# HANDOUT_REMUNERATION OF MANAGERIAL PERSONNEL

For CA/CS Final Students

This handout deal with certain provisions related to Managerial Remunertion like Meaning of Managerial personnel and their remuneration along with total ceiling of managerial remuneration and various other connected details.

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**9/25/2009**

# Remuneration to Managerial Personnel

This handout deal with certain provisions related to Managerial Remuneration like Meaning of Managerial personnel and their remuneration along with total ceiling of managerial remuneration and various other connected details.

## Other features of this handout are:

1. Remuneration for professional services rendered by a director

2. Mode of payment of remuneration

3. Provisions of Sitting Fees

4. General permission granted by the RBI to pay sitting fees to non-resident non-whole-time directors
5. Remuneration payable to managerial personnel by company having no profits or inadequate profits
6. Meaning of 'no profit' or 'inadequate profit'

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11. Payment of remuneration to managerial person with the approval of the Central Government

12. Payment of guarantee commission to the managing or whole-time director is remuneration which requires approval of the Central Government

13. Amendment of provi sions relating to the managing, whole-time director or non-rotational directors require approval of the Central Government

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**Managerial personnel**

The term "Managerial Person" under the Act means a managing director, whole-time director or manager. A company may either have a managing director or manager and in any of the case may also have whole-time director. Part I of Schedule XIII to the Companies Act, 1956 also states that the managerial person means a managing director or whole-time director or a manager.

**Meaning of remuneration**

The remuneration includes pay, compensation, or reward for work, etc. The word remuneration is defined in the explanation appended to section 198 of the Companies Act. Accordingly, for the purposes of sections 198, 309, 310 and 311, remuneration shall include the following:—

(*a*) any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation, free of charge, to any of the company's directors and manager;

(*b*) any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the company's directors and manager;

(*c*) any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the company's directors and manager; and

(*d*) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the company's directors and manager or his spouse or child.

Expenditure incurred on maintenance of vehicles would fall within the meaning of the expression 'remuneration' and once remuneration is fixed as provided under section 309 it is not possible to state that the expenditure incurred by the company on personal use of car by directors would not be allowable deduction. In so far as the company is concerned the expenditure is business expenditure, which could not be disallowed as such. [*Sayaji Iron & Engineering Co.* v *CIT* (2002) Comp Cas 675 (Guj)].

## Total ceiling of managerial remuneration

Section 198(1) relates to overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits. The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed 11% of the net profits of the company for that financial year. Such net profits shall be computed in a manner laid down under sections 349 and 350, except that the remuneration of the directors shall not be deducted from the gross profits.

Remuneration is payable to all the directors including managing and whole-time directors and in any capacity. Therefore, it includes the remuneration for services rendered by him in any other capacity other than that of a director.

## Remuneration for professional services rendered by a director

Proviso of section 309(1) excludes any remuneration for professional services rendered by a director, provided that the director possesses requisite professional qualification for practicing the profession in respect of which they render special services. It is immaterial, whether the professional fees, which are paid to him is on a monthly basis or on a case to case basis. [*Stup Consultants Ltd.* v *Union of India*].

Comment [Cs1]: Important provision.

**Whether remuneration to deputy managing director/works manager/sales manager outside the provisions of section 198(1)?**

The Act does not recognise a "Deputy Managing Director". The designation would be misleading if the incumbent is not a director. However, if the person concerned is in fact not a director and is not occupying the position of a managing director, manager or holding other managerial office, his remuneration would be outside the scope of section 198.

Appointment of a director as a whole-time sales manager or works manager would attract the provisions of section 269 as from the date of his appointment since, as a director, he will be in the position of a whole-time director. The provisions of sections 309 and 198 would also be attracted.

