CHAPTER XIII APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Sec. 196 – Sec.205
&
Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

Table of Contents

196. Appointment of managing director, whole-time director or manager:

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec. 197A, 267, 311, 317, 384, 385, 388 of the Companies Act, 1956]

[Refer Rule 3 & 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014]

[Form No. MR-1, Form No. MGT-14] [Where Form No. MR-1 is filed, even Form No. DIR-12 under section 152 is required to be filed.

- Section 196 (2), (4) and (5) shall not apply to a Government Company. vide notification no. G.S.R. 463(E) dated 5th June, 2015,
- Section 196 (4) and (5) shall not apply to private companies. Notification no. G.S.R. 464(E) dated 5th June 2015

Prohibition on simultaneously appointment of MD and Manager:

196. (1) No company shall appoint or employ at the same time a managing director and a manager.

Maximum term of MD, WTD and Manager:

(2) No company shall appoint or re-appoint any person as its managing director, whole- time director or manager for a term exceeding five years at a time.

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

Disqualification for appointment as MD, WTD and Manager:

(3) No company shall appoint or continue the employment of any person as managing director, whole-time director or manager who —

(a) is below the age of twenty-one years or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

(b) is an undischarged insolvent or has at any time been adjudged as an insolvent;
(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
(d) has at any time been convicted by a court of an offence and sentenced for a period of more than six months

---

Approvals required for the appointment of MD, WTD or Manager:

(4) Subject to the provisions of section 197 and Schedule V, a managing director, whole- time director or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be approved by the Board of Directors at a meeting which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule: [Application to Central Government in Form no. MR-2]

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a return in the prescribed form shall be filed within sixty days of such appointment with the Registrar. [Form no. MR-1]

Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 –
A company shall file a return of appointment of a Managing Director, Whole-Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days *of the appointment,* with the Registrar in Form No. **MR-1** along with such fee as may be specified for this purpose.

SCHEDULE V Conditions for appointment and payment of remuneration of managerial personnel

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

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;
   (ii) the Central Excise Act, 1944;
   (iii) the Industries (Development and Regulation) Act, 1951;
   (iv) the Prevention of Food Adulteration Act, 1954;
   (v) the Essential Commodities Act, 1955 ;
   (vi) the Companies Act, 2013;
   (vii) the Securities Contracts (Regulation) Act, 1956 ;
   (viii) the Wealth-tax Act, 1957 ;
   (ix) the Income-tax Act, 1961;
   (x) the Customs Act, 1962;
   (xi) the Competition Act, 2002;
   (xii) the Foreign Exchange Management Act, 1999;
   (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985;
   (xiv) the Securities and Exchange Board of India Act, 1992 ;
   (xv) the Foreign Trade (Development and Regulation) Act, 1922 ;
   (xvi) the Prevention of Money-Laundering Act, 2002 ;

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 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.

(c) he has completed the age of twenty-one years and has not attained the age of seventy years:
Provided that where he has attained the age of seventy 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 V of Part II;

(e) he is resident of India

Explanation 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 vacation in India.

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.

Further Considerations:

- For any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director, Form no. MGT-14 is required to be filed under section 117 (3) (c).

Validity of the acts where appointment is not approved at a GM:

(5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Explanations:

Sec 2(54) managing director:
"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.

Explanation.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management.

Analysis:

- A person may be appointed as MD only if he is a director of the company. Therefore, -
  - All provision applicable to a director shall also apply to the MD; and
  - If such person ceases to be a director, he automatically ceases to be MD.
- A person shall be a MD only if he is entrusted with substantial powers of management which are not otherwise exercisable by a director.
- A person who is not designated as MD but occupies the position of MD shall also be deemed to be a MD.
- Powers to do administrative acts of a routine nature shall not be deemed to be included within the substantial powers of management.
- MD is subordinate to the Board and exercises his powers subject to the superintendence, control and direction of Board. His authority can be revoked by the Board.
- Powers of management may be entrusted to a MD by –
  - AoA; or
  - An agreement; or
  - A resolution passed in GM; or
  - A resolution passed by Board.
- A company may have 2 or more than 2 MD.
- **A MD can be a rotational director or a non rotational director.** In case he is rotational director, he shall retire as per the provision of sec. 152(6), notwithstanding the fact that his term of office (max. 5 years) has not yet expired.
- **An additional director may be appointed as MD.** If on the expiry of his term in next AGM, he is not appointed as a director by shareholders, he shall vacate his office of AD and consequently of MD also.

