DIVESH GOYAL
Practicing Company Secretary
GOYAL DIVESH& ASSOCIATES

Mob: +918130757966
csdiveshgoyal@gmail.com

PROVISIONS RELATING TO MD/ WTD AS PER COMPANIES ACT, 2013

Series- 121

APPLICABLE PROVISIONS- MANAGERIAL PERSONNEL:

SECTIONS INVOLVED:

Section 152(2): Save as otherwise expressly provided in this Act, **Every Director**shall be appointed by the company in general meeting.

Section 170(2)A return containing such particulars and documents as may be prescribed, of thedirectors and the key managerial personnel shall be filed with the Registrar within thirty days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.

Section 117(3)(c)A copy of 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**shall be filed with the Registrar within thirty days of the passing or making thereof.

Section 161(1): The articles of a company may confer on its Board of Directors the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier

Section 196: 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

Section 197: Overall Maximum Remuneration and Managerial Remuneration.

EARLIER WAS SECTION 197A, 267, 311, 317, 384, 385, 388 OF THE COMPANIES ACT, 1956

RULES INVOLVED:

Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules,2014

Rules 17 of the Companies (Appointment and Qualification of Directors) Rules, 2014- Register of directors and key managerial personnel

Rule 18 of the Companies (Appointment and Qualification of Directors) Rules, 2014- Return containing the particulars of directors and the key managerial personnel

Rule 8 of the Companies (Appointment and Qualification of Directors) Rules, 2014- Consent to act as director.

CIRCULARS INVOLVED:

Notification No. G.S.R. 464(E) dated 5th June 2015

FORMS INVOLVED:

DIR- 12 - Particulars of appointment of Directors and the key managerial personnel and the changes among them.

MR-1 - Return of appointment of MD/WTD/Manager.

MGT- 14 -Filing of Resolutions and agreements to the Registrar

DIR- 11 – Filing of resignation with ROC by the Director.

NON APPLICABILITY:

Government Company:As per NOTIFICATION NO. GSR 463(E)[F.NO.1/2/2014-CL-V], DATED 5-6-2015 :

Section 196 Sub Section 2, 4 & 5 Not applicable on Government Company.
Section 197 not applicable on Government Company.

Private Company: As per NOTIFICATION NO. GSR 464(E) [F.NO.1/1/2014-CL-V], DATED 5-6-2015

Section 196 Sub Section 4 & 5 Not applicable on Private Company.
Section 197 not applicable on Private Company (Literal Interpretation).

DEFINITION:

Managing Director: - As per Section 2 clause 54 of Companies Act, 2013

A director who, by virtue of the articles of a company or anagreement with the company or a resolution passed in its general meeting, or by its Boardof Directors, is entrusted with substantial powers of management of the affairs of thecompany and includes a director occupying the position of managing director, by whatevername called.

MD means a ***Director***. As a MD or WTD must also be a director, theBoard can appoint to the office of MD/WTD only a person who is already a director.

Situation: If, for any reason such as the need of possessing professional or technical qualification, an outsider has to be appointed, the course to be followed is first to get him appointed as director either by the Board itself as an additional director under section 161 or by the Company in general meeting u/s 152 for such period as the company may determine.

Manager:-As per Section 2 clause 53 of Companies Act, 2013

An individual who, subject to the superintendence, control and directionof 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.

Whole-Time Director: - As per Section 2 clause 54 of Companies Act, 2013

A director in the whole-time employment of the company.In other words, a director employed to devote the whole of his time and attention in the carrying on of the affairs of the Company.

Whether a WTD can be director in other Companies:

That is to say he cannot also be an employee of another Company or elsewhere, or be engaged in any other business pursuit, though he may be an ordinary director of one or more other Companies also.

Executive Director: - Companies (Specification of definitions details) Rules, 2014, 2(K)Executive Director means a Whole Time Directoras defined in clause (94) of section 2 of the Act.

PURPOSE OF FILING OF FORMS:

MGT-14: This form required to file within 30 days of passing of resolution and required to file for below mentioned purposes for **All The Companies**including Private Limited Company {Section 117(3)(c)}.

- Appointment of Managing Director
- Re-appointment of Managing Director
- Renewal of Appointment of Managing Director
- Variation of the Term of Appointment of Managing Director

MR-1: This form is required to be filed within 60 days of appointment of Managerial Personnel and required to file for the Company **OTHER THAN** Private Company and Government Company.

