Appointment And Remuneration of Managerial Personnel (Chart 4.1)

Section 196 - Appointment of MD, WTD, Manager

Section 196(1)

Co. shall not appoint MD & manager at same time

Section 196(2) - Tenure [A]

1) Co. shall not appoint or re-appoint any person as its Managing Director (MD), Whole Time Director (WTD) or Manager for a term exceeding 5 yrs

2) No re-appointment shall be made earlier than 1 year before expiry of his term

Section 196(5) - Validity of acts [A]

If appointment not approved in GM, acts done before approval shall be deemed to be valid

Section 196(3) - Disqualification

Co. shall not appoint/ continue employment of person as MD, WTD or Manager who-

a) is below age of 21 yrs or has attained age of 70 yrs

Person attained age of 70 yrs be appointed by SR & explanatory statement to be annexed to notice & indicate justification

b) is undischarged insolvent or has been adjudged as insolvent

c) has suspended payment to creditors or makes, or has made, composition with them

d) has been convicted by court of offence & sentenced for more than 6 months

Schedule V - Part I

Person shall not be eligible for appointment as MD or WTD or Manager unless he satisfies following conditions -

a) Not been Imprisoned & not been fined exceeding Rs.1,000/- under 16 acts as specified

b) Not been detained for any period under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

In case CG has given its approval to appointment of person convicted/detained under (a) or (b) no further approval required for subsequent appointment

c) Has completed age of 21 yrs & not attained age of 70 yrs

Where he has attained age of 70 yrs & where his appointment is approved by SR in GM, no further approval of CG required

d) where he is managerial person in more than 1 Co. he draws remuneration from 1 or more companies subject to ceiling provided in Section V of Part II

e) he is resident of India

Section 196(4) - Procedure of appointment [A]

a) Terms & conditions of appointment & remuneration payable be approved by BOD at BM

b) Same shall be subject to approval of shareholders by resolution at next GM

c) In case appointment is at variance to conditions of Schedule V appointment shall be approved by CG

d) Notice convening BM or GM shall include terms & conditions of appointment, remuneration payable & other matters including interest of director

e) Return Form No. MR.1 along with fee shall be filed with Registrar within 60 days of appointment

Section 203 - Appointment of Key Managerial Person

Section 203(1) - Who is KMP?

1) Every Listed Co.

2) Public Co. having PSC Rs. 10 Crore or more

shall have whole time key managerial personnel:-

a) MD/CEO/Manager & in their absence, WTD

b) CS &

c) CFO

2) Also, Co. other than covered above, which has PSC of Rs. 5 crore or more shall have a whole-time CS

3) Individual shall not be appointed/reappointed as chairperson, in pursuance of articles, as well as MD or CEO at the same time unless -

a) articles provide otherwise or

b) Co. does not carry multiple businesses

4) Above prohibition shall not apply to Co. engaged in multiple businesses & which has appointed 1 or more CEO for each such business as may be notified by CG

Conditions for appointment

1) Whole-time KMP shall be appointed by resolution at BM containing terms & conditions of appointment including remuneration

2) Whole-time KMP shall not hold office in more than 1 Co. at same time except in its Subsidiary Co.

3) No restriction on KMP from being director in Co. with permission of Board

4) Whole-time KMP holding office in more than 1 Co. at same time on commencement of this Act, shall, within period of 6 mths choose 1 Co. in which he wishes to continue

5) Co. may appoint person as its MD, if he is MD/Manager of 1 and of not more than 1 other Co. by UBR

6) Specific Notice of such meeting, & of resolution to be moved thereat has to be given to directors in India

Section 203(4) - Casual Vacancy

Filled-up by Board in BM within 6 months from date of such vacancy

Section 203(5) - Penalty for Contravention

Company - Fine - Rs. 1 to 5 Lakhs

Director & KMP in default -

Fine - Upto Rs. 50,000/-

Further fine for continuing contravention - upto Rs.1,000/- for every day after 1st during which contravention continues