Sec. 2(53) 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.

Analysis:

- Manager need not to be a director. However, there is no restriction on appointment of director as Manager.
- Manager is a person who has the management of whole or substantially the whole of the affairs of a

company. The whole of the affairs of the company cannot in anyway be in the hands of two or more persons. Therefore, a company cannot have 2 or more than 2 managers.

- A company cannot, at the same time employ a MD and manager but can employ manager and WTDs simultaneously.

Sec. 2(94) whole-time director:

"whole-time director" includes a director in the whole-time employment of the company

Analysis:

- A whole time employee when appointed as a director is in the position of WTD. Accordingly, appointment of a whole time employee as an alternate director also amounts to appointment of a whole time director. Similarly, appointment of a branch manager as a director amounts to appointment of a WTD.
- A WTD means a director who is entrusted with day-to-day management of the company.
- Where a person, not being an employee of the company, is appointed as a director, he occupies the position of an ordinary director; he does not become a WTD.
- A company may, at the same time, employ –
    - 2 or more WTD;
    - MDs and WTDs;
    - Manager and WTDs.
- Any director (rotational or non rotational) may be appointed as WTD. Therefore, if a rotational director is appointed as WTD, he shall retire as per the provision of sec. 152(6), notwithstanding the fact that his term of office has not yet expired.
- An AD may be appointed as a WTD. If on expiry of his term in next AGM, he is not appointed as a director by shareholders, he shall vacate the office of additional director and consequently the office of WTD shall also be vacated.
- As per Rule 2(1)(k) of the Companies (Specification of Definitions Details) Rules, 2014 "Executive Director" means a whole time director as defined in clause (94) of section 2 of the Act.

197. Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec. 198, 201, 309, 310, 387 of the Companies Act, 1956]

[Refer Rules 4 and 5 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014]

[Form No. MR-2]

[Refer regulations (61) and (91) of Table F.II in Schedule I to the Act]

- This section shall not apply to a Government Company, vide notification no. G.S.R. 463(E) dated 5th June, 2015.

Total managerial remuneration not to exceed 11% in case of Public Co.:

197(1) The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed eleven percent of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven percent of the net profits of the company, subject to the provisions of Schedule V: [Application to Central Government in Form No. MR-2]

Provided further that, except with the approval of the company in general meeting,—

(i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed five percent of the net profits of the company and if there is more than one such director remuneration shall not exceed ten per cent. of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) one per cent. of the net profits of the company, if there is a managing or whole- time director or manager;

(B) three per cent. of the net profits in any other case.

SCHEDULE V Conditions for appointment and payment of remuneration of managerial personnel

PART II – REMUNARATION

Section I — Remuneration payable by companies having profits:
Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.

Analysis:

- **Remuneration not to exceed 11%-**
  Total managerial remuneration payable to directors and managers during any FY shall not exceed 11% of net profits for that FY.
- **Computation of NP-**
  NP of respective FY shall be computed as per the manner laid down u/s. 198 except that remuneration of the directors shall not be deducted.
- **Total managerial remuneration exceeding 11%-**
  Total remuneration payable in any FY may exceed 11% if-
  I. CG's approval obtained; and
  II. Such higher remuneration s authorised by members in GM; and
  III. Provisions of Sch. V are complied with.
- Application to CG for its approval shall be made in Form No. MR-2.
- **Limit of remuneration payable to individual MD/WTD/Manager-**

I. Remuneration payable to any one MD/TD/Manager shall not exceed 5% of the net profits; and
II. If there is more than such director, 10% of the net profits, to all directors and manager together.
III. However, with the approval of company in GM remuneration can be paid in excess of such limits.

- **Limit of remuneration payable to individual Ordinary Director-**
  Remuneration payable to individual Ordinary Director shall not exceed-
  I. 1% of NP , id there is a MD/TD/Manager; and
  II. 3% of NP in any other case.
  III. However, with the approval of company in GM remuneration can be paid in excess of such limits.

