



EXPOSURE DRAFT

Application Guide on Managerial Remuneration under the Companies Act, 2013

Comments/suggestions may kindly be sent to the following address/ e-mail within 10 days i.e. upto 27th May, 2015

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INTRODUCTION:

The Companies Act 2013 requires companies to comply with Chapter XIII for appointment and payment of remuneration to managerial personnel.

- For payments of remuneration an understanding of the relevant sections of the Companies Act 2013 is important to identify the relevant conditions to be fulfilled. The computation of net profits of a company in the manner laid out under Section 198 and the eligible limits as stipulated in Schedule V are most critical for determination of remuneration payable. These provisions were elaborated further by the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 released in March 2014.
- The key provisions in the sections 196 to 202, Schedule V and the Rules cover appointment of managing director, whole-time director or manager, overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits, computation of net profits, recovery of remuneration in certain cases, Central Government or company to fix limit with regard to remuneration, compensation for loss of office of managing or whole-time director or manager and appointment of key managerial personnel.

The new Act has introduced twenty new provisions in Chapter XIII and modified twenty two of the existing provisions which are quite significant for understanding and implementation. The new Act has also dropped six of the requirements which were stipulated in the earlier Act.

- Important new provisions are:
 - a. Conditions and stipulations for payment of remuneration under different circumstances
 - b. Disclosure requirements in Board's report
 - c. Recovery of remuneration on restatement of financial statements due to fraud or non-compliance
 - d. Requirement of whole-time key managerial personnel based on thresholds

OBJECTIVE:

Senior executive compensation in a highly competitive corporate environment wherein governance is a supreme importance, managerial remuneration is an important aspect of enterprise management. It is critical to motivate the senior executive to perform well in their challenging role but it is equally necessary to ensure their compensation for their efforts and keep a check on the extravagant in their pay packages. It is important therefore to demonstrate discipline and fairness by checking objectivity in determining the remuneration package while striking a balance between the interest of the company and its stakeholders.

Managerial remuneration was covered in the publications of the Institute of Chartered Accountants of India, statement on auditing practices and guidance note on certification of corporate governance in addition to which there have been two expert advisory opinions in 1962 and 1992.

SCOPE:

With a view to enhancing the understanding and application of the provisions relating to managerial remuneration and an application guide has been prepared for the use by the members of ICAI.

This guide has been published to give the members an authoritative guidance to the members on managerial remuneration, which has undergone significant changes in the new Companies Act

This guide includes the provisions of the Companies Act, Schedule V and Rules and provides application guidance on conditions eligible limits for remuneration and determination of profits for computing remuneration.

This guide is applicable for all companies for preparation of its financial statements from April 1, 2014.



Definitions:

- Chief Executive Officer
 - *Chief Executive Officer means an officer of a company, who has been designated as such by it*
- Chief Financial Officer
 - *Chief Financial Officer means a person appointed as the Chief Financial Officer of a company*
- Company secretary or Secretary
 - *Company secretary or Secretary a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a Company Secretary under this Act*
- Director
 - *Director means, a Director appointed to the Board of a company*
- Independent director
 - *Independent director means an independent director referred to in sub-section (5) of section 149*
- Employees stock option
 - *Employees stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price*
- Key managerial person
 - *Key managerial person in relation to a company, means the Chief Executive Officer or the Managing Director or the Manager, the Company Secretary; the whole time director; the Chief Financial Officer and such other officer as may be prescribed*
- Manager
 - *Manager means an individual, who subject to the superintendence control and direction of the Board of Directors, has the management of the whole or substantially the whole, of the affairs of the company and includes a director or any other person occupying the position of manager **by whatever name called whether under a contract of service or not.***
- Managing Director
 - *Managing Director means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of Managing Director, by whatever name called.*
Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;
- Whole-time director
 - *Whole-time director includes a director in the whole-time employment of the company*
- Remuneration
 - *Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act.*



Provisions Relating to Appointment:

Appointment of managing director, whole-time director or manager

- Every listed company and every other public company, including a subsidiary of a public company, having a paid-up share capital of ten crore rupees or more is required to have whole-time key managerial personnel such as Managing Director, Chief Executive Officer or Manager or in the absence of these a Whole-time Director, a Company Secretary and Chief Financial Officer. However, a company cannot at the same time appoint or employ a Managing Director and Manager.
- All companies including private companies, which has a paid up share capital of five crore rupees or more should have a whole-time company secretary.
- Dual Appointments:
 - Any of these individuals are not eligible to be appointed / reappointed as the Chairperson as well as Managing Director or Chief Executive Officer at the same time unless
 - a) Articles of Association provides for such appointments and the company does not carry out multiple businesses
 - or
 - b) Company carries on multiple businesses, such companies can have one or more Chief Executive Officers for such business. This may be, however as notified by the Central Government for certain class of companies.

In the case of multiple businesses, when the Central government permits certain class of companies engaged in such multiple businesses, to have more than one Chief Executive Officer, then the same person can be a Chairman as well as Managing Director or Chief Executive Officer.

- A whole time key managerial personnel cannot hold office in more than one company at the same time except in the subsidiary company. If a person holds office in more than one company, within six months of the commencement of the Act, choose the company in which he wishes to continue as KMP.
- If the office of a KMP is vacated, the vacancy can only be filled up by appointing a person at a Board Meeting within six months of the date of such vacancy.

Eligibility of an individual for appointment

- An individual shall be eligible for appointment as Managing Director, Whole-time Director or Manager of a company if the following conditions are fulfilled:
 - The Person:
 - Is a resident of India which includes a person
 - who has being staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as managerial person and
 - who has come to stay in India
 - For taking up employment in India or
 - For carrying on a business or vacation in India
 - Has completed 21 years of age and has not attained the age of seventy years. Such a person who is beyond seventy years will be eligible, if the appointment is approved by a special resolution in a General Meeting and no Central Government consent is required. However, the notice for such motion shall contain the justification for appointment of such person.
 - Is not imprisoned for any period or fined exceeding one thousand rupees for the conviction of any offence under the following 16 Acts specified under Part I of Schedule V namely:
 - a)
 - (i) the Indian Stamp Act, 1899 (2 of 1899);



- (ii) the Central Excise Act, 1944 (1 of 1944);
 - (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951);
 - (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954);
 - (v) the Essential Commodities Act, 1955 (10 of 1955);
 - (vi) the Companies Act, 2013;
 - (vii) the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
 - (viii) the Wealth-tax Act, 1957 (27 of 1957);
 - (ix) the Income-tax Act, 1961 (43 of 1961);
 - (x) the Customs Act, 1962 (52 of 1962);
 - (xi) the Competition Act, 2002 (12 of 2003);
 - (xii) the Foreign Exchange Management Act, 1999 (42 of 1999);
 - (xiii) the Sick Industrial Companies (Special Provision) Act, 1985 (1 of 1986);
 - (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (xv) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
 - (xvi) the Prevention of Money-laundering Act, 2002 (15 of 2003);
- b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), 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.

- Is not an undischarged insolvent or has at any time not been adjudged as an insolvent
- Has not at any time suspended payment to his creditors or makes, or has at any time made, a composition with them
- Has not at any time been convicted by a court of an offence and sentenced for a period of more than six months

- This is not applicable to the individuals who are appointed by the companies in the Special Economic Zones

Period of Appointment

- No public company, listed or unlisted, can appoint or reappoint any person as its Managing Director, Whole-time Director or Manager for a period exceeding five years at time
- No reappointments of these persons can be made earlier than a year before expiry of their current term i.e. the reappointment can be made for another term in the last year of the current term and not earlier.

Provisions Relating to Remuneration

Remuneration:

- Remuneration as defined under the Act means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act 1961. Remuneration under this Act includes salaries and perquisites and commission on profits, but excludes sitting fees and expenses.
- The remuneration payable to the managerial person and the directors of the company shall be determined in accordance with the provisions of section 197 and Schedule V, either by the articles of the company or by a resolution or if the articles so require a special resolution passed by a general meeting



- The remuneration payable to a director includes remuneration payable to him for all services rendered by him in any other capacity
- Includes reimbursement of any direct taxes
- Managerial personnel may continue to receive remuneration in accordance with the terms and conditions approved under Companies Act, 1956 for the remaining term even if it extends after April 1st 2014

Perquisites not included in Managerial Remuneration:

Perquisites which are not to be considered as Managerial Remuneration paid where there is no profit or inadequate profit:

- Contribution to provident fund, superannuation fund, or annuity fund. These are not to be included in remuneration provided they are within taxable limits under the Income Tax Act either individually or in aggregate.
- Gratuity payable at a rate not exceeding half-a-month salary for each year of completed service.
- Encashment of leave at the end of the tenure.
- For expatriate and non-resident Indian the following perquisites in addition to the above shall not be included in Managerial Remuneration
 - *Children's education allowance*: In case of children studying in or outside India, an allowance limited to a maximum of Rs.12,000 per month per child or actual expenses incurred, whichever is less for a maximum of two children.
 - *Holiday passage for children studying outside India or family staying abroad*: Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
 - *Leave travel concessions*: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India. Family means spouse, dependent children and dependent parents of the managerial person

Other Benefits:

- A Director or manager may be paid in cash or kind either by way of monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other, for any other services rendered not specifically excluded.