**Whether remuneration to Technical directors or directors designated as technical outside the purview of section 198(1)?**

Though the directors are designated as "technical advisors' or as 'technical directors' the functions entrusted to them are not of a purely advisory or technical nature and in fact considerable administrative and executive powers, involving the exercise of managerial decision have been entrusted to them, and consequently the remuneration paid to them is held to fall within the scope of section 198(1) of the Act.

It is hardly necessary to stress the point that the formal designation given to a director is in no way significant, so far as the question of applicability of the provisions of the Act is concerned. The important point is whether the nature of the duties and powers delegated to a director would, in fact, place him in the position of a managing director or a director in the whole-time employment of a company.

**Whether remuneration to director working as technical adviser be included in 11% managerial remuneration?**

If a director of the company is working as a technical adviser to the company and is paid remuneration by way of monthly salary, his salary will be included in the 11% limit of managerial remuneration.

**Mode of payment of remuneration**

Within the limits of the maximum remuneration specified in section 198(1), a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.

Payment of monthly remuneration to an ordinary or a sitting director is governed by the provisions of section 309.

## SITTING FEES

A director who is not a managing or whole-time director may be paid sitting fees for attending meetings of the Board or of the committee of directors.

**Sitting fees paid for attending meeting are excluded from overall managerial remuneration ceiling**

The limit of 11% of the net profits on overall maximum managerial remuneration **shall be exclusive of any sitting fees** payable to directors for attending each meeting of the Board or committee.

**Approval of the Central Government is not required for increase in sitting fee within the prescribed limit**

No approval of the Central Government under section 198 will be necessary for an increase in the amount of sitting fee so long as such increase is within the limits prescribed by the Government.

By **Notification No. GSR 580(E), dated 24-7-2003,** the government has increased the fees payable to directors of public companies and private companies which are subsidiaries of public companies for attending the Board meetings and Committee thereof w.e.f. 24-7-2003 as under:

(*a*) Companies with a paid-up share capital and free reserves of Rs. 10 crore and above or turnover of Rs. 50 crore and above shall be paid sitting fees not exceeding the sum of twenty thousand rupees; and

(*b*) Other companies shall pay sitting fees not exceeding the sum of ten thousand rupees.

**Provisions in the Articles of Association**

The Articles shall contain a provision authorising payment of sitting fees to directors. Where the articles provide that sitting fees to directors may be paid in conformity with the provisions of the Companies Act, 1956 as may be applicable from time to time, then the Board of the said company could increase the sitting fees on the basis of the provision in the said Rules from time to time.

**Sitting fee, traveling expenses, etc. payable for attending meeting even, if no business is transacted at the meeting for want of quorum**

It has been clarified *vide* Circular No. 1 of 1972, dated 2-2-1972 (DCA) that sitting fees, traveling allowances, etc., are payable to a director who was present at the meeting of the Board or committees thereof with a view to participating in its proceedings though no business could be transacted at that meeting for want of quorum.

**General permission granted by the RBI to pay sitting fees to non-resident non-whole-time directors**

The Reserve Bank has granted general permission *vide* its Notification No. FERA 128/92-RB, dated 19th March, 1993 to companies in India to make payments in Indian rupees to their non whole-time directors who are resident outside India and are on a visit to India for the company's work such as attending Board meetings, etc., and are entitled to payment of sitting fees or commission or remuneration in accordance with the provisions contained in the concerned company's entered into by it or in any Board resolution or general body resolution passed by the company. Provided that the Central Government's approval has been obtained by the company under section 309(4) or section 310 of the Companies Act, 1956, wherever it applies.

**Comment [Cs2]:** In order to get the benefit of RBI general permission company should not be at default of Section 309 provisions.

However, Government of India's approval should have been obtained by the company under the Companies Act, 1956, for the appointment of the director, wherever applicable.