Further Considerations:

- Aforesaid second proviso, shall apply to nidhi companies with the modification that the remuneration of a director who is neither managing director nor whole-time director or manager for performing special services to the Nidhis specified in the articles of association may be paid by way of monthly payment subject to the approval of the company in general meeting and also to the provisions of section 197:
  Provided 'that no approval of the company in general meeting shall be required where, —
  (a) Nidhi does not have a managing director or a whole-time director or a manager;
  (b) the remuneration payable during a financial year to all the directors of the Nidhi does not exceed ten per cent. of the net profits of such Nidhi or fifteen lakh rupees, whichever is less; and
  (c) a remuneration payable under clause (b) is approved by a special resolution passed in this behalf by the Nidhi. Refer notification no. G.S.R. 465(E) dated 5th June, 2015.

Remuneration to be exclusive of sitting fees:

(2) The percentages aforesaid shall be exclusive of any fees payable to directors under sub-section (5).

Analysis:

- Any remuneration mentioned aforesaid in sub sec. (1) or in first or second proviso to sub sec. (1) shall be exclusive of sitting fees.

Remuneration in case of no profit or inadequate profit:

(3) Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government. [Application to Central Government in Form No. MR-2]

Analysis:

- Where in any FY a company has no profits or its profits are inadequate it shall not pay in any case to its directors, including WTD, MD and Manger, any sum as remuneration exclusive of any fees payable under sub-section (5).
- However, a company can pay remuneration in case of no profits or inadequate profits, only-
  - In accordance with the Sch. V; or
  - where company can’t comply with such Sch., with previous approval of CG.

Further Considerations:

- transitional provision-
  It is clarified by MCA vide Circular 07/2015 dated 10th April 2015 that where listed companies and their subsidiaries have agreed to pay remuneration to managerial person, without approval of Central Government, in excess of limits specified in para II Para (C) of Schedule XIII of the Companies Act, 1956 (read with MCA's Circular number 14/ 11/2012-CL-VII dated 16th August, 2012), and if the tenure of such managerial person is remaining on coming into force of Companies Act 2013 i.e. on 01 April 2014, then such companies may continue to pay such managerial person remuneration for his remaining term in accordance with terms and conditions approved by company as per relevant provisions of Schedule XIII of earlier Act even if the part of his/her tenure falls after 1st April, 2014.

Reference:

SCHEDULE V Conditions for appointment and payment of remuneration of managerial personnel

PART II – REMUNARATION

Section II.— Remuneration payable by companies having no profit or inadequate profit without Central Government approval:
Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may, without Central Government approval, pay remuneration to the managerial person not exceeding the higher of the limits under (A) and (B) given below:—

(A) remuneration based on the effective capital:

(1)	(2)
Where the effective capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	30 lakhs
(ii) 5 crores and above but less than 100 crores	42 lakhs
(iii) 100 crores and above but less than 250 crores	60 lakhs
(iv) 250 crores and above	60 lakhs *plus* 0.01% of the effective capital in excess of Rs. 250 crores:

Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.

Explanation—It is hereby clarified that for a period less than one year, the limits shall be pro-rated.

(B) Remuneration based on current relevant profit:
in the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, —2.5% of the current relevant profit:

Provided that if the resolution passed by the shareholders is a special resolution, this limit shall be doubled:

Provided further that the limits specified under this section shall apply, if—

(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and 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) Foreign investments or collaborations, 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 with respect to 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:
The following disclosures shall be mentioned in the Board of Director's report under the heading "Corporate Governance", if any, attached to the financial statement:—
(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.

Rule 7(2) of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-
The companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial personnel, in the event of no profit or inadequate profit beyond ceiling specified in Section II, Part II of Schedule V, subject to complying with the following conditions namely:-

(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any, and while doing so record in writing the clear reason and justification for payment of remuneration beyond the said limit;

(ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon preference shares and dividend on preference shares for a continuous period of thirty days in the preceding financial year before the date of payment to such managerial personnel;

(iii) the approval of shareholders by way of a special resolution at a 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 clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit;

(v) the company has filed Balance Sheet and Annual Return which are due to be filed with the Registrar of Companies.

Modes for determining remuneration and remuneration for services rendered in other capacity:

(4) The remuneration payable to the directors of a company, including any managing or whole-time director or manager, shall be determined, in accordance with and subject to the provisions of this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to a director determined aforesaid shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(a) the services rendered are of a professional nature; and
(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the Board of Directors in other cases, the director possesses the requisite qualification for the practice of the profession.

Analysis:
- Remuneration payable to directors or manager shall be determined by-
  - AoA; or
  - Ordinary resolution; or
  - SR, if AoA requires so
  - In accordance with this section.

Therefore, Board can fix or determine remuneration only with the concurrence of the shareholders in GM or in accordance with the AoA.

- Remuneration determined above shall be inclusive of remuneration payable for the services rendered in any other capacity. However, if services rendered are of a professional nature and director possesses the requisite qualification, such remuneration shall not be included.

Sitting Fees:

(5) A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such fees shall not exceed the amount as may be prescribed:

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

Rule 4 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-
A company may pay a sitting fee to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof:

Provided that for Independent Directors and Women Directors the sitting fee shall not be less than the sitting fee payable to other directors.

Analysis:

- A director may receive sitting fees for attending meetings of the Board or committees thereof, such sum as may be decided by the Board.
- However, such fees shall not exceed one lakh rupees per meeting.
- Sitting fees payable to Independent Directors and Women Directors shall not be less than the sitting fee payable to other directors.

Mode of payment of remuneration:

(6) A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other.

Remuneration of Independent Director:

(7) Notwithstanding anything contained in any other provision of this Act but subject to the provisions of this section, an independent director shall not be entitled to any stock option and may receive remuneration by way of fees provided under sub-section (5), reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

NP for the purpose this section:

(8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

Course of action of director where he receives excess remuneration:

(9) If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by this section or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.

No waiver of excess remuneration by the company:

(10) The company shall not waive the recovery of any sum refundable to it under sub- section (9) unless permitted by

the Central Government. [Application to Central Government in Form No. MR-2]

Increase in remuneration in case of no or inadequate profits:

(11) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained. [Application to Central Government in Form No. MR-2]

Analysis:

- In case of no profits or inadequate profits, if Sch. V is applicable, any provision increasing remuneration of any director, shall have no effect unless-
  - Such increase is in accordance with Sch. V; otherwise
  - approval of Central Government had been obtained
- It is immaterial as to whether the provision increasing remuneration is contained in-
  - MoA or AoA; or
  - agreement entered into by company; or
  - any resolution passed by the company in general meeting or its Board

Disclosure requirement for listed companies:

(12) Every listed company shall disclose in the Board's report, the ratio of the remuneration of each director to the median employee's remuneration and such other details as may be prescribed.

Rule 5 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014- (Only relevant part)

Provided that the particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, as may be decided by the Board, shall not be circulated to the members in the Board's report, but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

Provided further that such particulars shall be made available to any shareholder on a specific request made by him in writing before the date of such Annual General Meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders and such particulars shall be made available by the company within three days from the date of receipt of such request from shareholders:

Provided also that in case of request received even after the date of completion of Annual General Meeting, such particulars shall be made available to the shareholders within seven days from the date of receipt of such request.

Insurance premium no to be part of remuneration:

(13) Where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or company secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel:

Provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

Regulation (91) of Table F II in Schedule I- Schedule I-

Every officer of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in which relief is granted to him by the court or the Tribunal.

No prohibition on receiving remuneration by director, being MD or WTD, from holding or subsidiary comoany:

(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.

Penalty for contravention:

(15) If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

[Comments: Where stock option granted to Independent Directors prior to commencement of section 197, the same can be exercised by independent directors even after commencement of section 197. FAQ of ICSI also confirms this.]