Commission:

- Public Limited Companies are permitted to pay commission on profits to its directors and managerial personnel as a percentage of profits, which will be included in remuneration.
- Guarantee commission:
 - This is a benefit for extending personal guarantees on behalf of the company and arises out of an office of profit and therefore will be included in remuneration.
- Underwriting commission:
 - Where a company pays a commission as consideration for a director agreeing to underwrite the subscription of any securities or derivatives proposed to be issued, this commission will also be considered as part of overall remuneration.
 - Where a company has a paid up capital of Rs.10 crores or more and the commission exceeds one per cent of net worth, a prior approval with special resolution with a special majority of 75% is required before payment.



Stock Options:

- An Independent director shall not be entitled to receive stock option. However, in case of other directors, Stock options would be part of remuneration

Insurance premium paid by the company for policies:

- Where any Insurance is taken by the company on behalf of its key managerial personnel indemnifying any of them against any liability for default, negligence, breaches of trust and duty, misfeasance for which they are likely to be guilty charged for being not to be treated as part of the remuneration. Only if the person is proved to be guilty such premiums are to be considered as remuneration.

Exclusions from Remuneration

- There may be occasions when a director or managerial person renders service to the company in some other capacity. In such cases, the remuneration amount will not be treated as Managerial Remuneration, if the following conditions are met:
 - the services rendered are of a professional nature and
 - In the opinion of the Nomination and Remuneration Committee, where such a Committee exists under the provisions of the Act, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.
 -

Sitting Fees and Expenses

- Remuneration excludes fees for attending meetings of boards and committees of companies
- The maximum fee for attending meetings of any company may be decided by the Board of directors and the maximum amount shall not exceed one lakh rupees per meeting of the Board or by the Nomination and Remuneration committee where mandatory. For Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.
- There may be different fees for different class of companies and different fees for independent directors which may be prescribed at a later date
- Where a public company has a Nomination and Remuneration Committee, the quantum of sitting fees requires the recommendation of this committee. However, the overall ceiling of Rs.1 lakh is fixed and the maximum quantum of fees recommended cannot be exceeded.
- In addition to the fees, directors may be paid all travelling, hotel and other expenses properly incurred by them for attending meetings of the Board, Committees and general meetings of the company or any such expenses incurred in connection with the business of the companies.

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.

Refund of excess remuneration

- Any Director receives or draws directly or indirectly by way of remuneration any such sum in excess of the limit prescribed by section 197 or without the prior consent of the Central Government where required, he shall refund such sum to the company and till such time of refund he shall hold it in trust for the company

Waiver of remuneration

- Without the permission of the Central Government, the company cannot waive any such refundable sums of remuneration.

Commission to Directors:

(i) Commission on profits:

The commission to managerial personnel can be paid as a percentage of profits as laid out below:

- Commission to Managing / Whole-time /Executive Director or Manager: - 5% of net profits for each person and 10% in Aggregate
- Commission to other directors when commission is paid to the managerial personnel above: - 1% of net profits
- Commission to directors where there are no managing / whole time /executive directors or manger: - 3% of net profits

This commission is in addition to salary but should be considered for the overall limits of managerial remuneration.

Compensation for Loss of Office of Managing or Whole time Director or Manager

- 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.
- The payment of the compensation for the loss of office shall not exceed:
Remuneration due for the remainder of the term or
Remuneration due for three years, whichever period is shorter.

This is to be calculated on the basis of average remuneration by him:

- during the three years immediately preceding the date of cessation of office or
 - where the term of office has been for a lesser time, during such period.
- In the event of winding up, the assets of the company after deducting expenses are insufficient to repay the share capital and premiums to shareholders no payment as compensation shall be made. This is applicable if the winding up commencing 12 months before or after he ceased to hold office.
 - However, no payment shall be made in the following cases:—
 - where the director resigns from his office as a result of the reconstruction/amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;
 - where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;



- where the office of the director is vacated due to disqualification;
- where the company is being wound up due to the negligence or default of the director either voluntarily or by an order of the Tribunal;
- where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
- where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Remuneration payable to a Managerial person in two companies

- Where a person draws remuneration from two companies, the maximum limit of the total remuneration cannot exceed the higher of the maximum limit under any one of the companies.
- Remuneration from foreign subsidiaries or foreign companies in addition to an Indian company is not covered under the Indian Companies Act. Hence, if paid by them, it will not be within the ceiling prescribed under the Companies Act, 2013

Managerial Remuneration Limits

Limits on remuneration for Private Companies

- There are no restrictions under the Companies Act for payment of remuneration to managerial personnel. If the Articles of Association requires prior approval of its shareholders at a general meeting, such approval should be obtained before the payment is made. There are no restrictions in the case of a private company which is a subsidiary of a foreign company. In the case of private company which is a subsidiary of a public company and also a public company which is a subsidiary of a foreign company, limits on remuneration are applicable.

Limits on remuneration for Public Companies

- The Act has laid down overall limits on remuneration payable to managerial personnel by public companies and has also given detailed sub limits for such remuneration. In addition, separate guidelines have been laid down for profits, inadequate and no profit scenarios. Also, circumstances under which deviations are permissible and quantum of such amount have been stated on the relevant provisions.
- Overall limits for Public Companies, listed or unlisted, **having adequate profits**
 - In the case of public companies, listed or unlisted with adequate profits, total remuneration payable including its directors, managing director, whole time director and its manager shall not exceed 11% of the net profits for that financial year computed in accordance with section 198.
 - The total remuneration paid can exceed 11% to all its directors, managing director, whole time director and its manager with the consent in the general meeting of the company and with the approval of Central Government.
 - The overall remuneration of 11% shall be split as under

Person	Limit
To any one managing director or whole time director or manager	Shall not exceed 5% of the net profits of the company
If there are more than one such director (for all such directors together)	Shall not exceed 10% of the net profit of the company



For a director who is neither a managing or whole time director, where there is a managing director or whole time director or manager (for all such directors together)	Shall not exceed 1% of the net profits of the company
For a director who is neither a managing or whole time director, where there is no managing director or whole time director or manager (for all such directors together)	Shall not exceed 3% of the net profits of the company

Where the Managing Director / Whole Time Directors have been there for part of the year then whether to average the whole year profits or whether to compute the managerial remuneration based on his period of operations (especially where quarterly results are published. It is adequate if calculation is done on an annual basis.

In arriving at the net profits, no deduction should be made for remuneration of directors from the gross profits. The limits are to be applied on prorata basis if the appointment is for part of a year.

Overall limits for Public Companies, listed or unlisted, not having adequate profits not requiring Central Government Approval

- Where companies do not have adequate profits, the remuneration payable is computed with reference to the remuneration computed using effective capital (A) and current relevant profit (B), whichever is higher.
- Effective Capital (A)**
 - Remuneration cannot be paid exceeding the limits as under without the approval of the Central Government:

Where the effective capital is	Limit of yearly remuneration
Negative or less than Rs 5 Cr	Rs 30 Lakhs
Rs 5 Cr and above but less than Rs 100 Cr	Rs 42 Lakhs
Rs 100 Cr and above but less than Rs 250 Cr	Rs 60 Lakhs
Rs 250 Cr and above	Rs 60 lakhs+ 0.01% of the effective capital in excess of Rs 250 Cr

- Effective Capital means the aggregate of the paid up share capital (excluding share application money or advances against shares) amount if any for the time being standing to the credit of share premium account, reserves and surplus (excluding revaluation reserve) long term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee and other short term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, debentures or other securities) accumulated losses and preliminary expenses not written off.
- Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment.
- In any other case the effective capital shall be calculated as on the last date of financial year preceding the financial year in which the appointment of the managerial person is made.



- The limits are to be applied on prorata basis if the appointment is for part of a year.

