

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

PART I 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 Excises and Salt 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, 1956 (1 of 1956),
- (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 monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),
- (xii) the Foreign Exchange Regulation Act, 1973 (46 of 1973),
- (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, 1992 (22 of 1992) ;

(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 ;

3[(c) he has completed age of 25 years and has not attained the age of 70 years :

Provided that where -

- (i) he has not completed the age of 25 years, but has attained the age of majority ; or
- (ii) he has attained the age of 70 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 III of Part II ;]
- (e) he is resident in India.

Explanation 4[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 vocation in India.

4[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 sections 198 and 309, a company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent for all of them together.

Section II - Remuneration payable by companies having no profits or inadequate profits

1[1. Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, 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 :-

Where the effective capital of company is Monthly remuneration payable shall not exceed (Rupees)

- (i) less than rupees 1 crore 75,000
- (ii) rupees 1 crore or more but less than rupees 5 crore 1,00,000
- (iii) rupees 5 crore or more but less than rupees 25 crore 1,25,000
- (iv) rupees 25 crore or more but less than rupees 50 crore 1,50,000
- (v) rupees 50 crore or more but less than rupees 100 crore 1,75,000
- (vi) rupees 100 crore or more 2,00,000

Provided that the ceiling limits specified under this sub-paragraph shall apply, if -

- (i) payment of remuneration is approved by a resolution passed by the 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.

(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 : -

Where the effective capital of company is Monthly remuneration payable shall not exceed (Rupees)

- (i) less than rupees 1 crore 1,50,000
- (ii) rupees 1 crore or more but less than rupees 5 crore 2,00,000
- (iii) rupees 5 crore or more but less than rupees 25 crore 2,50,000
- (iv) rupees 25 crore or more but less than rupees 50 crore 3,00,000
- (v) rupees 50 crore or more but less than rupees 100 crore 3,50,000
- (vi) rupees 100 crore or more 4,00,000 :

Provided that the ceiling limits specified under this sub-paragraph shall apply, if -

- (i) payment of remuneration is approved by a resolution passed by the 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) Export performance and net foreign exchange collaborations
- (6) Foreign investments or collaborators, 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 w.r.t. 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 :

(1) The shareholders of the company shall be informed of the remuneration package of the managerial person.

(2) The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any, attached to the annual report : -

(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.

(C) exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale

if the company is a listed company or a subsidiary of a listed company 3 :-

Where the effective capital of company is Monthly remuneration payable shall not exceed (Rupees)

(i) less than rupees 1 crore 1,50,000

(ii) rupees 1 crore or more but less than rupees 5 crore 2,00,000

(iii) rupees 5 crore or more but less than rupees 25 crore 2,50,000

(iv) rupees 25 crore or more but less than rupees 50 crore 3,00,000

(v) rupees 50 crore or more but less than rupees 100 crore 3,50,000

(vi) rupees 100 crore or more 4,00,000

Provided that the ceiling limits specified under this sub-paragraph shall apply, if -

(i) payment of remuneration is approved by a resolution passed by the 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) Export performance and net foreign exchange collaborations

(6) Foreign investments or collaborators, 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 w.r.t. 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 :

- (1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
- (2) The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any attached to the annual report : -
 - (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.

Provided further that the conditions specified in sub-paragraph (C) shall apply in the case the effective capital of the company is negative :

Provided also that the prior approval of the Central Government is obtained for payment of remuneration on the above scale.

2[(D) not exceeding Rs. 2,40,00,000 per annum or Rs. 20,00,000 per month in respect of Companies in Special Economic Zones as notified by Department of Commerce from time to time :

Provided that these companies have not raised any money by public issue of shares or debentures in India :

Provided further that such companies have 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.]

2. A managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section :

- (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,
- (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.

3. In addition to the perquisites specified in paragraph 2 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 paragraph 1 of this section :

- (a) Children's education allowance : In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible upto a maximum of two children.
- (b) Holiday passage for children studying outside India/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, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in the 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 calculated 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 section II of this part, family means the spouse, dependent children and dependent parents of the managerial person.

2[Explanation IV. - For the purposes of this section, "Remuneration Committee" means

(i) [in respect of a listed company, a committee which consists of atleast three non-executive independent directors including nominee directors, if any; and

(ii) in respect of any other company, a Remuneration Committee of Directors]3.

Explanation V . - For the purposes of this clause, the Remuneration Committee while approving the remuneration under this section, 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 VI . - for the purposes of Paragraph 1, "negative effective capital" means the effective capital which is calculated : -

(a) in accordance with the provisions contained in Explanation I of this Part ;

(b) less than zero.]

1. Substituted by Notification No. GSR 36(E) dated 16-1-2002

2. Inserted By the Notification No. GSR 565(E), dated 14-8-2002

3. Inserted vide Notificaiton no. G.S.R. 70(E) dated 8th February, 2011

1[SECTION III - REMUNERATION PAYABLE TO A MANAGERIAL PERSON IN TWO COMPANIES

Subject to the provisions of sections I and II, 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.]

1. Inserted By the Notification No. GSR 418(E), dated 12-9-1996.

PART III

PROVISIONS APPLICABLE TO PARTS I AND II OF THIS SCHEDULE

1. The appointment and remuneration referred to in Parts I and 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 has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate