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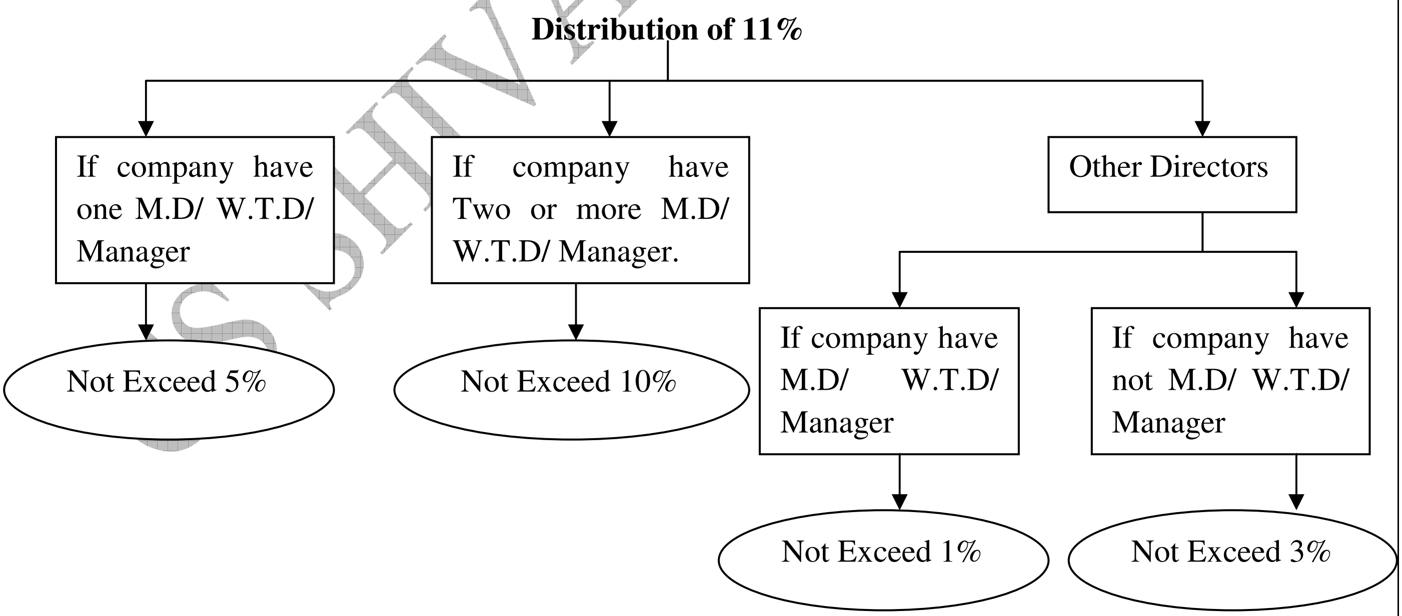
MANAGERIAL REMUNERATION, ITS APPOINTMENT & COMPANY SECRETARY

APPLICABILITY- Section 197 relating to Managerial Remuneration applicable only on Public Company.

MAXIMUM LIMIT- Total Managerial Remuneration payable to its directors including M.D/ W.T.D/ Manager shall not exceed **11% of the net profit (Calculated as per Section 198, refer Annexure)** of the Company in any Financial Year.

NOTE- The Remuneration of the directors shall not be deducted from the aforesaid net profit.



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NOTE- The aforesaid percentage not include following particulars-

- Fees Payable to directors for attending Board or committee meeting. (Sitting fees to a director as may be decided by board but shall not exceed Rs. 1 Lack per board or committee meeting)
- Remuneration of services rendered of a professional nature.
- Insurance premium paid by Company on behalf of it. (if any director found guilty for any fraud then Insurance premium will be the part of Limit).