- **Current Relevant Profit (B)**

- A Managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or managerial person at any time during the two years prior to his appointment as a managerial person is eligible for 2.5% of the current relevant profit.
- The limits, as stated above in both the situations (A) and (B), can be doubled through a special resolution passed by the shareholders

For the purpose of this section, "current relevant profit" means profit calculated under section 198 but without deducting the excess of expenditure over income as defined in section 4(1) of section 198 relating to all usual working charges in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding and subsidiary companies

Overall limits for Public Companies, listed or unlisted, not having adequate profits requiring Central Government Approval

- If there are no profits or inadequate profits, but the remuneration payable to any director is more than Schedule V on account of:
 - a) a provision in the company's memorandum
 - b) contained in an agreement entered into by the companyor
 - c) a resolution has been passed by the company at its general meeting and these have the effect of increasing the amount in excess of that due under Schedule V shall not take effect unless:
 - a) conditions specified in special circumstances Section III of Schedule V are complied, if not
 - b) approval from Central Government is obtained

Special circumstances under which excess remuneration permissible without Central Government approval

- Under certain circumstances, a company, can without the approval of the Central Government pay remuneration to managerial personnel in excess of limits linked to effective capital, where:
 - Remuneration 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 payment and treat this amount as total managerial remuneration payable by the other company to its managerial persons including the amount or amounts which is within permissible limits under section 197
 - Remuneration up to two times the amount permissible can be paid in case of:
 - Company is newly incorporated and the period is less than seven years from the date of incorporation



- Company who is a sick company and a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal for a period of five years from the date of sanction of scheme
 - Remuneration of a managerial person exceeds the limits as stated but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal
- Provided all the conditions as required for remuneration payable under no or inadequate profits are met such as limits in relation to effective capital or 2.5% in the case of a non-security holder or is an independent person
- And in addition the following conditions are to be met :
- Managerial person is not receiving remuneration from any other company except from a company which is a foreign company and has its approval from shareholders in a general meeting and the remuneration is within the allowable limits.
 - The auditor or Company Secretary of the company or in his absence, 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 and the quantum of remuneration
 - Such certificate is filed along with the return as prescribed under sub section 4 of the section 196
 - The auditor or Company Secretary of the company or in his absence, 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.
- The Company in a special economic zone as notified by department of commerce from time to time and is a company:
- (i) which has not raised any money by public issue of shares or debentures in India and
 - (ii) has not made any default in India in repayment of any of its debts, including public deposits, or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs 2, 40, 00,000 per annum.

Central Government or company to fix limits with regard to remuneration:

Where a company has no profit or profits are inadequate to pay remuneration, the Central Government or the company may fix the remuneration within the limits specified under this Act at an amount or percentage of profits after considering the following:

- a) the financial and operating performance of the company during the three preceding financial years and 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) The relationship between remuneration and performance.
- f) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
- g) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
- h) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.



Companies other than Listed Companies and subsidiaries of Listed Companies can pay remuneration beyond ceiling prescribed

- If the following conditions are fulfilled even under the circumstances of no profits or inadequate profits, companies can pay remuneration beyond the ceiling limit without Central Government approval:
 - The company should not have defaulted any repayment of its debts, fixed public deposits, debentures, or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person
 - The Balance Sheet and Annual Return **due to be filed** have been filed with the Registrar of Companies

Determination of Net Profits

Remuneration is calculated as a percentage of Net Profits which is required to be computed in a specific manner. The relevant provisions are given below:

- (1) In computing the net profits of a company in any financial year for the purpose of section 197,—
 - (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
 - (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- (2) In making the computation aforesaid, credit shall be given for the bounties and subsidies received from any Government, or any public authority constituted or authorized in this behalf, by any Government, unless and except in so far as the Central Government otherwise directs.

The subsidies referred to are revenue in nature and do not denote any Government grants which are recognized in the Balance Sheet

- (3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—
 - (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;
Explanation: Where the business itself is say in investment of shares / assets etc., this will not be removed.
 - (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 recognized in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
 - (f) If there are any amounts withdrawn from reserves and credited to the profit and loss account.
- (4) In making the computation aforesaid, the following sums shall be deducted, namely:—
 - (a) all the usual working charges;
 - (b) directors' remuneration;



- (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
- (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
- (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
- (f) interest on debentures issued by the company;
- (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
- (h) interest on unsecured loans and advances;
- (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
Clarification: In case the site restoration costs to be provided over the life of the project, it shall be deducted where its a debit to Statement of Profit and Loss Account.
- (j) outgoing inclusive of contributions made under section 181 to bona-fide and charitable funds
- (k) depreciation to the extent specified in section 123;
- (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
- (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
- (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
- (o) debts considered bad and written off or adjusted during the year of account.
- (p) CSR expenditure charged to Profit and Loss Account as per section 135 of the Companies Act

- (5) In making the computation aforesaid, the following sums shall not be deducted, namely:—
- (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
 - (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4); e.g. Voluntary Retirement Schemes
 - (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
 - (d) any change in carrying amount of an asset or of a liability recognized in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.
 - (e) Provision relating to impairment of assets due to changes in the economic environment
 - (f) Dividend distribution Tax shall not be deducted
 - (f) any amount transferred to reserves and surplus by debit to statement of profit and loss

Procedure for approval of managerial remuneration for any company:

- Within the framework of Section 197 and Schedule V, the remuneration including commission payable to any managerial personnel requires the approval of the Board of Directors at a meeting and is subject to the approval of a resolution by the shareholders at the next general meeting.
- If the appointment is at variance to the conditions specified in Schedule V of the Act, approval of the Central Government is required.
- A three layer process for approval is as below:
 - a. Remuneration within individual limits for each managerial person – Board approval



- b. Remuneration exceeding individual limits for each person but not exceeding overall limit of 11% - In addition to the approval of the Board, approval of the shareholders is required
- c. Remuneration in excess of overall limit of 11% - In addition to the approvals of the Board and the shareholders, approval of the Central Government is required

Thus if the overall remuneration does not exceed 11% of net profits, no Central Government consent is required.

- Remuneration covers both whole time managerial personnel and non-executive managerial personnel and the limit of 11% includes commission to Non whole time directors. When there are inadequate profits and remuneration is to be paid to non-executive directors, the approval of the Central Government is necessary.
- Where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid

Procedure for approval of managerial remuneration for a Public Company listed or unlisted having adequate profit:

- Within the limits prescribed:
 - The remuneration payable to a Managing Director, Whole-Time Director or Manager shall be subject to the approval at the Nomination and Remuneration Committee and a Board resolution at a meeting of the directors. This shall be approved by a resolution at the next general meeting of the company.
- In excess of limits prescribed:
 - With the consent in the general meeting of the company and with the approval of Central Government, the total remuneration can exceed 11% to all its directors, managing director, whole time director and its manager

Procedure for approval of managerial remuneration for a Public Company listed or unlisted not having adequate profit:

- The remuneration is to be determined and be paid after complying with the provisions in the Articles of Association of the Company. If the Articles of association provide the requirement of a special resolution then the company shall pass such a special resolution regarding the payment of Managerial Remuneration.
- A resolution is passed by the Nomination and Remuneration Committee and the Board clearly recording in writing the justification for paying remuneration beyond the said limit.
- Nomination and remuneration committee should take into account the financial position of the company, trend in the industry, appointees qualification, experience, past performance and remuneration and be in a position to bring about objectivity while striking a balance between the interest of the company and the shareholders
- A special resolution has been passed at a general meeting for payment of remuneration for a period of not exceeding three years
- The notice convening board or general meeting for considering such appointment shall include the terms and conditions including the remuneration payable and such other matters including interest of the person in such appointment. The statement along with the notice should contain:
 - An explanatory statement containing the following information along with the notice calling for the general meeting
- General Information
 - Nature of Industry
 - Date or expected date of commencement of commercial production
 - In case of new companies expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
 - Financial information based on given indicators
 - Foreign investments or collaborations if any
- About the appointee
 - Background details



- Past remuneration
- Recognition or awards
- Job profile and his suitability
- Remuneration proposed
- Comparative remuneration profile with respect to industry, size of the company, profile of the position and person
- Person is an expatriate the relevant details would be with respect to the country of his origin
- Pecuniary relationship directly or indirectly with the company or relationship with the managerial person if any
- Other information
 - Reasons for loss or inadequate profits
 - Steps taken or proposed to be taken for improvement

Expected increase in productivity and profits in measurable terms

- A return in the prescribed form is to be filed with the Registrar within 60 days of such appointment
- Contravention of these provisions results in a fine of Rs.1 – Rs.5 lakhs for company and up to Rs.50000 for each person and Rs.1000 for each continuing day.