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[A] *Section 196(2), (4), (5) shall not be applicable to Government Company*

[A] *Section 196 (4), (5) shall not be applicable to Private Company*

[A] *Sub-section (1), (2), (3) and (4) of this section shall not apply to MD or CEO or & in their absence, whole-time director of Government Company*

Appointment And Remuneration of Managerial Personnel (Chart 4.2 - a)

Managerial Remuneration - Section 197 + Schedule V

Maximum Remuneration in case of PROFITS
Limits based on "Percentage of Net Profits" given in Section 197 itself

Total Managerial Remuneration payable by a Public Company in a Financial Year
Not exceed 11% of Net Profit of the Company

To MD or WTD or Manager

- If there is only 1 MD/WTD/Manager → Maximum 5% of Net Profits
- If there is More than 1 MD/WTD/Manager → Maximum 10% of Net Profits

To Other Directors

- If there is no MD/WTD/Manager → Maximum 3% of Net Profits
- If there is MD/WTD/Manager → Maximum 1% of Net Profits

With Approval of the Company in General Meeting these limits can be exceeded

However, In case if Company wants to exceed 11% of Net Profits then approval of Central Government required

*Effective Capital =

Add:	Less:
1) Paid up Equity Share Capital } Calls in Arrears to be reduced	1) Investments
2) Paid up Preference Share Capital } Calls in Arrears to be reduced	2) P&L Debit Balance
3) Securities Premium	3) Preliminary Expenses
4) All Reserves (Excluding Revaluation Reserve)	
5) Long term Loans and Deposits repayable after 1 year	

Effective Capital shall be calculated as on last date of financial year preceding financial year in which appointment of managerial person is made

Maximum Remuneration in case of LOSSES or INADEQUATE PROFITS
Limits based on "Effective Capital*" given in Schedule V Part II

Maximum Remuneration Limit in case of Loss/ Inadequate Profit

In case Managerial Person was NOT

a) Security holder ≥ 5,00,000 (Nominal Value)
b) Employee
c) Director
d) Relative of Director/Promoter
at anytime during the 2 Years prior to his appointment as Managerial Person

Maximum Remuneration = Higher of (A) or (B)

(A) → Slab

(B) = 2.5% of Current Relevant Profit

In Other Cases

Follow the Slab in (A)

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

If the resolution passed by the shareholders is a special resolution, this limit shall be doubled

1) Payment of remuneration is approved by Board Resolution and NRC Approval if NRC is there
2) Company has not made any default in repayment of debts for continuous period of 30 days

If Co is not able to comply with Schedule V, then previous approval of CG shall be taken

A *Managerial person who has been appointed in accordance with provisions of Schedule XIII of Companies Act, 1956, may continue to receive remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of 1956 Act even if part of his/her tenure falls after 1st April, 2014*

Appointment And Remuneration of Managerial Personnel (Chart 4.2 - b)

Remaining Provisions of Section 197

A Section 197 - Not applicable to Government Company

Section 197(4) - Remuneration rendered in any other capacity

1) Remuneration payable to directors, including any MD/WTD/Manager, shall be determined, in accordance with & subject to this section, either by
a) AOA or
b) resolution or,
c) if AOA so require, by SR in GM &
2) Remuneration determined shall be inclusive of remuneration payable to him for services rendered by him in any other capacity
3) Remuneration for services rendered by such director in other capacity shall not be included if -
a) services rendered are of professional nature &
b) in opinion of NRC (if any) or BOD, director possesses requisite qualification for practice of profession

Section 197(5) - Sitting Fees to directors

1) Director may receive fee for attending meetings of Board or Committee thereof or for any other purpose whatsoever as may be decided by Board
2) Sitting fees not exceed Rs. 1,00,000 per meeting, as per Rules*
3) For Independent Directors & Women Directors, sitting fee shall not be less than other directors
4) Percentages u/s 197(1) shall be exclusive of any sitting fees payable to directors for attending meetings or for any other purpose whatsoever as may be decided by Board