**REMUNERATION PAYABLE TO MANAGERIAL PERSONNEL BY COMPANY HAVING PROFITS**

As per provisions of Section I of Part II of Schedule XIII to the Companies Act, 1956, subject to the provisions of sections 198 and 309, a company may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed 5% of its net profits for one such managerial person, and if there is more than one such managerial person, 10% for all of them together. Section 309(3) provides that managerial personnel may be paid remuneration either by way of a monthly payment or at specified percentage of the net profits of the company or partly by one way and partly by the other. In case if remuneration exceeds 5% or 10% as the case may be, it cannot be paid without the approval of the Central Government.

**Requirement for approval of members in the general meeting and filing of e-Form 25C**

The appointment may be made by the Board subject to the approval of members in the next general meeting by way of ordinary resolution. The company shall also be required to file e-Form 25C electronically with the Registrar of Companies, within 90 days from the date of appointment.

## REMUNERATION PAYABLE TO MANAGERIAL PERSONNEL BY COMPANY HAVING NO PROFITS OR INADEQUATE PROFITS

Section II of Part II of Schedule XIII to the Companies Act, 1956 relates to remuneration payable to managerial person *i.e.*, a managing or wholetime director or a manager by companies having no profits or inadequate profits.

Following are the worth noting points in regard to payment of remuneration by companies having no profits or inadequate profits for appointment of a managerial person under the provisions of Schedule XIII to the Companies Act, 1956.

### Meaning of 'no profit' or 'inadequate profit'

If in any financial year, a company has suffered losses or the profit of the company computed in the manner laid down in sections 349 and 350, except that the remuneration of directors shall not be deducted from the gross profit, is less than the overall managerial remuneration payable under the provisions of section 198 read with the provisions of section 309 of the Act, shall be considered as 'no profit' or 'inadequate profit'.

It means that the remuneration payable to the managerial person is more than 5% of the net profit in case of one managerial person or more than 10% of the net profit in case of more than one managerial person.

### Computation of profit under section 349

Computation of net profits under section 349 has to be based on the net profits shown in the profit and loss account of a company prepared in accordance with the normal accounting principles and applicable accounting standards. Certain additions and deletions contained in section 349 are to be made.

| **Statements of computation of profit for the purpose of managerial remuneration covering various items of additions and deletions based on the analysis of section 349 is placed below:** |
|---|
| Managerial Remuneration<br>— Salaries<br>— Allowances<br>— Company's contribution to PF & other funds<br>— Benefits<br>— Personal accident insurance premium<br>— Leave Encashment<br>— Medical Reimbursement |

Profit Before Tax as per profit and loss account

*Add the following if debited to the profit & loss account before arriving at the profit before tax*

— Sitting fee

Provision for doubtful debts
Provision for doubtful advances
Loss on sale/disposal/discarding of assets
Loss on sale of investments
Write off of investments
Provision for diminution in the value of investments
Unserviceable fixed assets written off
Fall in the value of foreign currency monetary assets
Loss on cancellation of foreign exchange contracts
Provision for contingencies and unascertained liabilities
Provision for loss of subsidiary companies
Lease Premiums written off
Provision for warranty spares/supplies
Infructious project expenses written off
Provisions for redundancy in stores, spares and finished goods
Provision for anticipated loss in case of contracts
Loss on sale of undertaking
Provisi on for wealth tax
Voluntary compensation paid under VRS

*Less the following if credited to the profit & loss account for arriving at profit before tax*

Capital profit on sale/disposal of fixed assets
Capital profit on sale of immovable assets (if the company is engaged in business of wholly or partly buying and selling of any such immovable property, it shall not be deducted)
Profit on sale of undertaking/any part thereof
Profit on buy-back of shares
Profit/discount on redemption of shares or debentures
Profit on sale of investments
Compensation received on "Non compete" Agreements
Write back of provision for doubtful debts
Write back of provision for doubtful advances
Appreciation in the value of investments
Compensation received on surrender of tenancy rights
Profit on sale of undertaking
Consideration received on assignment of operating licences
Write back of provision for contingencies
Write off bad debts against the provision created earlier
Write back of provision for diminution in the value of investments
Excess of expenditure over income, i.e. loss of earlier years computed in accordance

| |
|---|
| with section 349.<br>Profit on sale of forfeited shares<br>Depreciation as provided in the books of account |