Procedure for approval of managerial remuneration for companies other than Listed Companies and subsidiaries of Listed Companies with nil or inadequate beyond ceiling prescribed

- Companies can pay the remuneration beyond the prescribed ceiling if the following conditions are fulfilled:
- A resolution is passed by the Nomination and Remuneration Committee and the Board clearly recording in writing the justification for paying remuneration beyond the said limit
- A special resolution has been passed at a general meeting for payment of remuneration for a period of not exceeding three years
- The notice convening board or general meeting for considering such appointment shall include the terms and conditions including the remuneration payable and such other matters including interest of the person in such appointment. The statement along with the notice should contain:
 - An explanatory statement containing the following information along with the notice calling for the general meeting
 - General Information
 - Nature of Industry
 - Date or expected date of commencement of commercial production
 - In case of new companies expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus
 - Financial information based on given indicators
 - Foreign investments or collaborations if any
 - About the appointee
 - Background details
 - Past remuneration
 - Recognition or awards
 - Job profile and his suitability
 - Remuneration proposed
 - Comparative remuneration profile with respect to industry, size of the company, profile of the position and person
 - Person is an expatriate the relevant details would be with respect to the country of his origin



- Pecuniary relationship directly or indirectly with the company or relationship with the managerial person if any
- Other information
 - Reasons for loss or inadequate profits
 - Steps taken or proposed to be taken for improvement
 - Expected increase in productivity and profits in measurable terms

Disclosure of managerial remuneration:

- In the financial statement the following disclosures are required to be made under the heading “ Corporate Governance” in the Board of Directors report:
 - All elements of remuneration like salary, benefits, bonuses, stock options, pension etc.; of all the directors
 - Details of fixed component and performance linked incentives along with the performance criteria
 - Service contracts, notice period, severance fees;
 - Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable
 - The Managing or whole time director of the company can receive any remuneration or commission from any holding or subsidiary company and to be disclosed in the Board’s report
 - Any listed company to disclose in its Board’s report
 - the ratio of the remuneration of each director to the median employee’s remuneration
 - the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year
 - the percentage increase in the median remuneration of employees in the financial year
 - the number of permanent employees on the rolls of company
 - the explanation on the relationship between average increase in remuneration and company performance
 - comparison of the remuneration of the Key Managerial Personnel against the performance of the company
 - variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year
 - average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration
 - comparison of the each remuneration of the Key Managerial Personnel against the performance of the company
 - the key parameters for any variable component of remuneration availed by the directors
 - the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year
 - affirmation that the remuneration is as per the remuneration policy of the company

Penalties for contravention

- If any person contravenes the provisions of the section 197, he shall be punishable with fine which shall not be less than one lakh rupees and may extend to five lakhs
- If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made there under, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one,



with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.



Illustrations

Illustration 1: Remuneration payable by public companies ¹ with adequate profits (with approval of Shareholders)

	Rs. In Crores	Rs. In Crores
Case (a) : Company A is a listed company with the Profit before tax of Rs. 80 crores. Depreciation charged is Rs. 5.00 crores, commission paid to staff is Rs. 1.00 crore, Bad debts written off is Rs. 2.00 crores, Income Tax payable is Rs. 15.00 crores. A land was sold during the year and the profit on such sale was Rs. 3.00 crores. Mr. X is the MD of the Company. The Company also has a non-executive director and a manager. Remuneration paid to the MD is Rs. 6.00 crores. The non-executive director was paid Rs. 75 Lakhs. The managers were paid Rs. 3 crores. This remuneration paid has been approved by the shareholders. Calculate the remuneration payable to MD, the non-executive director and to other managers		
Profit before Tax		80.00
Add:		
Depreciation	5.00	
Commission paid	1.00	
Bad Debts written off	2.00	
Income Tax payable	15.00	23.00
Less:		
Profit on sale of immovable property	3.00	3.00
Net Profits		100.00
Remuneration payable:		
Remuneration to MD	Shall not exceed 5% of the net profits of the Company i.e. 5% of Rs. 100 crores.	5.00 ^{Note 1}
^{Note 1} The amount paid to MD is Rs. 6.00 crores which is in excess of the limit as calculated above. Hence the amount paid to MD should be restricted to Rs. 5.00 crores.		
Remuneration to other non-executive director	Shall not exceed 1% of the net profits of the Company i.e. 1% of Rs. 100 crores = Rs. 1 crore.	0.75 ^{Note 2}
^{Note 2:} The amount paid to the non-executive director is less than the amount allowed, hence the amount of Rs. 0.75 crore can be paid.		
Remuneration to other managers		3.00
Managerial remuneration	The total managerial remuneration can be upto 11% of the net profits. i.e. 11% of 100 crores = Rs. 11 Crores. The amount paid in this case is Rs. 8.75 crores, which is within the allowed limit of Rs. 11 crores.	8.75
Case (b): Assuming that in the case (a) above, all the facts remain the same, but there is one MD and one WTD apart from Non-executive director and other managers. The remuneration fixed by the company for the MD is Rs. 6.00 crores and for the WTD it is Rs. 5 crores. Calculate the remuneration payable.		



Remuneration to MD ^{Note 2}	Shall not exceed 5% of the net profits of the Company i.e. 5% of Rs. 100 crores.	5.00 ^{Note 1}
Remuneration to WTD ^{Note 2}	Shall not exceed 5% of the net profits of the Company i.e. 5% of Rs. 100 crores.	5.00
<p>^{Note 1} The amount paid to MD is Rs. 6.00 crores which is in excess of the limit as calculated above. Hence the amount paid to MD should be restricted to Rs. 5.00 crores.</p> <p>^{Note 2} The total amount to be paid to MD and WTD cannot exceed 10% of the net profits. i.e. the amount cannot exceed 10% of Rs. 100 crores = Rs. 10 crores</p>		
Remuneration to Non-executive director and other managers	The total managerial remuneration can be upto 11% of the net profits. i.e. 11% of 100 crores = Rs. 11 Crores. Out of this Rs. 10 crores has already been paid to MD and WTD. Hence the amount of remuneration to be paid to the Non-executive Director and other managers cannot exceed Rs. 1.00 crore.	1.00 ^{Note 3}
<p>^{Note 3} In case the company decides to pay the actual amount as per case (a) to Non-executive Director and other managers i.e. Rs. 0.75 crores, Rs. 2.00 crores and Rs.1 crore respectively, then the total amount paid will exceed the limit or 11% of the net profits. As the total amount paid will then be Remuneration to MD and WTD :Rs. 10 crores and the remuneration paid to Non-executive director and other managers is Rs. 3.75 crores totaling Rs. 13.75 crores, which exceed the maximum limit allowed of Rs. 11 crores. In this case, Central Government approval is required.</p>		

Note:

- ¹ Provision relating to managerial remuneration is applicable to private company only in case of no profits
² If the remuneration paid exceeds the limit given, then approval of Central Government is required

Illustration 2: Remuneration payable by companies with no profits / inadequate profits:

	Rs. In Crores	Rs. In Crores
<p>Case (a): Company XYZ had a loss of Rs. 10 crores and the effective capital of the company is Rs. 1 Crore. Also, the managerial person holds security of nominal value of Rs. 2 Lakhs. He had been appointed only last year by the Company. Calculate the remuneration payable to the managerial person.</p>		
Remuneration payable in the above case is:	Higher of : 1. Rs. 30 Lakhs (or) 2. 2.5% of the current relevant profits (here this option is not applicable as the company has incurred loss)	
Remuneration payable where it is	It is Rs. 30 Lakhs as this is higher	0.30



approved by shareholders	of the 2 options given above	
Remuneration payable where it is approved by shareholders by special resolution	Double of the above amount	0.60
Case (b): Company XYZ incorporated in 1998, had a loss of Rs. 10 crores and the effective capital of the company is Rs. 120 Crore. Also, the managerial person holds security of nominal value of Rs. 2 Lakhs. He had been appointed only last year by the Company. Calculate the remuneration payable to the managerial person.		
Remuneration payable in the above case is:	Higher of : 1. Rs. 60 Lakhs (or) 2. 2.5% of the current relevant profits (here this option is not applicable as the company has incurred loss)	
Remuneration payable where it is approved by shareholders	It is Rs. 60 Lakhs as this is higher of the 2 options given above	0.60
Remuneration payable where it is approved by shareholders by special resolution	Double of the above amount	1.20
Case (c): In the situation discussed in case (b) above, in case the company XYZ has been incorporated 2 years back, then calculate the remuneration payable to the managerial person.		
Remuneration payable where it is approved by shareholders	It is upto 2 times the amount given in case (b)	1.20
Remuneration payable where it is approved by shareholders by special resolution	It is upto 2 times the amount given in case (b)	2.40
Case (d): In the situation discussed in case (b) above, in case the company XYZ is a sick company for whom scheme of revival has been ordered by BIFR or NCLT last year, then calculate the remuneration payable to the managerial person.		
Remuneration payable where it is approved by shareholders	It is upto 2 times the amount given in case (b)	1.20
Remuneration payable where it is approved by shareholders by special resolution	It is upto 2 times the amount given in case (b)	2.40
Case (e): In the situation discussed in case (b) above, in case the company XYZ is an SEZ entity and has not raised money by way of public issue of shares or debentures in India. The Company has also not defaulted in payment of its debts, public deposits or debentures, then calculate the remuneration payable to the managerial person.		