NOTE- An Independent director shall not be entitled to any stock option but may receive Remuneration by way of sitting fees (not less than such sitting fees payable to other directors of the company), Reimbursement of expenses for participation in the Board or Committee meetings and profit related commission as approved by way of Ordinary Resolution in General Meeting.

VARIOUS COMBINATION RELATING TO DISTRIBUTION OF 11%

Suppose ABC LTD have **6 directors** in its Board.

1st Combination- 1Managing director, 2 Independent directors & 3 others directors

Then 1 Managing director shall not get exceed **5%** of net profit, 2 Independent directors **not** entitled to get any percentage, 3 others directors shall not get exceed **1%** of net profit. So, total remuneration not exceed **6% of net profit.**

2nd Combination- 2Managing directors, 2 Independent directors & 2 others directors

Then 2 Managing directors shall not get exceed **10%** of net profit, 2 Independent directors **not** entitled to get any percentage, 2 others directors shall not get exceed **1%** of net profit. So, total remuneration not exceed **11% of net profit.**

3rd Combination- 2 Independent directors & 4 others directors

Then 2 Independent directors not entitled to get any percentage, 4 others directors shall not get exceed **3%** of net profit. So, total remuneration not exceed **3% of net profit.**

REMUNERATION IN CASE OF NO PROFIT/ INADEQUATE PROFIT

Managerial Remuneration not exceed the higher of the limits under (A) and (B)

(A)

S.NO.	EFFECTIVE CAPITAL	LIMIT OF YEARLY REMUNERATION
1	Negative or less than 5 crores	30 lakhs
2	5 crores or more but less than 100 crores	42 lakhs
3	100 crores or more but less than 250 crores	60 lakhs

4	250 crores and above	60 lakhs + 0.01% of effective capital in excess of Rs. 250 crores

Aforesaid limit will be double after passing Special Resolution.

Note- **Effective Capital** means the aggregate of Paid-up Share Capital, reserves and surplus (excluding revaluation reserves), long term loan & deposits repayable after 1 year, Accumulated losses and preliminary expenses not written off.

(B)

In the case of Managerial Person-

1. Who was not a Security holder of the Company of nominal value of Rs. 5 lakh or more.
2. Not related to any director or promoter at any time during two years prior to his appointment as a managerial person

- **2.5% of Current relevant profit.**

Aforesaid limit will be double after passing Special Resolution.

S.No.	Perquisites not included in Managerial Remuneration in case of No Profit/ Inadequate Profit
1.	Contribution to Provident Fund, Superannuation fund or annuity fund which are not taxable under Income tax Act, 1961
2.	Gratuity at a rate not exceed half a month's salary for each completed year of service
3.	Encashment of leave at the end of the tenure
4.	Children education allowance upto a maximum of 2 Children of Rs. 12,000/- per month per child or actual expenses (whichever is less)
5.	Leave Travel Concession & Family staying abroad (Economy class ticket in a year & First Class ticket once in 2 year)

REFUND OF REMUNERATION- If any director receive by way of remuneration in excess of limit without the prior consent of CG, He shall refund such excess amount to the Company.

Requirement of Appoint a M.D/ W.T.D/ Manager (Section 203)

Every Listed Company.

(Or)

Every Public Company having Paid-up Share Capital of Rs. 10 Crore or more.

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Ek Myyan me 2 Talware ni reh sakti **(Hindi Khawat).** So, as per Section 196(1) A Company shall not appoint at the same time a Managing Director and a Manager. It means that a Company may appoint 2 or more Managing Director but at the same time not appoint a manager & If a Manager appointed not required to appoint Managing Director.

<u>NOTE-</u> Managing Director & Manager both are the part of **K.M.P** under Section 2(51) of Companies Act, 2013.

<u>NOTE-</u> A M.D/ W.T.D/ Manager shall not hold office in more than one Company except in its Subsidiary Company at the same time.

<u>TERMS OF APPOINTMENT-</u> For a term not Exceeding 5 years at a time (This Proviso not applicable on government Company after a notification on 5^{th} June, 2015).