Depreciation as provided in the books
Profit on sale of shares of subsidiary/associated companies
Besides the above

(*a*) certain extraordinary items as required under accounting standard-5 are shown after arriving at profits before tax, such items also need to be considered for arriving at the profit under section 349 of the Companies Act;

(*b*) bounties and subsidies received from any Government or any Public Authority constituted or authorised by any Government shall also be added notwithstanding the fact that they may have been directly credited to capital reserves.

## MEANING OF THE "EFFECTIVE CAPITAL"

For the purpose of deciding remuneration payable to managerial persons in a company, the effective capital, which is the base for determining eligibility of remuneration, shall be calculated as on the last date of the financial year preceding the financial year in which the appointment is made.

For ascertaining the effective capital of a company for arriving at the maximum permissible remuneration, the following shall be considered and added:—

1. Paid-up share capital (excluding share application money and advances against shares);
2. Share premium account;
3. Reserves and surplus (excluding revaluation reserve); and
4. Long-term loans and deposits repayable after one year but excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee and short-term arrangements.

The following amount shall be deducted :—

1. Investments (except in the case of investment company);
2. Accumulated losses;
3. Preliminary expenses not written off.

The net figure will be considered as the effective capital of a company. Where the appointment of the managerial person is made in the year in which the company has been incorporated, the effective capital shall be calculated on the date of such appointment on the abovesaid basis.

## REMUNERATION COMMITTEE

### Requirement for appointment of a Remuneration Committee of the Board

Schedule XIII of the Companies Act, 1956 as amended by **Notification No. GSR 36(E), dated 16th January, 2002** provides that payment of remuneration of a managerial person shall be approved by a resolution passed by the Remuneration Committee. Therefore, it shall be compulsory for a public company or a private company, which is a subsidiary of a public company to constitute and appoint a remuneration committee of the directors.

*Explanation IV* of Schedule XIII, inserted by Notification No. GSR 36(E), dated 16th January, 2002 provides that for the purposes of this section, 'Remuneration Committee' means that a committee which consists of at least three non-executive independent directors including nominee director or nominee directors, if any.

Therefore, if a company is not capable to appoint a remuneration committee consisting of three non-executive independent directors it shall not be eligible to appoint or re-appoint a managerial person under the provisions of Schedule XIII of the Companies Act and it shall be required to obtain approval of the Central Government for that purpose in terms of the provisions of section 269 of the Act.

### Company should have at least three non-executive independent directors

To fulfill the requirements for approval of remuneration payable to a managerial person by a remuneration committee, it shall be compulsory for a company to have at least three non-executive independent directors in the Board of directors at the time of appointment of a managerial person. However, a nominee director of a financial institution shall be considered as an independent director and may be appointed as a member of the remuneration committee.

### Company should not have committed any default in repayment of any of its debts

The Part A and Part B of Part II of Schedule XIII of the Act provides that the company should not have 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.

Therefore, if a company has committed any of the above said default it shall not be eligible to appoint or re-appoint a managerial person under the provisions of Schedule XIII of the Companies Act and it shall be required to obtain approval of the Central Government for that purpose in terms of the provisions of section 269 of the Act.

### Requirement of approval by way of a special resolution passed in general meeting of members

In the following cases the appointment of managerial person shall be made by the members at the general meeting by way of a special resolution:—

(*a*) if the appointee has not completed the age of 25 years, but has attained the age of majority or he has attained the age of 70 years;

(*b*) where in any financial year during the currency of tenure of the managerial person a company has no profits or its profits are inadequate, and the proposed remuneration to managerial person by way of salary, dearness allowance, perquisites and other allowances not exceeding the limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calcul ated on the scale as given in Notification No. GSR 36(E), dated 16th January, 2002.