Remuneration payable		UptoRs. 2.40 crores per annum
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Illustration 3:

Company XYZ, a Listed Company, has 4 categories of employees – 1000 workers, 600 Supervisors, 400 middle level managers and 200 senior level managers, given in the ascending order of the remuneration. Assuming the workers earn at an average of Rs. 60,000 per annum, Supervisors earn at an average of Rs. 1,20,000 per annum, middle level managers earn at an average of Rs. 2,00,000 per annum and the senior level managers earn at an average of Rs. 5,00,000 per annum. Director A earns a remuneration of Rs. 10,00,000 per annum and Director B earns a remuneration of Rs. 12,00,000 per annum. What are the disclosures to be considered in the Board's report? Director A and Director B had been earning Rs. 8,00,000 and Rs. 10,00,000 in the previous year.

Computation and disclosure of Median remuneration:

Median means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers maybe found by arranging all the observations from lowest value to highest value and picking the middle one.

Total number of employees - 2200
 Median - 1100
 Median remuneration - It is on the 1100th employee, in this case, it is the supervisor

Disclosure in Board's report under Corporate Governance section:

Ratio of the remuneration of each director to the median employee's remuneration		
Director A	(10,00,000 : 1,20,000)	8.33%
Director B	(12,00,000 : 1,20,000)	10%
% increase in remuneration of each director or Manager, if any, in the financial year		
Director A	$((10,00,000-8,00,000)/8,00,000)$	25%
Director B	$((12,00,000-10,00,000)/10,00,000)$	20%

Illustration 4:

Case (a): Mr. A is the MD of Company XYZ Limited for the past 5 years and was earning a salary of Rs. 25 lakhs per annum. His contract is valid till March 31, 2017. On April 1, 2015; services of Mr. A was terminated due to operational reasons. What is the compensation to be paid to Mr. A by XYZ Limited?

As per Section 202 (3) of the Companies Act, 2013, any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of 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.

Computation of the compensation for the loss of office:

Period for which the compensation is to be paid	Balance of term (2 years in this case) or 3 years which ever is	2 years
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	shorter	
Amount to be paid to Mr. A	Rs. 25 Lakhs for 2 years	Rs. 50 Lakhs

Case (b): In the case (a), all the facts remain the same, but Mr. A's term is valid till March 31, 2019, then what is the compensation to be paid to Mr. A by XYZ Limited?

Computation of the compensation for the loss of office:

Period for which the compensation is to be paid	Balance of term (4 years in this case) or 3 years whichever is shorter	3 years
Amount to be paid to Mr. A	Rs. 25 Lakhs for 3 years	Rs. 75 Lakhs



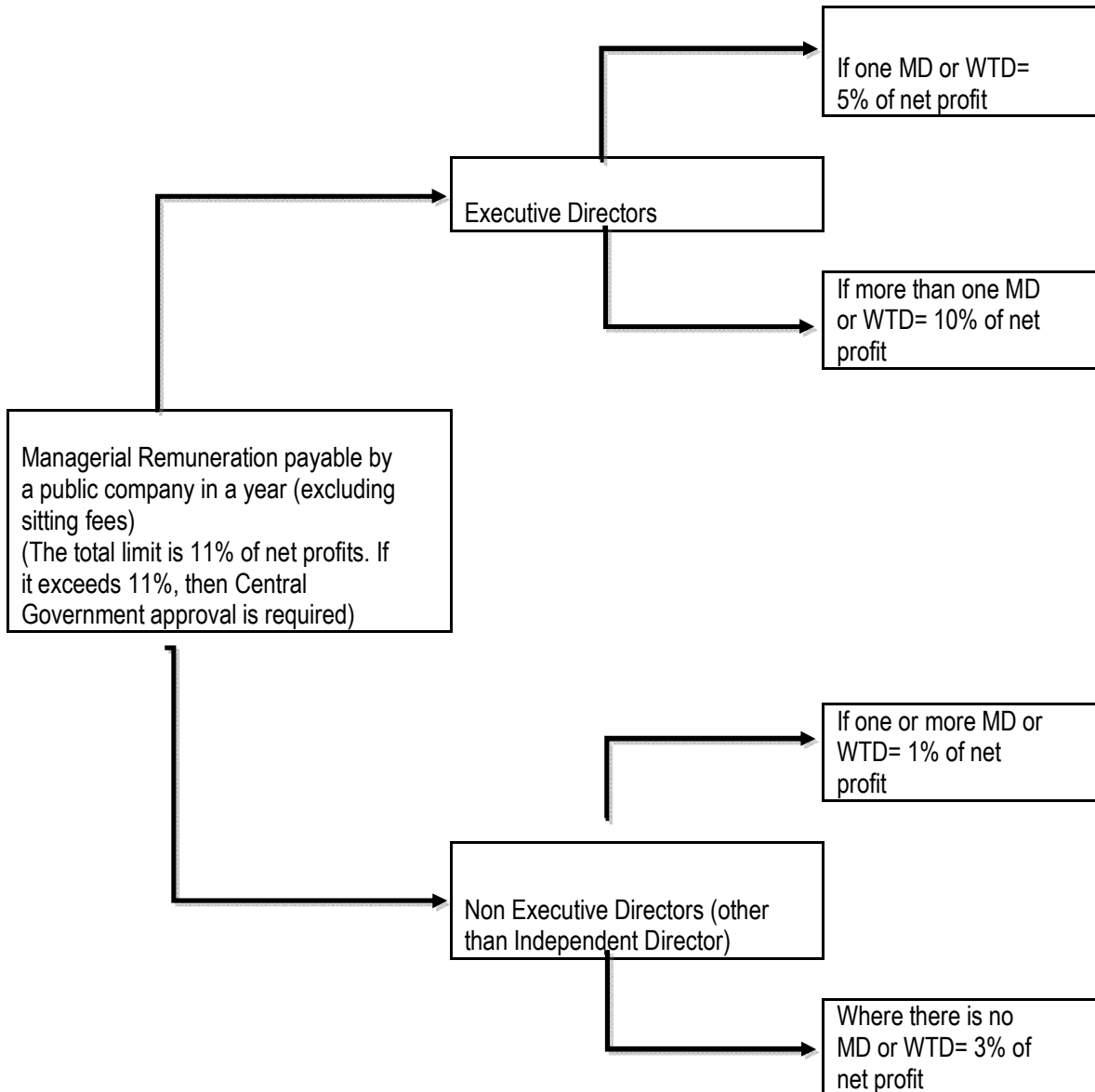
Annexure



Annexure 1

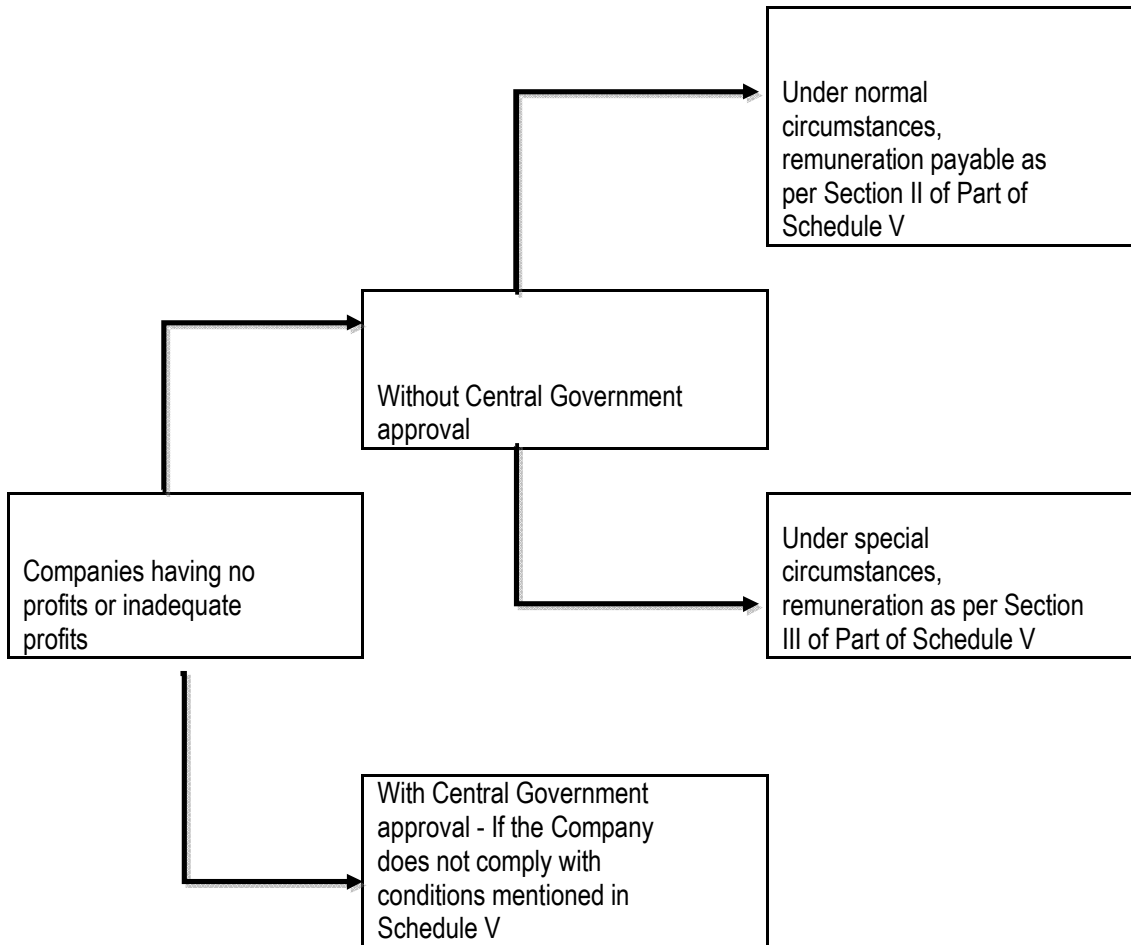
Limits of remuneration to Managerial Personnel