SCHEDULE V Conditions for appointment and payment of remuneration of managerial personnel

PART II – REMUNARATION

Section III.— Remuneration payable by companies having no profit or inadequate profit without Central Government approval in certain special circumstances:

In the following circumstances a company may, without the Central Government approval, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—

(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(b) where the company—
   - (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or
   - (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction or National Company Law Tribunal, for a period of five years from the date of sanction of scheme of revival, it may pay remuneration up to two times the amount permissible under Section II.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the National Company Law Tribunal: Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—
   - (i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
   - (ii) the auditor or company secretary of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
   - (iii) the auditor or company secretary or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

(d) a company in a Special Economic Zone as notified by Department of Commerce from time to time which has not raised any money by public issue of shares or debentures in India, and has 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, may pay remuneration up to Rs. 2,40,00,000 per annum.

Section IV.— Perquisites not included in managerial remuneration:

1. A managerial person shall be eligible for the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in Section II and Section III:—
   a. contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Incometax Act, 1961 (43 of 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.

2. In addition to the perquisites specified in paragraph 1 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 Section II or Section III—
    a. Children's education allowance: In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.
    b. Holiday passage for children studying outside India or 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, over drafts, interest due on loans unless funded, bank guarantee, etc., and other short term arrangements) as reduced by the aggregate of any investments (except in 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 this Schedule, ''family'' means the spouse, dependent children and dependent parents of the managerial person.

Explanation IV.— The Nomination and Remuneration Committee while approving the remuneration under Section II or Section III, 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 V.— For the purposes of this Schedule, "negative effective capital" means the effective capital which is calculated in accordance with the provisions contained in Explanation I of this Part is less than zero.

Explanation VI.— For the purposes of this Schedule:—
(A) "current relevant profit" means the profit as calculated under section 198 but without deducting the excess of expenditure over income referred to in sub-section 4 (l) thereof in respect of those years during which the managerial person was not an employee, director or shareholder of the company or its holding or subsidiary companies.
(B) "Remuneration" means remuneration as defined in clause (78) of section 2 and includes reimbursement of any direct taxes to the managerial person.

Section V. —Remuneration payable to a managerial person in two companies:

Subject to the provisions of sections I to IV, 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.

PART III Provisions applicable to Parts I and II of this Schedule

1. The appointment and remuneration referred to in Part I and Part 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 is not required to appointed a Secretary, a Secretary in whole-time practice shall certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (4) of section 196.

PART IV

The Central Government may, by notification, exempt any class or classes of companies from any of the requirements contained in this Schedule

198. Calculation of profits.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec.349 of the Companies Act, 1956]

Computing NP for the purpose of Sec. 197:

198. (1) In computing the net profits of a company in any financial year for the purpose of section 197,—

(a) credit shall be given for the sums specified in sub-section(2), and credit shall not be given for those specified in sub-section(3); and

(b) the sums specified in sub-section (4) shall be deducted, and those specified in sub- section (5) shall not be deducted.

Credit of the bounties and subsidies:

(2) In making the computation aforesaid, credit shall be given for the bounties and 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.

Credit not be given for the certain sums:

(3) In making the computation aforesaid, credit shall not be given for the following sums, namely:—

(a) profits, by way of premium on shares or debentures of the company, which are issued or sold by the company;

(b) profits on sales by the company of forfeited shares;

(c) profits of a capital nature including profits from the sale of the undertaking or any of the undertakings of the company or of any part thereof;

(d) profits from the sale of any immovable property or fixed assets of a capital nature comprised in the undertaking or any of the undertakings of the company, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets:

Provided that where the amount for which any fixed asset is sold exceeds the written- down value thereof, credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its written- down value;

(e) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Certain sums to be deducted:

(4) In making the computation aforesaid, the following sums shall be deducted, namely:—

(a) all the usual working charges;

(b) directors' remuneration;

(c) bonus or commission paid or payable to any member of the company's staff, or to any engineer, technician or person employed or engaged by the company, whether on a whole-time or on a part-time basis;

(d) any tax notified by the Central Government as being in the nature of a tax on excess or abnormal profits;

(e) any tax on business profits imposed for special reasons or in special circumstances and notified by the Central Government in this behalf;

(f) interest on debentures issued by the company;

(g) interest on mortgages executed by the company and on loans and advances secured by a charge on its fixed or floating assets;

(h) interest on unsecured loans and advances;

(i) expenses on repairs, whether to immovable or to movable property, provided the repairs are not of a capital nature;

(j) outgoings inclusive of contributions made under section 181;

(k) depreciation to the extent specified in section 123;

(l) the excess of expenditure over income, which had arisen in computing the net profits in accordance with this section in any year which begins at or after the commencement of this Act, in so far as such excess has not been deducted in any subsequent year preceding the year in respect of which the net profits have to be ascertained;

(m) any compensation or damages to be paid in virtue of any legal liability including a liability arising from a breach of contract;

(n) any sum paid by way of insurance against the risk of meeting any liability such as is referred to in clause (m);

(o) debts considered bad and written off or adjusted during the year of account.

