from both companies individually is
ASC Ltd. = 5% of ₹50,00,000 = ₹2,50,000
XYZ Ltd. = 5% of ₹30,00,000 = ₹1,50,000
Total = ₹4,00,000

NOW, as per section V of Part II of Schedule V, maximum that Mr. A will be allowed to draw from both companies in aggregate shall be maximum limit permissible from any one company which is highest. I.e. ASC Ltd., which is ₹ 2,50,000 in total from both. So now if he receives ₹2,00,000 from ASC Ltd., he cannot draw anything more than ₹ 50,000 from XYZ Ltd.

Question 6.
Directors of ABC Limited have been given the following remuneration --
Guarantee Commission has been paid to them for having guaranteed the term loans obtained from a financial institution.
Examine the validity of the above payment in the light of the provisions of the Companies Act, 2013.

Answer
Guarantee Commission:
Here, the question that arises is whether the guarantee commission is “remuneration” under the Act. It was held in Suessen Textile Bearings Ltd v. Union of India [(1984) 55 (Comp. Cases 492, 496, 497)] that the guarantee commission paid to directors for giving surety against loans or credit facilities taken by the company from financial institution is not a remuneration for within the meaning of section 309 of the earlier Companies Act, 1956 and therefore, approval of the Central Government is not necessary. The director giving guarantee does not render manual, clerical, technical, supervisory or administrative service. He gets the commission for the risk which he bears and that has nothing to do with his directorship. Hence the payment of guarantee commission is in order.
Considering the above, it may be concluded that the guarantee commission paid to the directors for guarantee provided on loan from a financial institution is valid.
Question 7.
Advise M/s Super Specialities Ltd. in respect of the following proposals under consideration of its Board of directors:
(i) Appointment of Managing Director who is more than 70 years of age;
(ii) Payment of commission of 4% of the net profits per annum to the directors of the company;
(iii) Payment of remuneration of ₹ 40,000 per month to the whole-time director of the company running in loss and having an effective capital of ₹ 95.00 lacs.

Answer
(i) Under the proviso to section 196 (3) of the Companies Act, 2013, a person who has attained the age of seventy years may be employed as managing director, whole-time director or manager by the approval of the members by a special resolution passed by the company in the general meeting and the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.
(ii) Under section 197 (7) of the Companies Act, 2013, independent directors may be paid profit related commission as may be approved by the members. However, under section 197 (1) the limit of 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 eleven per cent of the net profits of that company for that financial year computed in the manner laid down in section 198. Further, the third proviso to section 197 (1) provides that except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors or whole-time directors shall not exceed one per cent. of the net profits of the company, if there is a managing or whole-time director or manager; or three per cent of the net profits in any other case Therefore, in the given case, the commission of 4% is beyond the limit specified, and the same should be approved by the members by ordinary resolution.
(iii) If, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V. Section II of Part II of schedule V provides that where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding ₹ 60 Lakhs for the year if the effective capital of the company is negative or upto ₹ 5 Crores. In the present case, the proposed remuneration can be paid without the approval of Central Government.

Question 8.
X, a Director of MJV Ltd., was appointed on 1st April, 2011, one of the terms of appointment was that in the absence of adequacy of profits or if the company had no profits in a particular year, he will be paid remuneration in accordance with Schedule V. For the financial year ended 31st March, 2014, the company suffered heavy losses. The company was not in a position to pay any remuneration but he was paid ₹ 50 lacs for the year, as paid to other directors. The effective capital of the company is ₹ 150 crores. Referring to the provisions of Companies Act, 2013, as contained in Schedule V, examine the validity of the above payment of remuneration to X.

Answer
Under Section II of Part II of Schedule V to the Companies Act, 2013, the remuneration payable to a managerial personnel is linked to the effective capital of the company. Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding ₹ 120 Lakhs in the year in case the effective capital of the company is between ₹ 100 crores to 250 crores. The limit will be doubled if approved by the members by special resolution and further if the appointment is for a part of the financial year the remuneration will be pro-rated.

From the foregoing provisions contained in schedule V to the Companies Act, 2013 the payment of ₹ 50 Lacs in the year as remuneration to Mr. X is valid in case he accepts it, as under the said schedule he is entitled to a remuneration of ₹ 120 Lakhs in the year and his terms of appointment provide for payment of the remuneration as per schedule V.

Question 9
A and B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of five percent of the net profits to its Managing Director, Mr. Kamal.
(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹50,000 and also commission at the rate of one percent of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed two percent of the net profits of the company. The commission is to be distributed equally among all the directors.
(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for professional services rendered as software engineer, whenever such services are utilized.

You are required to examine with reference to the provisions of the Companies Act, 2013 the validity of the above proposals.