Limits in the case of company having profits





Limits in the case of company having no profits or inadequate profits





Annexure 2

Computation of Profits:

Profit before Tax as per Statement of Profit and Loss	
Less:	
Profits by way of premium on shares or debentures of the company	
Profits on sales by the company of forfeited shares	
Profits of a capital nature including profits from the sale of the undertaking	
Profits from the sale of any immovable property or fixed assets of a capital nature	
Any change in carrying amount of an asset or of a liability recognized in equity reserves	
Add:	
Income-tax and super-tax payable by the company under the Income-tax Act, 1961	
Any compensation, damages or payments made voluntarily	
Loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company	
Any change in carrying amount of an asset or of a liability	



Annexure 3

Calculation of effective capital

Add:	
Paid up share capital (excluding share application money or advances against shares)	
Share premium account	
Reserves and surplus (excluding revaluation reserve)	
Long term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee and other short term arrangements)	
Less:	
Investments (except in case of investment by an investment company whose principal business is acquisition of shares, debentures or other securities)	
Accumulated losses	
Preliminary expenses not written off	



Annexure 4

Disclosure of managerial remuneration

**Board of Directors report:
Corporate Governance:**

Director's remuneration for the Financial Year

Particulars	Director X	Director Y	Director Z
Remuneration <ul style="list-style-type: none"> • Salary • Benefits – perks & allowances • Bonuses • Stock options • Pension • Sitting fees • Leave encashment • Received from holding / subsidiary company 			
Details of fixed component and performance linked incentives along with the performance criteria			
Service contracts <ul style="list-style-type: none"> • Notice period • Severance fees 			
Stock option details <ul style="list-style-type: none"> • Is it issued at discount? • Period over which accrued • Period over which exercisable 			
Other disclosures <ul style="list-style-type: none"> • Median employee's remuneration • Ratio of remuneration to the median employee's remuneration • Percentage increase in remuneration 			

General disclosures:

• Percentage increase in the median remuneration of employees		
• Number of permanent employees on the rolls of company		
• Explanation on the relationship between average increase in remuneration and company performance		
• Comparison of the remuneration of the Key Managerial Personnel against the performance of the company		



<ul style="list-style-type: none"> Variations in the market capitalisation of the company 		
<ul style="list-style-type: none"> PE ratio 	At the closing date of Current year	At the closing date of Previous year
<ul style="list-style-type: none"> Percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies 		
<ul style="list-style-type: none"> In case of unlisted companies, the variations in the net worth of the company 	At the close of Current year	At the close of Previous year
<ul style="list-style-type: none"> Average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year 		
<ul style="list-style-type: none"> Key parameters for any variable component of remuneration availed by the directors 		
<ul style="list-style-type: none"> Ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year 		



Annexure 5

CHAPTER XIII APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

196. Appointment of managing director, whole-time director or manager.

- (1) No company shall appoint or employ at the same time a managing director and a manager.
- (2) 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:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

- (3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —
 - (a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

- (b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
 - (c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
 - (d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
- (4) Subject to the provisions of section 197 and Schedule V, a managing director, whole-time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule:

Provided that a 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:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar.

- (5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

- (1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven per cent. of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:



Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting,—

- (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five per cent. of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;
 - (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—
 - (A) one per cent. of the net profits of the company, if there is a managing or whole-time director or manager;
 - (B) three per cent. of the net profits in any other case.
- (2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).
 - (3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government.
 - (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 by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

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

- (a) the services rendered are of a professional nature; and
 - (b) in the opinion of the Nomination and Remuneration Committee, 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.
- (5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

- (6) 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.
- (7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
- (8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.
- (9) 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 the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.



- (10) The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless permitted by the Central Government.
- (11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained 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 that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.
- (12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.
- (13) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

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

- (14) 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.
- (15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

198. Calculation of profits.

- (1) In computing the net profits of a company in any financial year for the purpose of section 197,—
 - (a) credit shall be given for the sums specified in sub-section (2), and credit shall not be given for those specified in sub-section (3); and
 - (b) the sums specified in sub-section (4) shall be deducted, and those specified in sub-section (5) shall not be deducted.
- (2) In making the computation aforesaid, credit shall be given for the 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.
- (3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—
 - (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.



- (4) In making the computation aforesaid, the following sums shall be deducted, namely:—
- (a) all the usual working charges;
 - (b) directors' remuneration;
 - (c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;
 - (d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;
 - (e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;
 - (f) interest on debentures issued by the company;
 - (g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;
 - (h) interest on unsecured loans and advances;
 - (i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;
 - (j) outgoings inclusive of contributions made under section 181;
 - (k) depreciation to the extent specified in section 123;
 - (l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;
 - (m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;
 - (n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);
 - (o) debts considered bad and written off or adjusted during the year of account.
- (5) In making the computation aforesaid, the following sums shall not be deducted, namely:—
- (a) income-tax and super-tax payable by the company under the Income-tax Act, 1961, or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);
 - (b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub-section (4);
 - (c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;
 - (d) 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.

199. Recovery of remuneration in certain cases.

Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, 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.

200. Central Government or company to fix limit with regard to remuneration.

Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, 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 and while fixing the remuneration, the Central Government or 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.

201. Forms of, and procedure in relation to, certain applications.

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

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.
- (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) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of 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:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within 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.

203. Appointment of key managerial personnel.

- (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,—
- (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director;
 - (ii) company secretary; and
 - (iii) Chief Financial Officer :

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,—

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses:

Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

- (2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
- (3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time 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 to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

- (4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.
- (5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

204. Secretarial audit for bigger companies.



- (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed.
- (2) 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.
- (3) 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).
- (4) 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 which shall not be less than one lakh rupees but which may extend to five lakh rupees.

205. Functions of company secretary.

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

Explanation.—For the purpose of this section, the expression “secretarial standards” means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the Central Government.
- (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.



Annexure 6

Rules for Chapter XIII (after incorporating Amendments till date i.e., upto May'15)

New Delhi, dated 31st March, 2014

G.S.R 249 (E)-- In exercise of the powers conferred under sub-section (4) of section 196, sub-section (5) of section 197, sub-section (12) of section 197, section 200, sub-section (1) of section 198, sub-section (1) of section 203, sub-section (1) of section 204 and sub-section (1) of section 205 of the Companies Act, 2013, read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013) and in supersession of the Companies (Central Government's) General Rules and Forms, 1956 or any other relevant rules prescribed under the Companies Act, 1956 (1 of 1956) on matters covered under these rules, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely: -

1. Short title and commencement.-

- (1) These rules may be called the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
- (2) They shall come into force on the 1st day of April, 2014.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) "Act" means the Companies Act, 2013 (18 of 2013);
 - (b) "Annexure" means the Annexure to these rules;
 - (c) "Fees" means the fees as specified in the Companies (Registration offices and fees) Rules, 2014;
 - (d) "Form" or "e form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates;
 - (e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director;
 - (f) "section" means section of the Act.
- (2) Words and expressions used in these rules but not defined and defined in the Act or in Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act and said rules.

3. Filing of return of appointment.- A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days of the appointment, with the Registrar in Form No. **MR.1** along with such fee as may be specified for this purpose.

4. Sitting fees.- A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

5. Disclosure in Board's report.-(1) Every listed company shall disclose in the Board's report-

- (i) the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
- (ii) the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;



- (iii) the percentage increase in the median remuneration of employees in the financial year;
- (iv) the number of permanent employees on the rolls of company;
- (v) the explanation on the relationship between average increase in remuneration and company performance;
- (vi) comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
- (vii) variations in the market capitalisation of the company, price earnings ratio as at the closing date of the current financial year and previous financial year and percentage increase over decrease in the market quotations of the shares of the company in comparison to the rate at which the company came out with the last public offer in case of listed companies, and in case of unlisted companies, the variations in the net worth of the company as at the close of the current financial year and previous financial year;
- (viii) average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;
- (ix) comparison of the each remuneration of the Key Managerial Personnel against the performance of the company;
- (x) the key parameters for any variable component of remuneration availed by the directors;
- (xi) the ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year; and
- (xii) affirmation that the remuneration is as per the remuneration policy of the company.