Certain sums not to be deducted:

(5) In making the computation aforesaid, the following sums shall not be deducted, namely:—

(a) income-tax and super-tax payable by the company under the Income-tax Act, 1961 (43 of 1961), or any other tax on the income of the company not falling under clauses (d) and (e) of sub-section (4);

(b) any compensation, damages or payments made voluntarily, that is to say, otherwise than in virtue of a liability such as is referred to in clause (m) of sub- section (4);

(c) loss of a capital nature including loss on sale of the undertaking or any of the undertakings of the company or of any part thereof not including any excess of the written-down value of any asset which is sold, discarded, demolished or destroyed over its sale proceeds or its scrap value;

(d) any change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value.

---

199. Recovery of remuneration in certain cases.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[No corresponding provision under the Companies Act, 1956]

---

199. Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) who, during the period for which the financial statements are required to be re- stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

Further Considerations:

- the liability to refund the remuneration u/s. 199 shall be in addition to any liability incurred under the provision of this Act or any other law for the time being in force.

---

200. Central Government or company to fix limit with regard to remuneration.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec.637AA of the Companies Act, 1956]

---

200. Notwithstanding anything contained in this Chapter, the Central Government or a company may, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government or the company shall have regard to—

(a) the financial position of the company;

(b) the remuneration or commission drawn by the individual concerned in any other capacity;

(c) the remuneration or commission drawn by him from any other company;

(d) professional qualifications and experience of the individual concerned;

(e) such other matters as may be prescribed.

---

201. Forms of, and procedure in relation to, certain applications.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec.640B of the Companies Act, 1956]

[Refer Rule 6 & 7 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014]

[Form No. MR-2]

---

201. (1) Every application made to the Central Government under this Chapter shall be in such form as may be prescribed. [Application to Central Government in Form No. MR- 2]

(2)

(a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 –

(1) Every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. **MR-2** and shall be accompanied by fee as may be specified for the purpose.

(3) Every such application seeking approval shall be made to the Central Government within a period of ninety days from the date of such appointment.

Rule 6 (Applications to the Central Government) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 –

The Central Government or the company shall have regard to the following matters, namely:-

(1) the Financial and operating performance of the company during the three preceding financial years.

(2) the relationship between remuneration and performance.

(3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.

(4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.

(5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

---

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

[Brought to force from 12 Sept. 2013. For notification see Annexure N1.]

[Corresponding Sec.318 of the Companies Act, 1956]

Circumstances in which compensation can be paid:

202. (1) A company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

Analysis:

- payment shall be made-
    - as compensation for loss of office, e.g. where director is removed u/s. 169; or
    - as compensation for loss of any other office which terminates along with such office, e.g. that of a MD; or
    - as consideration for retirement from office
- compensation can be paid only to –
    - MD or WTD and not ordinary director; or
    - manager

Prohibition on compensation:

(2) No payment shall be made under sub-section (1) in the following cases, namely:—

(a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation;

(b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid;[resigns voluntarly]

(c) where the office of the director is vacated under sub-section (1) of section 167;

(d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director;

(e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and

(f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

Restriction on quantum of compensation and effect of winding up on amount of compensation:

(3) Any payment made to a managing or whole-time director or manager in pursuance of sub-section (1) shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period:

Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.

Analysis:

- compensation shall be admissible only for the lower of the following period-
    - remainder of his term; or
    - 3 years
- Compensation shall be calculated on the basis of the average of remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period

Further Considerations:

- Mere allegations that a director was involved in certain questionable transactions will not disentitle the director from receiving compensation.