<u>QUALIFICATION-</u>

- He had not sentenced to imprisonment for any period or fine exceeding Rs. 1,000 Under any Commercial Law. (Not applicable in case of Private Company).
- He had not been detained for any Period under FEMA, 1999. (Not applicable in case of Private Company).
- He has Completed the age of 21 years and has not attained the age of 70 Years. {Required to pass Special Resolution in case of attaining the age of 70 Years}.
- He is not an undischarged insolvent.
- He has not any time been sentenced for a period of more than 6 months by any court.
- He is resident of India. (Not applicable in case of Private Company).

<u>NOTE-</u> Resident means stay in India for a Continuous Period of not less than 12 months immediately Preceding the date of his appointment.

<u>COMPLIANCES FOR APPOINTMENT OF M.D/ W.T.D/ MANAGER</u>

IN CASE OF PRIVATE COMPANY

- Pass Board Resolution.
- Contract for Employment.
- File **Form DIR-12** with ROC within 30 days of appointment.

IN CASE OF PUBLIC COMPANY

- Pass Board Resolution.
- Pass Ordinary Resolution.
- Contract for Employment.
- File **Form DIR-12** with ROC within 30 days of appointment.
- File **Form MGT-14** with ROC within 30 days of appointment.
- File **Form MR-1** with ROC within 60 days of appointment.
- File **Form MR-2** within 90 days of appointment. (in case of CG Approval).

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CASES REQUIRED TO GET CG APPROVAL

- Managerial Remuneration exceed 11% and Subject to Schedule V.
- Managerial Remuneration in case of No Profit/ Inadequate Profit & not Comply with Schedule V.

Then required to file **Form MR-2** within 90 days of appointment with a attachment of General Notice & a certificate by a Company for publication of notice in news papers (Once in English & Once in Vernacular Language where the registered office of the Company is situated).

PENALTY- If any person Contravene the aforesaid provisos, then Punishable with fine not less than Rs. 1 Lakh but which may extend to Rs. 5 Lakh.