Explanation.- For the purposes of this rule.- (i) the expression “median” means the numerical value separating the higher half of a population from the lower half and the median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one;

(ii) if there is an even number of observations, the median shall be the average of the two middle values.

- (2) 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 sixty 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 five lakh 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.
- (3) The statement referred to in sub-rule (2) shall also indicate -
 - (i) designation of the employee;
 - (ii) remuneration received;
 - (iii) nature of employment, whether contractual or otherwise;
 - (iv) qualifications and experience of the employee;
 - (v) date of commencement of employment;
 - (vi) the age of such employee;
 - (vii) the last employment held by such employee before joining the company;
 - (viii) the percentage of equity shares held by the employee in the company within the meaning of clause (iii) of sub-rule (2) above; and
 - (ix) whether any such employee is a relative of any director or manager of the company and if so, name of such director or manager:

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case



may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Provided further that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders:

Provided also that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

6. Applications to the Central Government.-

The Central Government or 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 who receives remuneration and employees or executives of the company.
- (4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
- (5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

7. Fees.- (1) Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. **MR.2** and shall be accompanied by fee as may be specified for the purpose.

(2) 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:-

- (i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit;
 - (ii) 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;
 - (iii) 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;
 - (iv) a statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, 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;
 - (v) the company has filed Balance Sheet and Annual Return which are **due to be** filed with the Registrar of Companies.
- (3) Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

8. Appointment of Key Managerial Personnel.-



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

18A. Appointment of Company Secretaries in companies not covered under rule 8.—A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.”

9. Secretarial Audit Report.- (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-

- (a) every public company having a paid-up share capital of fifty crore rupees or more; or
- (b) every public company having a turnover of two hundred fifty crore rupees or more.

(2) The format of the Secretarial Audit Report shall be in Form No.**MR.3**.

10. Duties of Company Secretary.-

The duties of Company Secretary shall also discharge, the following duties, namely:-

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

¹ Inserted vide Amendment in Rules, G.S.R. 390 (E) dated 09.06.2014





Annexure 7

Schedule V (See sections 196 and 197)

PART I

CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT

APPOINTMENTS

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—

(a) 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 any of the following Acts, namely:—

- (i) The Indian Stamp Act, 1899 (2 of 1899);
- (ii) The Central Excise Act, 1944 (1 of 1944);
- (iii) The Industries (Development and Regulation) Act, 1951 (65 of 1951);
- (iv) The Prevention of Food Adulteration Act, 1954 (37 of 1954);
- (v) The Essential Commodities Act, 1955 (10 of 1955);
- (vi) The Companies Act, 2013;
- (vii) The Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (viii) The Wealth-tax Act, 1957 (27 of 1957);
- (ix) The Income-tax Act, 1961 (43 of 1961);
- (x) The Customs Act, 1962 (52 of 1962);
- (xi) The Competition Act, 2002 (12 of 2003);
- (xii) The Foreign Exchange Management Act, 1999 (42 of 1999);
- (xiii) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);
- (xiv) The Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (xv) The Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);
- (xvi) The Prevention of Money-Laundering Act, 2002 (15 of 2003);

(b) He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974):

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), 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.

(c) 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;

(d) Where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;



(e) He is resident of India.

Explanation I.—For the purpose of this Schedule, 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,—

- (i) For taking up employment in India; or
- (ii) For carrying on a business or vacation in India.

Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

PART II

REMUNERATION

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.

Section II. — Remuneration payable by companies having no profit or inadequate profit without Central Government approval:

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 the higher of the limits under (A) and (B) given below:—

(A):

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

Provided that the above limits shall be doubled 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) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

- (i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person;
- (iii) A special resolution has been passed at the general meeting of the company for payment of remuneration 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:—

I. 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. Other information:

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

IV. Disclosures:

The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—

- (i) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- (ii) Details of fixed component and performance linked incentives along with the performance criteria;



- (iii) Service contracts, notice period, severance fees;
- (iv) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

Section III. — Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

- (a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.
- (b) Where the company—
 - (i) Is a newly incorporated company, for a period of seven years from the date of its incorporation, or
 - (ii) Is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.
- (c) 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:

Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

- (i) Except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
- (ii) the auditor or Company Secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person 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 as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2, 40, 00,000 per annum.

Section IV. — Perquisites not included in managerial remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—
 - (a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961 (43 of 1961);
 - (b) Gratuity payable at a rate not exceeding half a month's salary for each completed year of service; and
 - (c) Encashment of leave at the end of the tenure.
2. In addition to the perquisites specified in paragraph 1 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II or Section III—



- (a) *Children's education allowance:* In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
- (b) *Holiday passage for children studying outside India or family staying abroad:* Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.
- (c) *Leave travel concession:* Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

Explanation I.— For the purposes of Section II of this Part, “effective capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Explanation II.—

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

Explanation III. — For the purposes of this Schedule, “family” means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, shall—

- (a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;
- (b) Be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

Explanation V. — For the purposes of this Schedule, “negative effective capital” means the effective capital which is calculated in accordance with the provisions contained in *Explanation I* of this Part is less than zero.

Explanation VI. — For the purposes of this Schedule:—

- (A) “current relevant profit” means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (I) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.
- (B) “Remuneration” means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

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.



PART III

Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.
2. The auditor or the Secretary of the company or where the company is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.



Annexure 8

Comparison of provisions of Schedule XIII to the Companies Act, 1956 and Provisions of Schedule V to the Companies Act, 2013

Part I – APPOINTMENTS

S. NO.	PARTICULARS	PROVISIONS UNDER THE COMPANIES Act, 1956	PROVISIONS UNDER COMPANIES Act, 2013
1.	INSERTION OF NEW CLAUSE	➤ Earlier for a person to be eligible for appointment as a managing or whole-time director or a manager only (xv) clauses were there to be satisfied.	➤ Now a person to be eligible for appointment as a managing or whole-time director or a manager also includes the Prevention of Money-Laundering Act, 2002 (15 of 2003) ;
2.	AGE FOR APPOINTMENT	➤ Maximum – 25 years ➤ Minimum – 70 Years	➤ Maximum – 21 Years ➤ Minimum – 70 Years

Part II – REMUNERATION

S. NO.	PARTICULARS	PROVISIONS UNDER THE COMPANIES Act, 1956	PROVISIONS UNDER COMPANIES Act, 2013										
3.	SECTION I REMUNERATION PAYABLE BY COMPANIES HAVING PROFITS	➤ A company having profits in a financial year may pay any remuneration, not exceeding: <ul style="list-style-type: none"> • 5% - net profits for one such managerial person, and • 10% - net profits if there is more than one such managerial person. 	➤ Now it may pay remuneration to a managerial person or persons not exceeding the limits specified in such 196 of the Companies Act, 2013.										
4.	SECTION II REMUNERATION PAYABLE BY COMPANIES HAVING NO PROFIT OR INADEQUATE PROFIT WITHOUT CENTRAL GOVERNMENT APPROVAL	➤ It may pay remuneration to a managerial person by way of salary, dearness allowance, perquisites and any other allowances, - (A) not exceeding the ceiling limit of Rs. 24,00,000 per annum or Rs. 2,00,000 per month calculated on the following scale :- <table border="1" style="margin-left: 20px; margin-top: 10px;"> <thead> <tr> <th>(1)</th> <th>(2)</th> </tr> </thead> <tbody> <tr> <td>Where the effective capital</td> <td>Monthly remuneration</td> </tr> </tbody> </table>	(1)	(2)	Where the effective capital	Monthly remuneration	➤ It pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:— <table border="1" style="margin-left: 20px; margin-top: 10px;"> <thead> <tr> <th>(1)</th> <th>(2)</th> </tr> </thead> <tbody> <tr> <td>Where the effective capital is</td> <td>Limit of yearly remuneration payable shall not exceed (Rupees)</td> </tr> <tr> <td>1) Negative or Less than 5 crores</td> <td>30 Lakhs</td> </tr> </tbody> </table>	(1)	(2)	Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)	1) Negative or Less than 5 crores	30 Lakhs
(1)	(2)												
Where the effective capital	Monthly remuneration												
(1)	(2)												
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)												
1) Negative or Less than 5 crores	30 Lakhs												



		is payable shall not exceed (Rupees)	2) 5 crores and above but less than 100 crores	42 Lakhs
		1) Less than rupees 1 crore	75,000	
		2) rupees 1 crore or more but less than rupees 5 crore	1,00,000	3) 100 crores and above but less than 250 crores
		3) rupees 5 crore or more but less than rupees 25 crore	1,25,000	4) 250 crores and above
		4) rupees 25 crore or more but less than rupees 50 crore	1,50,000	60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores
		5) rupees 50 crore or more but less than rupees 100 crore	1,75,000	
		6) rupees 100 crore or more	2,00,000	
		(B) not exceeding the ceiling limit of Rs.48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale :-		
		(1)	(2)	
		Where the effective capital is	Monthly remuneration payable shall not exceed (Rupees)	
		1) Less than rupees 1 crore	1,50,000	
		2) rupees 1 crore or more but	2,00,000	
		<p>Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.</p> <p>Explanation.—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.</p> <p>(B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — 2.5% of the current relevant profit.</p> <p>Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled.</p> <p>➤ Now in General Information there is no need to give information regarding Export performance and net foreign exchange collaborations.</p>		