**Tenure of appointment**

In terms of the amendments made by in Schedule XIII of the Companies Act, 1956 *vide* Notification No. GSR 36(E), dated 16th January, 2002 a company may appoint managerial person for a period of five years at a time.

However, if a company proposes to pay remuneration in excess of Rs. 24,00,000 p.a. or Rs. 2,00,000 p.m. and the company has no profits or its profits are inadequate, the remuneration will be approved for a period not exceeding three years at a time.

**Maximum remuneration payable to managerial person in case he is a managerial personnel in two companies**

Comment [Cs3]: Most Important provision for Exam and professional working.

Section III of Part II of Schedule XIII to the Companies Act, 1956 *inter alia* provides that the total remuneration which can be paid by two companies in which an individual is a managerial person shall not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person. It is to be noted that Section III is also subject to the provisions of Sections I and II.

As per Press Note No. 2/96, dated 16-9-1996 issued by the Department of Company Affairs *vide* F. No. 1/18/96-CL V *inter alia* provides that a person who is a managerial person in more than one company shall be able to draw remuneration from one or both the companies.

For making payment to a managerial person from two companies, the following steps are to be taken:—

(*i*) ascertain that which of the following two sections is applicable to both the companies of which one common individual is a managerial person;

**Section I** — Remuneration payable by companies having profits.

**Section II** — Remuneration payable by companies having no profits or inadequate profits.

(*ii*) working out of maximum remuneration which can be paid to the managerial person by each company separately, the higher of above two maximum limits will be the ceiling on total maximum remuneration which can be paid to such managerial person by both companies taken together.

## PAYMENT OF REMUNERATION TO MANAGERIAL PERSON WITH THE APPROVAL OF THE CENTRAL GOVERNMENT

### Requirement of approval of the Central Government for payment of remuneration to managerial person

A company which has no profits or has inadequate profits shall not pay to its directors, including any managing or wholetime director or manager, by way of remuneration any sum exclusive of any fees payable to directors under section 309(2), except with the previous approval of the Central Government. [Section 198(4)]

However, approval of the Central Government shall not be required for payment of remuneration to its managerial person if the appointment has been made in accordance with the provisions of section 269 read with Schedule XIII to the Act. [Section 198(4)]

**Comment [Cs4]:** Great interpretation involved here.

### Compulsory requirement of approval of the Central Government for appointment of managerial personnel

If the appointment and remuneration of a managerial person has not been made in accordance with the provisions of Schedule XIII, it shall be got approved by the Central Government. In order to obtain approval of the Central Government, application shall be made in the prescribed Form 25A within a period of ninety days from the date of appointment.

Approval of the Central Government for payment of remuneration shall be necessary only if remuneration exceeds 5% of the net profits for one such director, and if there is more than one such director, 10% for all of them put together. This aforesaid limit is applicable in the case of a company having profits.

### Compulsory requirement for prior approval for payment of remuneration exceeding the ceiling limit of Rs. 48,00,000 p.a. or Rs. 4,00,000 p.m.

In the case of a company having negative or zero effective capital and proposes to pay managerial remuneration to a person in excess of Rs. 48,00,000 p.a. or Rs. 4,00,000 p.m. calculated on the scale in terms of the amendments made in Schedule XIII of the Companies Act, 1956 *vide* Notification No. GSR 36(E), dated 16th January, 2002 the appointment of such managerial person shall be made subject to the prior approval of the Central Government.

### Increase in remuneration and requirement for approval of the Central Government

Section 310 stipulates that in case of a public company, or a private company which is a subsidiary of a public company, any provision relating to increase in the remuneration of any director including a managing or whole-time director, or any amendment thereof, which purports to increase or has the effect of increasing, whether directly or indirectly the amount thereof shall not have any effect—

(*a*) in cases where Schedule XIII is applicable, unless such increase is in accordance with the conditions specified in that Schedule; and

(*b*) in any other case, unless it is approved by the Central Government; and the amendment shall become void if, and in so far as, it is disapproved by that Government.