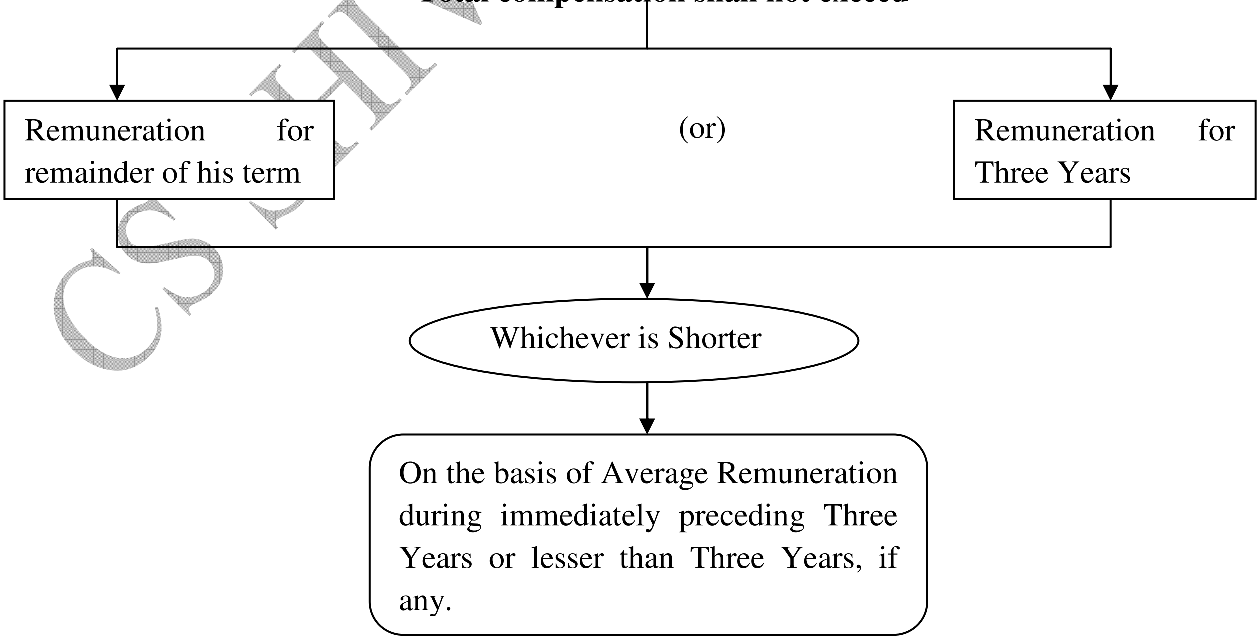
COMPENSATION FOR LOSS OF OFFICE TO M.D/ W.T.D/ MANAGER

A company may make payment to M.D/ W.T.D/ Manager by way of compensation for loss of office under section 202 of the Companies Act, 2013.

Compensation shall not be paid in following cases-

- Where the director resigns from his office as a result of the reconstruction of the Company.
- Where the director resigns from his office in normal course.
- Where the office of the director is vacated under Section 167(1).
- Where the Company is being wound up (by Tribunal or Voluntarily).
- Where the director has been guilty of fraud.

Total compensation shall not exceed



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COMPANY SECRETARY- Company Secretary is a Person who is the member of the Institute of Company Secretaries of India and appointed by a Company to perform the functions of a Company Secretary. {Define under section 2(24) of Companies Act, 2013}.

REQUIREMENT OF COMPANY SECRETARY-

Requirement of Appoint a CS (Section 203)

Every Listed Company.	(Or)	Every Company having Paid-up Share Capital of Rs. 5 Crore or more.

NOTE- A Company Secretary shall not hold office in more than one Company except in its Subsidiary Company at the same time.

COMPLIANCES FOR APPOINTMENT OF COMPANY SECRETARY

IN CASE OF PRIVATE COMPANY

- Pass Board Resolution.
- File **Form DIR-12** with ROC within 30 days of appointment.

IN CASE OF PUBLIC COMPANY

- Pass Board Resolution.
- File **Form DIR-12** with ROC within 30 days of appointment.
- File **Form MGT-14** with ROC within 30 days of appointment.
- File **Form MR-1** with ROC within 60 days of appointment.

FUNCTIONS OF COMPANY SECRETARY (SECTION 205)

CS to be a **SAHARA** of a Company

S	**S**ecretarial Standards	To ensure that the Company Complies with Applicable Secretarial Standards.
A	**A**pplicable Laws	To report to the board about compliance with applicable laws.
H	**H**olding Meetings	To facilitate the convening of meetings & maintain the minutes of the meetings.
A	**A**pprovals	To obtain approvals from the Board, Shareholders or other Authorities.
R	**R**epresentative	To Represent before various Regulators or Authorities
A	**A**ssist	To Assist the Board in the conduct of affairs of the Company & ensuring good corporate governance.

PENALTY

If Company is defaulted → Punishable with fine not less than Rs. One Lakh but which may extend to Rs. Five Lakh.

If any officer is defaulted → Punishable with fine Which may extend to Rs. Fifty Thousands.

ANNEXURE (HOW TO CALCULATE NET PROFIT U/S 198)

	Net Profit
Credit	Subsidies received from any government or Public Authority.
Not Credit	Profits or Premium on Securities, Profits of a Capital Nature.
Debit	All Usual Working Charges, interest on Debt, Expenses of revenue nature, Depreciation, bad debts, any tax on business, damages to be paid in any legal liability.
Not Debit	Income Tax, Loss of Capital nature, damages to be paid Voluntarily in any legal liability.
TOTAL	**Net Profit for the Purpose of Remuneration Under Section 197**