		<table border="1"> <tr> <td>less than rupees 5 crore</td> <td></td> </tr> <tr> <td>3) rupees 5 crore or more but less than rupees 25 crore</td> <td>2,50,000</td> </tr> <tr> <td>4) rupees 25 crore or more but less than rupees 50 crore</td> <td>3,00,000</td> </tr> <tr> <td>5) rupees 50 crore or more but less than rupees 100 crore</td> <td>3,50,000</td> </tr> <tr> <td>6) rupees 100 crore or more</td> <td>4,00,000</td> </tr> </table> <p>➤ Earlier General Information regarding Export performance and net foreign exchange collaborations should be given.</p> <p>➤ Disclosure:</p> <ul style="list-style-type: none"> • Earlier Remuneration package of the managerial person shall be informed to the Shareholders. • Earlier the disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any attached to the annual report. 	less than rupees 5 crore		3) rupees 5 crore or more but less than rupees 25 crore	2,50,000	4) rupees 25 crore or more but less than rupees 50 crore	3,00,000	5) rupees 50 crore or more but less than rupees 100 crore	3,50,000	6) rupees 100 crore or more	4,00,000	<p>➤ Disclosure:</p> <ul style="list-style-type: none"> • Now there is no need to inform about Remuneration package of the managerial person shall to the Shareholders. • Now the disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any attached to the Financial Statement. •
less than rupees 5 crore													
3) rupees 5 crore or more but less than rupees 25 crore	2,50,000												
4) rupees 25 crore or more but less than rupees 50 crore	3,00,000												
5) rupees 50 crore or more but less than rupees 100 crore	3,50,000												
6) rupees 100 crore or more	4,00,000												
5.	SECTION III :- REMUNERATION PAYABLE BY COMPANIES HAVING NO PROFIT OR INADEQUATE PROFIT WITHOUT CENTRAL GOVERNMENT	<p>➤ Earlier it was not there in the Schedule.</p>	<p>➤ In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—</p> <p>(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company</p>										



	APPROVAL IN CERTAIN SPECIAL CIRCUMSTANCES		<p>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 including such amount or amounts is within permissible limits under section 197.</p> <p>(b) where the company—</p> <p>(i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or</p> <p>(ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.</p> <p>(c) 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.</p> <p>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:—</p> <p>(i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;</p> <p>(ii) the auditor or Company Secretary of the company or where the</p>
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			<p>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.</p> <p>(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.</p> <p>(d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year, may pay remuneration up to Rs. 2,40,00,000 per annum.</p>
6.	<p>SECTION IV.— PERQUISITES NOT INCLUDED IN MANAGERIAL REMUNERATION:</p>	<p>➤ Children’s education allowance:- Earlier Maximum limit was Rs.5000 per month.</p> <p>➤ Earlier Explanation V was included in the clause which says that – the Remuneration Committee while approving the remuneration under this section, shall, -</p> <p>(a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance,</p>	<p>➤ Children’s education allowance:- Now the Maximum limit is Rs.12000 per month.</p> <p>➤ Now Explanation V has been removed from this clause.</p>



		past remuneration, etc. (b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.	
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**Part IV –
EXEMPTIONS TO CERTAIN COMPANIES**

S. NO.	PARTICULARS	PROVISIONS UNDER THE COMPANIES Act, 1956	PROVISIONS UNDER COMPANIES Act, 2013
7.	Exemptions	➤ Earlier it was not there in the Schedule.	➤ The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule.



Annexure 9

Comparison of related provisions in the Companies Act 2013 vis-à-vis corresponding provisions of the Revised Clause 49 of SEBI Listing Agreement incorporating amendments

S. No.	Particulars	Provisions in Companies Act 2013	Corresponding provisions of the Revised Clause 49 of SEBI Listing Agreement incorporating amendments which shall be made applicable to all listed companies from October 1, 2014
1	Prohibition of stock options to Independent Directors/Non Executive Director's compensation & disclosures	Section 149(9) provides that subject to the provisions of Sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under Sub-Section (5) of Section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.	<p>Clause-49 (Part-II)(C) provides that all fees / compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and shall require previous approval of shareholders in general meeting. The shareholders' resolution shall specify the limits for the maximum number of stock options that can be granted to non-executive directors, in any financial year and in aggregate.</p> <p>Provided that the requirement of obtaining prior approval of shareholders in general meeting shall not apply to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 2013 for payment of sitting fees without approval of the Central Government.</p> <p>Provided further that independent directors shall not be entitled to any stock option.</p>
2	Enhanced disclosure of remuneration policies	<ul style="list-style-type: none"> ➤ Section 178 provides that the Board of Directors of every listed company and such other class or classes of companies as may be prescribed shall constitute the Nomination and Remuneration Committee which shall recommend to the Board a remuneration policy for the directors, key managerial personnel and senior management. ➤ While formulating the policy, the Committee shall ensure that it involves a balance between fixed and 	<ul style="list-style-type: none"> ➤ Clause-49 (Part-IV) provides that the company through its Board of Directors shall constitute the nomination and remuneration committee which shall comprise at least three directors, all of whom shall be non-executive directors and at least half shall be independent. Chairman of the committee shall be an independent director. <p>Provided that the chairperson of the company (whether executive or non executive) may be appointed as a</p>



		<p>incentive pay reflecting short and long term performance objectives appropriate to the working of the company and its goals. Provided that such policy shall be disclosed in the Board's Report.</p> <p>➤ Further as per Section 197, listed companies need to 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 the rules may be prescribed.</p>	<p>member of the Nomination and Remuneration Committee but shall not chair such Committee</p> <p>➤ The role of the committee shall, <i>inter-alia</i>, include the following:</p> <ul style="list-style-type: none"> • Formulation of the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration of the directors, key managerial personnel and other employees; • Formulation of criteria for evaluation of Independent Directors and the Board; • Devising a policy on Board diversity; • Identifying persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, and recommend to the Board their appointment and removal. The company shall disclose the remuneration policy and the evaluation criteria in its Annual Report. <p>➤ The Chairman of the nomination and remuneration committee could be present at the Annual General Meeting, to answer the shareholders' queries. However, it would be up to the Chairman to decide who should answer the queries.</p>
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Annexure 10

FORM NO. MGT.9

EXTRACT OF ANNUAL RETURN as on the financial year ended on

[Pursuant to section 92(3) of the Companies Act, 2013 and rule 12(1) of the Companies (Management and Administration) Rules, 2014]

REMUNERATION OF DIRECTORS AND KEY MANAGERIAL PERSONNEL

A. Remuneration to Managing Director, Whole-time Directors and/or Manager:

Sl. no.	Particulars of Remuneration	Name of MD/WTD/ Manager				Total Amount
		
1.	Gross salary (a) Salary as per provisions contained in section 17(1) of the Income-tax Act, 1961 (b) Value of perquisites u/s 17(2) Income-tax Act, 1961 (c) Profits in lieu of salary under section 17(3) Income- tax Act, 1961					
2.	Stock Option					
3.	Sweat Equity					
4.	Commission - as % of profit - others, specify...					
5.	Others, please specify					
	Total (A)					
	Ceiling as per the Act					

B. Remuneration to other directors:

Sl. no.	Particulars of Remuneration	Name of Directors				Total Amount
		
	3. Independent Directors					
	<ul style="list-style-type: none"> • Fee for attending board committee meetings • Commission • Others, please specify 					
	Total (1)					
	4. Other Non-Executive Directors					
	<ul style="list-style-type: none"> • Fee for attending board committee meetings • Commission • Others, please specify 					



Sl. no.	Particulars of Remuneration	Name of Directors				Total Amount
	Total (2)					
	Total (B) = (1 + 2)					
	Total Managerial Remuneration					
	Overall Ceiling as per the Act					

C. REMUNERATION TO KEY MANAGERIAL PERSONNEL OTHER THAN MD/MANAGER/WTD

Sl. no.	Particulars of Remuneration	Key Managerial Personnel			
		CEO	Company Secretary	CFO	Total
1.	Gross salary (a) Salary as per provisions contained in section 17(1) of the Income-tax Act, 1961 (b) Value of perquisites u/s 17(2) Income-tax Act, 1961 (c) Profits in lieu of salary under section 17(3) Income-tax Act, 1961				
2.	Stock Option				
3.	Sweat Equity				
4.	Commission - as % of profit - others, specify...				
5.	Others, please specify				
	Total				