DIR-12:- This form is required to be filed within 30 days of passing of resolution and required to file for the company **OTHER THAN** Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments

RESOLUTION REQUIREMENT:

For appointment or reappointment of Managerial Personnel (MD/WTD/Manager) following resolution required to be filed in case of;

PRIVATE COMPANY:

- In case of appointment of MD/WTD/Manager Private Company required passing **Board Resolution.**
- Board resolution can be passed by **Circular Resolution** or in the Meeting of Board of Directors.

PUBLIC COMPANY:

- **Passing of Board Resolution** required passing subject to approval of Shareholders in Next General Meeting.
- **Passing of Ordinary Resolution** required passing in subsequent General Meeting.
- Board resolution ***CAN NOT***bepass by **Circular Resolution.**

Note: Approval of Central Government in case such appointment is at variance tothe conditions specified in that Schedule.

MATTER COVERED IN RESOLUTIONOF APPOINTMENT:

- Terms and conditions of appointment
- Remuneration

MATTER COVERED IN NOTICE OF APPOINTMENT:

Notice of Board Meeting and General Meeting shall includes;

- Terms and conditions of appointment
- Proposed Remuneration
- Interest of Director & Directors in such appointment if any.

TENURE OFMANAGERIAL PERSONNEL:

Maximum tenure for appointment of Managing Director, Whole Time Director or Manager is 5 (Five) Year at a time. {Section 196(2)}.

Re-appointment:

The company may re-appointment them for next term ***but not earlier than one year before expiry of the current term***. This means, company may re-appoint them for next term in last one year of current term. *Section 196(2) proviso*

AGE FOR APPOINTMENT OFMD/WTD/Manager:

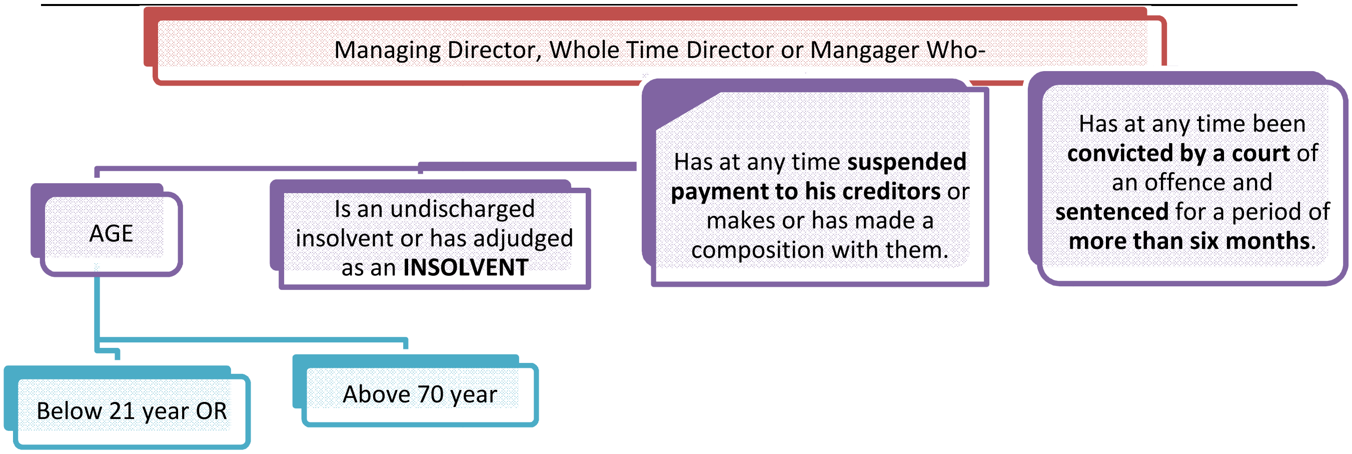
MINIMUM AGE:Minimum age for appointment as MD/ WTD/ Manager is 21 (Twenty) of year. There is an absolute prohibition on appointment of a person below the age of 21 year.

MAXIMUM AGE:Maximum age for appointment as MD/ WTD/ Manager is 70 (Seventy) of year. But subject to approval of Shareholders in General Meeting a person can be appoint as MD/WTD/Manager even after obtaining age of 70 years.