Section 197(6) - Mode of Remuneration

Remuneration be paid either monthly or at specified % of Net Profits of Co or partly by one way & partly by other

Section 197(7) - Remuneration of ID

Independent director(ID) shall not be entitled to stock option & may receive remuneration as-
1) sitting fees u/s 197(5)
2) reimbursement of expenses for participation in Board & other meetings &
3) profit related commission as may be approved by members

Section 197(9), (10) - Refund of excess

1) If any director draws or receives any sums in excess of limit prescribed or without prior sanction of CG, he shall refund the same to Co & until refunded, hold it in trust for Co
2) Co shall not waive recovery of any sum refundable to it u/s 197(9) unless permitted by CG

Section 197(12) - Disclosure by Listed Co

1) Listed Co shall disclose in Board's Report, ratio of remuneration of each director to median employee
2) As per Rules*, Board's Report shall include statement showing name of every employee who-
a) if employed throughout FY, was in receipt of remuneration, in aggregate, was not less than Rs. 60,00,000/-
b) if employed for part of FY, was in receipt of remuneration, in aggregate, was not less than Rs. 5,00,000/-pm
c) if employed throughout FY or part, was in receipt of remuneration, in aggregate, is in excess of that drawn by MD/WTD/Manager & holds by himself or along with his spouse & dependent children, not less than 2% of equity shares of Co
d) Statement shall also indicate designation, remuneration received, nature of employment, qualification & experience, date of commencement of employment, age, last employment held by employee before joining Co, % of equity shares held, & whether any employee is relative of any director or manager & if so, name of such director or manager

Section 197(13) - Insurance for Indemnification

1) Where insurance is taken by Co on behalf of MD/WTD/Manager/ CEO/ CFO/ CS for indemnifying any of them against liability in respect of any negligence, misfeasance, breach of duty/ trust for which they may be guilty in relation to Co, premium paid on such insurance shall not be treated as part of remuneration
2) If such person is proved to be guilty, premium paid on such insurance shall be treated as part of remuneration

Section 197(14) - Receiving Commission

Director in receipt of any commission from Co & who is MD/ WTD shall not be disqualified from receiving remuneration or commission from any holding/ subsidiary of such Co subject to disclosure in Board's Report

Section 197(15) - Contravention

Person contravening this Section shall be punishable with Fine -Rs. 1,00,000/- to Rs. 5,00,000/-

Remaining provisions of Schedule V to Companies Act, 2013

Section III of Part II

Co. may, without CG approval, pay remuneration in excess of amounts provided in Section II in cases-
1) Where remuneration is paid by any other Co. & that other Co. is either Foreign Company or has got approval of shareholders in GM, & treats amount as managerial remuneration u/s 197 & total managerial remuneration payable is within permissible limits u/s 197
2) Where Co. is-
a) newly incorporated, for 7 yrs from date of incorporation or
b) sick co, for whom scheme of revival or rehabilitation has been ordered by BIFR or NCLT, for 5 years from date of sanction
it may pay remuneration upto 2 times permissible u/s II
3) Where remuneration of managerial person exceeds limits in Section II but has been fixed by BIFR or NCLT
4) Conditions for Payment of Remuneration-
a) Managerial person is not receiving remuneration from any other Co. except Point(1)
b) Auditor/CS/Secretary Certifies that
- all secured creditors & term lenders have stated in writing that they have no objection
- there is no default on payments to any creditors, & all dues to deposit holders are being settled on time
5) Co. in SEZ which has not raised money by public issue of shares/ debentures in India & has not made any default in India in repayment of debts for continuous 30 days in any FY, may pay remuneration upto Rs. 2,40,00,000 p.a.

