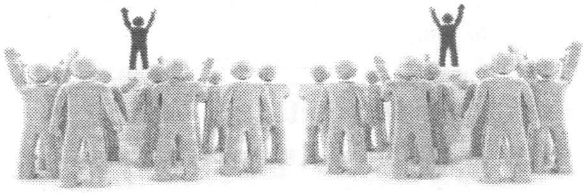
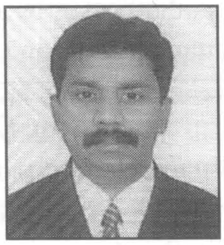
Key Managerial Personnel Under Companies Act, 2013





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Key Managerial Personnel is yet another new concept introduced by the Companies Act, 2013 used to denote the cluster of the management team of the company. It not only covers the traditional roles of managing director and whole time director but also includes some functional figure heads like Chief Financial Officer and Chief Operating Officer etc.

Definition

Section 2(51) defines Key Managerial Personnel to mean

"key managerial personnel", in relation to a company, means—

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed;

Section 2(18) defines CEO - *"Chief Executive Officer" means an officer of a company, who has been designated as such by it;*

Section 2(19) defines CFO - *"Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;*

Section 2(24) defines CS - *"company secretary" or "secretary" means 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;*

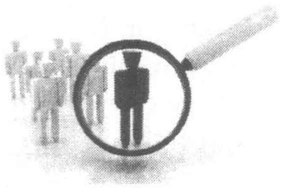
Section 2(53) defines Manager - *"manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;*

Section 2(54) defines MD - *"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.*

Section 2(94) defines WTD - *"whole-time director" includes a director in the whole-time employment of the company;*

Mandatory appointment of KMP

- Every listed company and every other company having paid up share capital of Rs. 5 Crores or more shall have the following whole-time key managerial personnel,—



  (i) Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;

  (ii) Company secretary; and

  (iii) Chief Financial Officer

Manner of appointment

- 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.

- 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 6 months from the date of such vacancy.

Same person not to act as Chairman and MD/CEO

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:

This restriction will not 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.

Whole time KMP not to hold office in more than one company

A whole-time key managerial personnel shall not hold office in more than one company at the same time, except:

- In the company's subsidiary company,
- As a director in any other company with the permission of the Board
- As an MD, 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.

A 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.

Other Provisions regarding KMP

- A KMP is included within the meaning of "Officer in Default" under the Act.
- A document or proceeding requiring authentication by a company; or contracts made by or on behalf of a company, may be signed by any key managerial personnel or an officer of the company duly authorised by the Board in this behalf.
- Details regarding KMP, changes therein and the remuneration paid to them are required to be disclosed in the Annual Return of the Company.
- Explanatory statement should disclose the nature of concern or interest, financial or otherwise, of every key managerial personnel, in respect of each item of special business to be transacted at a general meeting.
- A person whose relative is employed as a KMP in a company is disqualified to be appointed as auditor in that company.
- A person is disqualified to be appointed as an independent director if he either himself or through his relative holds or has held the position of a key managerial personnel of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.
- Company is required to maintain a register of the KMPs at its registered office containing particulars which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.
- A return of every appointment and change in KMP has to be filed with the ROC within 30 days of the appointment or the change as the case may be.
- The key managerial personnel shall have a right to be heard in the meetings of the Audit Committee when it considers the auditor's report but shall not have the right to vote.
- The remuneration policy of the KMP is to be recommended by the Nomination and Remuneration Committee who should ensure that the policy involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals. Such policy shall be disclosed in the Board's report.
- Every key managerial personnel shall, within a period of 30 days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (*1*) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.
- Key Managerial Personnel are prohibited to make forward dealings and insider trading in securities of the company.
- Financial statements of a company are

required to be signed either by the Chairperson of the company (where he is authorised by the Board) or by two directors out of which one shall be the managing director and the other Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed.

Penalty for contravention

On Company: Fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-

On every director and key managerial personnel of the company who is in default: fine which may extend to Rs. 50,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the contravention continues.

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