The provision relating to the remuneration may be contained in the company's Memorandum or Articles, or in any agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors.

Following are the other important provisions in this regard:—

(1) Approval of the Central Government shall be obtained where the provision for increase in remuneration is not in accordance with the provisions of Schedule XIII to the Act. In order to obtain approval of the Central Government, application shall be made in the prescribed eForm 25A. (Previously it was required to submit in the Form 26, which has been merged with an eForm 25A vide Notification No. GSR 56(E) dated 10th Feb., 2006)

(2) Section 310 does not apply to an independent private company. It also does not apply to a Government Company — DCA Notification No. GSR 235, dated 31-1-1978.

**Amendment of provisions relating to the managing, whole-time director or non-rotational directors require approval of the Central Government (Section-268)**

In the case of a public company, or a private company which is a subsidiary of a public company, an amendment of any provisions relating to the appointment or re-appointment of a managing, wholetime director or of the directors not liable to retire by rotation, whether that provision be contained in the company's Memorandum or Articles, or in any agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors shall not have any effect unless approved by the Central Government and the amendment shall become void if, and in so far as, it is disapproved by that Government. An application in the prescribed e-Form 25B electronically has to be made to the Central Government.

The application need not be made where a new provision regarding appointment or re-appointment of a managing director, wholetime director or director not liable to retire by rotation is to be inserted. The approval would be required only when an existing provision in the Articles of Association is amended.

# 'NON-EXECUTIVE DIRECTOR'

**Meaning of 'Ordinary' or 'Non-Executive Director'**

Non-executive directors are those on the Board of a company who are other than a managing or whole-time director. These non-executive directors normally receive only sitting fees for every meeting of the Board and Committee attended by them.

Therefore, a director who is neither inthe whole-time employment of the company nor a managing director is called an ordinary director or non-executive director.

**Ceiling on remuneration of ordinary or non-executive directors**

Sections 309(4) and 309(7) deals with remuneration payable to the part time directors, that is to say the directors who are neither in the whole-time employment of the company nor a managing director, within the overall limit stipulated in section 198(1) and further in section 309(4) itself.

Section 309(4) authorises payment of remuneration to part time directors in two alternative ways:—

(*i*) by way of monthly, quarterly or annual payment with the approval of the Central Government; and/or

(*ii*) by way of commission without the approval of the Central Government, subject to the approval of the members by way of special resolution.

Therefore, if the commission payable exceeds the limit, payment can be made only with the approval of the Central Government.

**Quantum of commission that may be paid to non-executive directors**

Section 309(4) provides that a director or directors who is/are not managing or whole time directors may be paid remuneration periodically with the approval of the Central Government or may be paid commission, provided the said remuneration shall not exceed 1% of the net profits if the company has a managing or whole-time director and 3% in other cases. The net profits shall be computed in terms of sections 198, 349 and 350 of the Act.

**Commission may be paid to all non-executive directors**

At the time of initiating the payment of commission to non-executive directors, subject to necessary approvals, the Board may decide that the same shall be shared equally by and amongst all such directors or in any other way as may be approved by the Board or as prescribed in the Articles.

**Prior approval of the members**

Besides the approval of the Central Government, no payment to non-executive directors without the prior approval of the company in general meeting accorded by a special resolution in terms of section 309(4) can be made.

**Special resolution shall be valid for a period of five years**

The approval of members by way of special resolution will be valid at a time for a period of five years. The said approval shall be prior to the payment of the commission.

**Renewal of special resolution**

The special resolution passed under section 310(4)(*b*) is valid for a period of 5 years at a time, it may be renewed for a further period of five years at a time and any renewal must be done not earlier than one year from the date on which it is to come into force.