Section IV of Part II

1) Managerial person shall be eligible for following perquisites (not be included in computation of ceiling) -
a) Contribution to PF, superannuation fund or annuity fund to extent these not taxable under Income-tax Act, 1961
b) Gratuity payable @ not exceeding half month's salary for each completed year of service and
c) Encashment of leave at end of tenure
2) Expatriate Managerial Personnel(including NR Indian) shall be eligible to following perquisites in addition to above
a) Children's education allowance - limited to maximum Rs. 12,000pm per child or actual expenses incurred, whichever is less
b) Holiday passage for children studying outside India or family staying abroad - once in year by economy class or once in 2 yrs by 1st class to children & members of family from place of study or stay abroad to India if they are not residing in India, with managerial person
c) Leave travel concession

Section V of Part II

Managerial Person shall draw remuneration from 1 or both Co. provided that total remuneration drawn from Co. does not exceed higher maximum limit admissible from any 1 of companies of which he is Managerial Person

PART III-Provisions applicable to Part I , II

1) Appointment & remuneration shall be approved by resolution of shareholders in GM
2) Auditor/ CS/ Secretary certify that requirement of this Schedule have been complied with & such certificate shall be incorporated in return filed with Registrar u/s 196(4)

PART IV - Exemption by CG

CG may by notification, exempt any class of Co. from requirements of this Schedule

* Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Appointment And Remuneration of Managerial Personnel (Chart 4.3)

Section 198 - Calculation of profits

While calculating Net Profits for the purpose of Section 197 -

Section 198(2) Items to be credited to P&L

Bounties & 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 (In short, Government Grants)

Section 198(3) Items not to be credited to P&L

a) Securities Premium
b) profits on sales by company of forfeited shares
c) Capital Reserve due to sale of Undertaking
d) profits from sale of immovable property/fixed assets of capital nature comprised in undertaking, unless business consists, whether wholly or partly, of buying & selling property/assets except difference between Original Cost and WDV
e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in P&L on measurement of asset or liability at fair value (In short, Revaluation profits based on Fair Value)

Section 198(4) Items to be deducted

a) all usual working charges
b) directors' remuneration
c) bonus/commission paid or payable to any member of company's staff whether on whole-time or part-time basis
d) tax notified by CG in nature of tax on excess/ abnormal profits
e) tax on business profits imposed for special reasons/ circumstances & notified by CG
f) interest on debentures
g) interest on mortgages/ loans/ advances
h) interest on unsecured loans/ advances
i) expenses on repairs (not of Capital Nature) to immovable/movable property
j) outgoings inclusive of contributions u/s 181
k) depreciation to extent specified in section 123
l) excess of expenditure over income
m) any compensation/ damages on virtue of legal liability including breach of contract
n) any sum paid by way of insurance against risk of meeting any liability such as is referred to in clause (m) above
o) debts considered bad & written off

Section 198(5) Items not to be deducted

a) Income Tax payable under Income Tax Act, 196
b) any compensation, damages or payments made like VRS
c) loss on Sale of Undertaking except Loss on Sale of Fixed Asset in Ordinary Course
d) change in carrying amount of an asset or liability recognised in equity reserves including surplus in P&L on measurement of asset or liability at fair value (In short, Revaluation Loss based on Fair Value)

Section 199 - Recovery of managerial remuneration in certain cases

If Co. is required to re-state its financial statements due to fraud or non-compliance with requirement under this Act & rules made thereunder, Co. shall recover from past or present MD or WTD or manager or CEO (by whatever name called) who, during period for which financial statements are required to be re-stated, received remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements

Section 200 - Central Government or company to fix limit with regard to remuneration

CG or company may, while according its approval for appointment u/s 196 or for remuneration u/s 197, fix remuneration at such amount or percentage as it may deem fit

Factors to be Considered -

As per Section 200 -

1) Financial position of company
2) Remuneration or commission drawn by individual concerned in any other capacity
3) Remuneration or commission drawn by him from any other company
4) Professional qualifications & experience of individual concerned
5) Any other matters as may be prescribed

As per Rules*

1) Financial & operating performance of company during 3 preceding F.Y.
2) Relationship between remuneration & performance
3) Principle of proportionality of remuneration within company
4) Whether remuneration policy for directors differs from that for employees if so, an explanation for difference
5) Securities held by director, including options & details of shares pledged as at end of preceding F.Y.