Answer
International Technologies Limited, a listed company, being managed by a Managing Director proposes to pay the following managerial remuneration:

(i) Commission at the rate of 5% of the net profits to its Managing Director, Mr. Kamal: Part (i) of the second proviso to section 197(1), provides that except with the approval of the company in general meeting, 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 and if there is more than one such director then remuneration shall not exceed 10 % of the net profits to all such directors and manager taken together.

In the present case, since the International Technologies Limited is being managed by a Managing Director, the commission at the rate of 5% of the net profit to Mr.Kamal, the Managing Director is allowed and no approval of company in general meeting is required.

(ii) The directors other than the Managing Director are proposed to be paid monthly remuneration of ₹ 50,000 and also commission at the rate of 1 % of net profits of the company subject to the condition that overall remuneration payable to ordinary directors including monthly remuneration payable to each of them shall not exceed 2 % of the net profits of the company: Part (ii) of the second proviso to section 197(1) provides that except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole time directors shall not exceed-
(A) 1% of the net profits of the company, if there is a managing or whole time director or manager; (B) 3% of
the net profits in any other case.
In the present case, the maximum remuneration allowed for directors other than managing or whole time
director is 1% of the net profits of the company because the company is having a managing director also. Hence,
if the company wants to fix their remuneration at not more than 2% of the net profits of the company, the
approval of the company in general meeting is required.
(iii) The company also proposes to pay suitable additional remuneration to Mr. Bhatt, a director, for
professional services rendered as software engineer, whenever such services are utilized:
(1) According to section 197(4), the remuneration payable to the directors of a company, including any
managing or whole-time director or manager, shall be determined, in accordance with and subject to the
provisions of this section, either
   (i) by the articles of the company, or
   (ii) by a resolution or,
   (iii) if the articles so require, by a special resolution, passed by the company in general meeting, and
(2) 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.
(3) Any remuneration for services rendered by any such director in other capacity shall not be so included if—
   (i) the services rendered are of a professional nature; and
   (ii) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section
   (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for
the practice of the profession.
Hence, in the present case, the additional remuneration to Mr. Bhatt, a director for professional services
rendered as software engineer will not be included in the maximum managerial remuneration and is
allowed but opinion of Nomination and Remuneration Committee is to be obtained.
Also, the International Technologies Limited (a 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 under the Companies (Appointment and Remuneration of Managerial personnel) Rules, 2014.

SECTION 198 : CALCULATION OF PROFITS
According to section 198 of the Companies Act, 2013,
Net profits for the purpose of managerial remuneration payable under section 197 shall be calculated
as follows:

(i) Credit shall be given for the sums specified in section 198(2)
Add: Bounties and subsidies received from any Government, or any public authority constituted or
authorised in this behalf, by any Government, unless and except in so far as the Central Government
otherwise directs.

(ii) Credit shall not be given for those specified in section 198(3)
Less: (if credited to the P & L A/c for arriving at Profit before tax)
   a. profits, by way of premium on shares or debentures of the company, which are issued or sold by
the company;
b. profits on sales by the company of forfeited shares;
c. profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;
d. profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets: Provided that where the amount for which any fixed asset is sold exceeds the written-down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written-down value;
e. any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

SECTION 199 : RECOVERY OF REMUNERATION IN CERTAIN CASES:
➢ 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.

SECTION 200 : COMPANY TO FIX LIMIT WITH REGARD TO REMUNARATION

A company may, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit.
While fixing the remuneration, the company shall have regard to—
(a) the financial position of the company;
(b) the remuneration or commission drawn by the individual concerned in any other capacity;
(c) the remuneration or commission drawn by him from any other company;
(d) professional qualifications and experience of the individual concerned;
(e) such other matters as may be prescribed.

According to Rule 6 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, for the purposes of clause (e) above the company shall have regard to the following matters, namely:

(1) the Financial and operating performance of the company during the three 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 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.

SECTION 201: FORMS OF AND PROCEDURE IN RELATION TO CERTAIN APPLICATIONS

(1) Every application made to the Central Government under section 196 shall be in Form No. MR.2 and shall be accompanied by fee as may be specified for the purpose.

(2) Before any application is made by a company to the Central Government as aforesaid, there shall be issued by the company a general notice to the members, indicating the nature of the application proposed to be made.

(3) 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 situated, and at least once in an English newspaper circulating in that district.

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

(5) Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, prescribes that the companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-

a. 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, if any. While doing so, the clear reason and justification for payment of remuneration beyond the said limit has to be recorded in writing.

b. The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon, preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel.

c. The approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years.

d. A statement along-with a notice calling the general meeting referred to above point (c), shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit.

e. The company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.

f. Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

SECTION 202: COMPENSATION FOR LOSS OF OFFICE OF MANAGING OR WHOLE TIME DIRECTOR OR MANAGER.
(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.

i.e CLOO only to MD / WTD / Manager. None other director.