No prohibition on remuneration for services rendered:

(4) Nothing in this section shall be deemed to prohibit the payment to a managing or whole-time director, or manager, of any remuneration for services rendered by him to the company in any other capacity.

---

203. Appointment of key managerial personnel.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[Corresponding Sec. 269, 316, 386 of the Companies Act, 1956]

[Refer Rule 8 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014]

[Refer regulations (77) and (78) of Table F.II in Schedule I to the Act]

Mandatory appointment of Whole Time KMP:

203. (1) Every company belonging to such class or classes of companies as may be prescribed 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 :

Provided that 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:

Provided further that nothing contained in the first proviso shall 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.

Rule 8 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-

Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

Rule 8A of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-

A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary.

Notification No. S.o. 1913(E)-

The Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.

Regulation (77) of Table F.II in Schedule I-

Subject to the provisions of the Act,—

(i) A chief executive officer, manager, company secretary or chief financial officer may be appointed by the Board for such term, at such remuneration and upon such conditions as it may thinks fit; and any chief executive officer, manager, company secretary or chief financial officer so appointed may be removed by means of a resolution of the Board;

(ii) A director may be appointed as chief executive officer, manager, company secretary or chief financial officer.

Analysis:

- Every listed company and every other public company having a paid-up share capital of 10 crore rupees or more shall have whole-time key managerial personnel specified in sub section (1).
- Every non listed company and public company not covered above having paid up share capital of five crore rupees or more shall have a whole-time company secretary.
- An individual shall not be appointed or reappointed as the chairperson as well as the managing director or Chief Executive Officer of the company at the same time, in pursuance of the articles, unless conditions specified in first proviso are satisfied.
- However, above mentioned condition shall not apply if company is engaged in multiple businesses and appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

Manner of appointment of WT KMP:

(2) 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.

Number of companies in which a person can be WT KMP and MD:

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that 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:

Provided also that a company may appoint or employ a person as its managing director, 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.[managing directorship in 2 companies]

Filling up vacancy in the office of WT KMP:

(4) 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 six months from the date of such vacancy.

Non applicability of foregoing sub sections:

(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole- time director of the Government Company.

Punishment for the contravention:

(5) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

---

204. Secretarial audit for bigger companies.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[No corresponding provision under the Companies Act, 1956]

[Refer Rules 9 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014]

[Form No. MR-3]

Mandatory secretarial audit for certain companies:

204. (1) Every listed company and a company belonging to other class of companies as may be prescribed shall annex with its Board's report made in terms of sub-section (3) of section 134, a secretarial audit report, given by a company secretary in practice, in such form as may be prescribed. [Form No. MR-3]

Rules 9 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-

(1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under-

(a) every public company having a paid-up share capital of fifty crore rupees or more; or

(b) every public company having a turnover of two hundred fifty crore rupees or more.

(2) The format of the Secretarial Audit Report shall be in Form No. MR-3.

Duty of company to give facilities:

(2) It shall be the duty of the company to give all assistance and facilities to the company secretary in practice, for auditing the secretarial and related records of the company.

Board's duty to furnish explanations on qualifications:

(3) The Board of Directors, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the company secretary in practice in his report under sub-section (1).

Punishment for the contravention:

(4) If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

---

205. Functions of company secretary.

[Brought to force from 01 April 2014. For notification see Annexure N5.]

[No corresponding provision under the Companies Act, 1956]

[Refer regulation (78) of Table F.II in Schedule I to the Act]

[Refer Rules 10 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014]

---

205. (1) The functions of the company secretary shall include,—

(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

(b) to ensure that the company complies with the applicable secretarial standards;

(c) to discharge such other duties as may be prescribed.

Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980) and approved by the Central Government.

Rule 10 of the Companies (Appointment and Remuneration of Managerial Remuneration) Rules, 2014-

The duties of company secretary shall also discharge, the following duties, namely:-

(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

(2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;

(3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;

(4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;

(5) to assist the Board in the conduct of the affairs of the company;

(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and

(7) to discharge such other duties as have been specified under the Act or rules; and

(8) such other duties as may be assigned by the Board from time to time.

Duties and functions of directors not to be affected:

(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.