CESSATIONOF CONTINUATION OF APPOINTMENT OFMD/WTD/MANAGER:

A person can't continue as MD/WTD/Manager who-

- Is below the age of 21 year or has attained the age of 70 years
- is an undischarged insolvent or has at any time been adjudged as an insolvent
- has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- has at any time been convicted by a court of an offence and sentenced for aperiod of more than six months



INFORMATION REQUIRED TO BE PROVIDE BY PERSON TO BE APPOINTED:

Documents Required to be Provide:

- A declaration that he is not disqualified to become a director under this Act, 2013 (DIR-8)
- Consent on or before appointment (DIR-2)
- Self attested copy of Residential Proof
- Self attested copy of PAN

Information Required to be Provide:

Every director is required to disclose the following details to Company:

i. Director Identification Number (optional for key managerial personnel);
ii. present name and surname in full;
iii. any former name or surname in full;
iv. father's name, mother's name and spouse's name(if married) and surnames in full;
v. date of birth;
vi. residential address (present as well as permanent);
vii. nationality (including the nationality of origin, if different);
viii. occupation;
ix. office of director or key managerial personnel held or relinquished in any other body corporate;
x. The details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies relating to-
    - the number, description and nominal value of securities;
    - the date of acquisition and the price or other consideration paid;
    - date of disposal and price and other consideration received;
    - cumulative balance and number of securities held after each transaction;
    - mode of acquisition of securities ;

- mode of holding – physical or in dematerialized form; and
- whether securities have been pledged or any encumbrance has been created on the securities.

Disclosure of Interest of Directors:

Section-184(1)

Appointment:Every Director shall disclose his interest in any company or body corporate, firms, or other association of individuals at the first Board Meeting in which he participates as director and thereafter at the first Board Meeting in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change. The details shall include:

- Name of company or companies or bodies corporate, firms or other association of individuals,
- Nature of interest
- Whether interest is held directly or through relatives
- Shareholding , if any
- Date of acquisition

Relinquishment:Every director or 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

NOTES:

A.	196(1)	There can be only Managing Director or Manager. Both positions can't be filed at same time.
B.	196(3)(d)	A person can't be appointed as Managerial Personnel if he is convicted by a court of an offence and sentenced for a period of more **than 6 (Six) month.**This phrasing includes conviction of all kinds of offences
C.	196(4)	Remuneration should be approved by Board of Director subject to approval of Shareholders in General meeting in case of public Company.
D.		Remuneration should be approved by Board of Director in Private Limited company.

DIVESH GOYAL
Practicing Company Secretary
GOYAL DIVESH& ASSOCIATES

Mob: +918130757966
csdiveshgoyal@gmail.com

E.	Schedule-V/ Part-I	No person shall be eligible for appointment as a MD or WTD or Manager of company unless he "[1]*IS RESIDENT IN INDIA*"
F.		A person attained age 70 can be appoint as Managerial personnel subject to approval of shareholders by passing of Special Resolution.

I.	Whether a person can be appointed as Managing Director in more than one Company.
	As per 203(3) third proviso, Yes a person can be appoint as MD even he is already MD/Manager in one other Company and not more than one subject to condition.
II.	What is the provision to appoint a person as MD in second Company?
	Such appointment or employment is made or approved by a resolution passed at ameeting of the Board with the consent of all the directors present at the meeting and of whichmeeting, and of the resolution to be moved thereat, specific notice has been given to all thedirectors then in India.
III.	What is the time period for appointment of MD/WTD/Manager If the office of any whole-time key managerial personnel is vacated.
	The resultingvacancy shall be filled-up by the Board at a meeting of the Board within a period of sixmonths from the date of such vacancy
IV.	Whether casual vacancy of appointment MD/WTD/Manager can be filed by passing of Circular Resolution.
	No, Casual Vacancy can't be filed by Circular Resolution. It can be filed only in the Meeting of Board of Directors. Section 203(4)
V.	Whether MD/WTD/Manager can appoint as Director in any other Company.
	Yes, MD/WTD/Manager can appoint as director in other company with the permission of theBoard of another Company.

[1]Resident of India Include a person who has been staying in India for a continuous period of less than 12 immediately preceding the date of his appointment as a Managerial Person and who has come to stay in India,-

- For taking up employment in India; or
- For carrying on a business or vacation in India.

VI.	Whether a Non-Resident can appoint as Managerial Personnel?
	As per Schedule-V a Managerial personnel should be resident in India.
VII.	Whether Schedule V applicable on Private Limited Companies.
	Schedule V ***NOT*** applicable on Private Limited Company w.e.f. 05.06.2015 because of Exemption notification on Private Limited Company.
VIII.	Whether there is any restriction on payment of Remuneration to Managerial Personnel in case of private limited Company?
	In case of private limited Company Section 197 not applicable, therefore there is no restriction on remuneration to Managerial Personnel.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com)