(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 otherwise than on the reconstruction of the company or its amalgamation as aforesaid;

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

(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.

(3) Quantum of compensation:

\[
\text{Compensation} = \text{Average salary}^{1} \times \text{Term}^{2}
\]

\(^1\)Avg salary = Calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:

\(^2\)Term = Unexpired term or 3 Years.

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

(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.

**Question 10.**

Can a company pay compensation to its directors for loss of office? Explain briefly the relevant provisions of the Companies Act, 2013 in this regard?

**Answer:**
A company can pay compensation to its directors for loss of office as provided in sections 202 of the Companies Act, 2013. Under section 202, such compensation can be paid only to managing director, director holding the office of the manager and to a whole-time director but not to others. The compensation payable shall be on the basis of average remuneration actually earned by such director for three years, or such shorter period as the case may be, immediately preceding the ceasing of holding of such office and shall be for the unexpired portion of his term or for three years whichever is shorter. No such payment can be made, if winding up of the company is commenced before or commences within 12 months after he ceases to hold office if the assets of the company on the winding up, after deducting expenses thereof, are not sufficient to repay to the shareholders the share capital (including the premium, if any) contributed by them. However, no payment of compensation can be made in the following cases:
(a) where a director resigns on the ground of amalgamation or reconstruction and is appointed the office of managing director or manager or other officer of such reconstructed or amalgamated company,
(b) where the director resigns his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid,
(c) where the director vacates office under section 167 of the Companies Act, 2013,
(d) where the winding up of the company is due to the negligence of the director concerned,
(e) where the director has been guilty of any fraud or breach of trust,
(f) where the director has instigated or has taken part directly or indirectly in bringing about, the termination of his office.

Question 11.
Mr. Doubtful was appointed as Managing Director of Carefree Industries Ltd. for a period of five years with effect from 1.4.2011 on a salary of ₹ 12 lakhs per annum with other perquisites. The Board of directors of the company on coming to know of certain questionable transactions, terminated the services of the Managing Director from 1.3.2014. Mr. Doubtful termed his removal as illegal and claimed compensation from the company. Meanwhile the company paid a sum of ₹ 5 lakhs on ad hoc basis to Mr. Doubtful pending settlement of his dues. Discuss whether:
(i) The company is bound to pay compensation to Mr. Doubtful and, if so, how much.
(ii) The company can recover the amount of ₹ 5 lakhs paid on the ground that Mr. Doubtful is not entitled to any compensation, because he is guiding of corrupt practice.

Answer
According to Section 202 of the Companies Act, 2013, compensation can be paid only to a Managing or Whole-time Director. Amount of compensation cannot exceed the remuneration which he would have earned if he would have been in the office for the unexpired term of his office or for 3 years whichever is shorter. No compensation shall be paid, if the director has been found guilty of fraud or breach of trust or gross negligence in the conduct of the affairs of the company.
In light of the above provisions of law, the company is not liable to pay any compensation to Mr. Doubtful, if he has been found guilty of fraud or breach of trust or gross negligence in the conduct of affairs of the company. But, it is not proper on the part of the company to withhold the payment of compensation on the basis of mere allegations. The compensation payable by the company to Mr. Doubtful would be ₹ 25 Lacs calculated at the rate of ₹ 12 Lacs per annum for unexpired term of 25 months.
Regarding adhoc payment of ₹ 5 Lacs, it will not be possible for the company to recover the amount from Mr. Doubtful in view of the decision in case of Bell vs. Lever Bros. (1932) AC 161 where it was observed that a
director was not legally bound to disclose any breach of his fiduciary obligations so as to give the company an opportunity to dismiss him. In that case the Managing Director was initially removed by paying him compensation and later on it was discovered that he had been guilty of breaches of duty and corrupt practices and that he could have been removed without compensation.

**Question 12.**
A Managing Director was removed during the tenure of office and certain compensation was paid to him. It was later on found that during the tenure of his office that he was guilty of corrupt practices and the company felt that no compensation should have paid to him and therefore wants to recover the compensation so paid to him. Can the company succeed?

**Answer**
The Companies Act, 2013 does not provide for the refund of any compensation paid by the company to its Managing Director, whole time director or manager. It only lays down the situations under which no compensation is payable for loss of office and one such situation is the commitment of fraud or breach of trust by the director.