**Articles must provide for remuneration to non-executive directors**

If there is no provision in the articles for payment of remuneration to non-executive directors, action shall first be taken to amend the provisions of articles to include a suitable provision by way of a special resolution at a general meeting.

**Central Government's approval**

Although the section prescribes that the approval of the Central Government is necessary only for payment of fixed remuneration to non-executive directors, it is found that the Department is of the view that a company cannot pay commission to non-executive directors based on 1% or 3% of net profits, as the case may be, without the prior approval of that government on the ground that any such payment would mean increase in the remuneration to a director which would attract the provisions of section 310 and thus need the approval of the Central Government.

The Government's view is that where directors receive fees for Board meetings attended by them, proposal for payment of commission or other remuneration to them would mean increase in remuneration under section 310. However, where the directors do not receive Board meeting fees or other remuneration, Central Government's approval is required as any remuneration proposed to be paid will be deemed to be an increase in remuneration and will require approval of the Government under section 310 and also approval of members by special resolution.

**Comment [Cs5]:** Most important and surprise provision.

**Application to the Central Government**

The application for payment of remuneration to non-executive directors shall be made in e-Form 25A. (Previously in the Form 26, which has been merged in the e-Form 25A by the Notification No. GSR 56(E) dated 10th Feb., 2006) Before making the application, the company shall publish a notice to the members of the company indicating the nature of the application proposed to be made, one in a newspaper in the principal language of the district in which the registered office is situated and also in an English newspaper circulating in that district. Copies of the notices duly certified as to date of publication shall be sent with the application. Fees as prescribed in the Companies (Fees on Applications) Rules, 1999 shall accompany the application.

It may be noted that no form is prescribed for making application to the Central Government under section 309(4) for payment of remuneration in excess of 1% or 3%. But where application is made under section 310 even for payment within 1% or 3%, the application shall be in the prescribed Form 26 besides issue of general notice under section 640B. Copy of the above application shall be forwarded to the Registrar of Companies also.

**Excess remuneration, if any, paid to directors**

If any director draws remuneration in excess of the limits provided in section 309 or without the approval of the Central Government, where required, he shall refund such excess to the company unless on an application made by the company, the Government waives the recovery for good and sufficient reasons. The application may be made in the form of a letter after it is approved by the Board. Such waiver of excess remuneration also requires the approval of members.

**Payment of traveling, boarding and lodging expenses**

The Articles shall contain a provision for payment of traveling, boarding and lodging expenses to directors in connection with the business of a company. In this context the clarification *vide* Circular No. 5/75, dated 1-2-1975 given by the DCA have been reproduced as under:

"Whether the condition restricting traveling and daily allowances, which may be paid to the directors of the company for performing journeys on the business of the company to the limits laid down in rule 6D of the Income-tax Rules, 1962 should be imposed, has been considered in consultation with the Company Law Advisory Committee. Having regard to the various practical difficulties faced by the companies in complying with the aforesaid condition, the Central Government have decided that no such condition could be imposed. The companies may, however, be advised to ensure that the payment will be on the basis of actual expenditure and expenditure kept to the minimum."

**Payment of guarantee commission to directors is not remuneration**

The Department had issued earlier Circular No. 14/50-CL.V, dated 16-12-1969 according to which guarantee commission payable to the directors for personal guarantee on loans to the company was to be treated as remuneration under section 309(1) of the Companies Act, 1956. In *Sussen Textile Bearings Ltd*. v *Union of India* reported in (1984) 55 Comp Cas 492, it was held by Delhi High Court that guarantee Commission paid by a company to its director for standing surety for loans and credit facilities taken by the company was not a remuneration within the meaning of section 309 of the Companies Act, 1956 and approval of the Central Government was not necessary. [Circular No. 3/94 (F. No. 14/3/87-CL.V), dated 16-2-1994]

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