*Companies(Appointment & Remuneration of Managerial Personnel) Rules, 2014

Appointment And Remuneration of Managerial Personnel (Chart 4.4)

Section 201 - Forms of, and procedure in relation to, certain applications

1) Application to CG shall be made in Form MR - 2 accompanied by fee
2) Before making application to CG, Co. shall issue General Notice to members, indicating nature of application proposed
3) Notice shall be published in newspaper in principal language of district where Registered Office of Co. is situated & English newspaper
4) Copies of notice shall be attached to application
5) As per Rules,* Co. other than Listed & Subsidiary of Listed may without CG approval pay remuneration beyond ceiling specified in Schedule V, subject to following conditions-
a) Remuneration is approved by BR in BM & NRC if any
b) Co. not made default in repayment of its debts for continuous period of 30 days in preceding FY before payment
c) Shareholders approval by SR in GM for Remuneration for a period not exceeding 3 yrs
d) Statement along with notice calling GM shall contain information as per Schedule V including reasons & justification for Remuneration beyond said limit
e) Co. has filed Balance Sheet and Annual Return with ROC
f) Application shall be made to CG within 90 days from appointment

Section 202 - Compensation for loss of office of managing or whole-time director or manager

1) Co. may make payment to MD/WTD/ Manager but not to any other director, by way of compensation for loss of office/ consideration for retirement
2) Payment shall not be made:
a) where director resigns due to reconstruction of Co or amalgamation with other body corporate & appointed as MD/WTD/Manager/other officer of Reconstructed/Amalgamated Co.
b) where he resigns otherwise than on reconstruction/ amalgamation
c) where office is vacated u/s 167(1)
d) where Co. is being wound up, by an order of Tribunal or voluntarily, if winding up was due to his default
e) where he is guilty of fraud/breach of trust or gross negligence in conduct of affairs of Co. or Subsidiary or Holding Co.
f) where he has instigated, or is directly or indirectly responsible for termination of his directorship
3) Compensation not exceed remuneration he would have earned for remainder of his term or 3 yrs, whichever is shorter
4) No payment if winding up of Co. is commenced before or within 12 months after, date on which he ceased to hold office
5) No prohibition on payment to MD/WTD/Manager, of any remuneration for services rendered by him to Co. in any other capacity

Section 204 - Secretarial audit for bigger companies

1) Every Listed Co.
2) Public Co. having PSC Rs. 50 crore or more or
3) Public Co. having turnover Rs. 250 crore or more
shall annex with its Board's Report, a Secretarial Audit Report in Form MR - 3
4) It shall be duty of Co. to give all assistance & facilities to CS
5) BOD, in their Report shall explain any qualification or observation or other remarks made by CS in his report
6) Penalty - Company, or officer or CS in default, shall be punishable with Fine - Rs. 1 to 5 Lakhs

Section 205 - Functions of Company Secretary

1) Functions of CS -
a) report to Board about compliance of various provisions applicable to Co.
b) ensure that Co. complies with applicable secretarial standards
c) provide to directors such guidance as they may require, with regard to their duties, responsibilities & powers
d) facilitate convening of meetings, attend Board, Committee & GM, maintain their minutes
e) obtain approvals from Board, GM, government & other authorities
f) represent before various regulators, & other authorities under Act in connection with discharge of various duties under Act
g) assist Board in conduct of affairs of company;
h) assist & advise Board in ensuring good corporate governance & in complying with corporate governance requirements & best practices
i) discharge such other duties as have been specified under Act or rules
j) other duties assigned by Board
2) Acts done by CS will not affect functions of BOD, Chairman, MD, WTD