Moreover, in Bell vs. Lever Brothers, (1932), Lever Brothers removed their managing director of a subsidiary by paying him compensation. It was afterwards discovered that during his tenure of office he had been guilty of so many breaches of duty and corrupt practices that he could have been removed without compensation. An action was then commenced to recover back the compensation money. It was held that Bell was not bound to refund the compensation money and to disclose any breach of his fiduciary obligation so as to give the company an opportunity to dismiss him. Thus, the Managing Director is not bound to refund the compensation. Hence, the company cannot succeed.

**SECTION 203 : APPOINTMENT OF KEY MANAGERIAL PERSONNEL**

**203(1): APPLICABILITY and REQUIREMENT:**

1) Every LISTED company
   
   and
   
   Every Unlisted public company having paid up share capital of Rs. 10 Crore or More

   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 :

2) Any Company other than a company covered above having Paid up Share capital of 5 Crore or more MUST HAVE A WHOLE TIME COMPANY SECRETARY.
3) Same person shall not be appointed or reappointed as the chairperson of the company, as well as the managing director or Chief Executive Officer of the company at the same time unless,—

(a) the articles of such a company provide for this; or

(b) the company does not carry multiple businesses:
   Point (b) shall not apply to companies:
   i) Paid up share capital : 100 crores or more AND
   ii) TURNOVER 1000 crores or more. AND
   iii) Engaged in multiple businesses AND
   iv) Which has appointed one or more Chief Executive Officers for each such business.

203(2): Appointment of KMP:
Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the remuneration.

203(3): MAXIMUM KEY MANAGERIAL PERSONNEL SHIP
A whole-time key managerial personnel shall not hold office in more than one company at the same time

Exception: 1. Its subsidiary company. or
2. With the permission of the Board. Unanimous resolution. **

Transitional provision:
Whole-time key managerial personnel holding office in more than one company on the date of commencement of this Act, shall, within a period of six months from such commencement.
choose one company, in which he wishes to continue.

**A company may appoint or employ a person as its managing director, if he is the managing director or manager of one other company provided 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. + special notice of such meeting.

203(4): CASUAL VACANCY IN OFFICE OF KEY MANAGERIAL PERSONNEL:
If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

203(4A) : The provisions of sub-section (1), (2), (3) and (4) of section 203 shall not apply to a Government company.

203(5): PUNISHMENT FOR CONTRAVENTION:
If a company contravenes the provisions of this section,

| the company shall be punishable with fine of five lakh rupees flat and |
| every director and key managerial personnel of the company who is in default shall be punishable with fine of fifty thousand rupees flat. |
| and |
| where the contravention is a continuing one, further fine one thousand rupees for every day till the contravention continues, but not exceeding five lakh rupees. |

Question 13
Explain the concept of KMP (Key Managerial Personnel) as introduced by the Companies Act, 2013. Explain the classes of companies which are required to appoint whole time Key Managerial Person under the provisions of the said Act.

Answer
As per the provisions of Section 203(1) of the Companies Act, 2013, every company belonging to such class or classes of companies as may be prescribed, shall have the following whole time Key Managerial Personnel.
(a) Managing Director or Chief Executive Officer or Manager and in their absence, a Whole-time Director;
(b) Company Secretary; and
(c) Chief Financial Officer

According to Rule 8 of the Companies (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 or more shall have a whole-time key managerial personnel.
Further, as per the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2014, a company other than a company covered under Rule 8 above, which has a paid up share capital of ₹ 5 crore or more shall have a whole-time company secretary. With the insertion of Rule 8A to the above rules, it is
now mandatory for every other company to have a whole-time company secretary, if its paid up share capital is ₹ 5 Crore or more.

SECTION 204 : SECRETARIAL AUDIT FOR BIGGER COMPANIES

204(1): APPLICABILITY:
Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board’s report, a secretarial audit report, given by a company secretary in practice.

Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that for the purposes of section 204 (1), the other class of companies shall be as under:
(a) Every public company having a paid up share capital of ₹ 50 crore or more; or
(b) Every public company having a turnover of ₹ 250 crore or more.

The format of the Secretarial Audit Report shall be in Form No. MR 3.

204(2): COMPANY’S DUTY:
It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

204(3): EXPLANATION ON QUALIFICATION IN SECRETARIAL AUDITORS REPORT:
The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).
204(4): CONTRAVENTION:
If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine not less than one lakh rupees up to five lakh rupees.

SECTION 205: FUNCTIONS OF COMPANY SECRETARY.

SECTION 205(1): FUNCTIONS OF THE COMPANY SECRETARY:
The functions 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 provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
(d) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
(e) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
(f) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
(g) to assist the Board in the conduct of the affairs of the company;
(h) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(i) to discharge such other duties as have been specified under the Act or rules; and
(j) such other duties as may be assigned by the Board from time to time.

SECTION 205(2): 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.

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