



# The Companies Act 2013

*Enlightening Nation*

## E-newsletter

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### *About the E-newsletter*

Dear Users,

**Thecompaniesact2013.com** imports yet another innovation for all the valuable users in the form of e-newsletter. This is the first issue of the **November month** comprising contemporary articles, latest notifications, circulars & orders.

The notion is to render all the updates about Company law of the current month in a compiled format and serve a better pavement for easy accessibility to the users.



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## ARTICLE



### Governing Provisions for Managerial Personnel

Chapter XIII of the Companies Act, 2013 read with Schedule V of the Companies Act, 2013 deal with the legal and procedural aspects of appointment and remuneration of Managerial Personnel.

#### Applicability of Provisions

**For Private Companies:** Section 196 (1),(2) and (3) of the Companies Act 2013 and Part I relating to conditions to be fulfilled for the appointment of a managing or whole-time director or a manager without the approval of the central government of Schedule V shall be applicable on Private Limited Company.

**For Public Companies:** All provisions relating to appointment and remuneration to managerial personnel provided in Chapter XIII of the Companies Act, 2013 read with Schedule V of the Companies Act, 2013 , as the case may be , shall be applicable to public companies.



### Managerial Personnel under Companies Act 2013

Following persons are included in the term Managerial Personnel:-

**Manager:** Section (53) “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.

**Managing Director:** Section (54) “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.

**Whole- Time Director:** Section 94“whole-time director” includes a director in the whole-time employment of the company.



### Disqualifications

Section 196(3) of the Act makes a specific prohibitory provision with regard to Managerial personnel. The section lays down that no company shall appoint or continue the employment of any person as its 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 Appointment and Remuneration of Managerial Personnel for such motion shall indicate the justification for appointing such person;

(b) is an undercharged insolvent or has at anytime 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.

**Apart from this, Part I of Schedule V** contains five conditions which must be satisfied by a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below:

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, 1992;
- 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 21 years and has not attained the age of 70 years: Provided that where he has attained the age of 70 years; and where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment;
- d) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;
- e) he is resident in India.

**Explanation :** For the purpose of above, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India:

- i. for taking up employment in India, or
- ii. for carrying on a business or vocation in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

However, 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 the terms and conditions of such person's appointment.



### **Provisions for appointment (In private Company or in Public Company)**

#### **In case of Private Companies**

As per Companies Act-2013 there is no compulsion on private company to appoint managerial personnel, a company can willingly appoint the managerial personnel by following the procedure provided below:

#### **As Managing Director:-**

- i) Convene and hold a board meeting as per the provisions of section 173 of the Companies Act 2013 for approving the terms and conditions for appointment and remuneration thereof ensuring that the person does not suffer from any disqualifications under The Companies Act 2013.
- ii) File Form MGT-14 within 30 days of passing resolution.
- iii) File Form DIR-12 within 30 days of appointment.

### **As Whole Time Director:-**

- i) Convene and hold a board meeting as per the provisions of section 173 of the Companies Act 2013 for approving the terms and conditions for appointment and remuneration thereof ensuring that the person does not suffer from any disqualifications under The Companies Act 2013.
- ii) File Form DIR-12 within 30 days of appointment.

### **In case of Public Companies**

1. Convene Board Meeting after giving notice to all the directors [Section 173] to discuss besides others the following matters.
  - a) Approve the terms and conditions on which the Managing Director/ Whole Time Director/ Manager is proposed to be appointed.[ Subject to the provisions of section 196,197 and Schedule V]
  - b) In case the appointee has completed the age of 21 years, but has attained the the age of 70 years, provided that appointment of person who has attained the age of seventy years may be made by passing a special resolution in the AGM/EGM and [form No.MGT-14] has to be filed with the ROC.
  - c) To decide the day, time, venue of the General Meeting.
  - d) To approve the notice of general meeting.
  - e) To authorise the Company Secretary or any director of the company to issue the notice of general meeting.
  - f) Issue and dispatch notices in writing at least 21 clear days before the date of the General Meeting [Section101] [Agenda]
2. Obtain a [written consent] [Section 152(5)] from the person who is to be appointed as Managerial personnel.
3. Ensure that the appointment is made in accordance with the conditions specified in [Schedule V]
4. Inform the Stock Exchange with which shares of the company are listed about the date of this meeting prior to the board meeting. [Clause 19 of the Standard Listing Agreement]
5. Inform the said Stock Exchange within 15 minutes of the board Meeting, of the outcome of the meeting by letter or fax.
6. Authorise Company Secretary or any director of the Company to issue the[notice of General Meeting] to all the Shareholders, auditors and directors at least 21 clear days [Section101] before the date of Annual General Meeting.
7. Alternately, an annual general meeting may be called up by giving a notice shorter than 21 days [Section101], consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.
8. In case of listed companies forward to the Stock Exchange promptly three copies of the notice and a copy of the proceedings of the General Meeting. [Clauses 31(c), (d) and 33 of the Standard Listing Agreement]

9. Hold and convene a General Meeting and pass an [Ordinary resolution], [Section 114] if the Articles of Association of your company require passing of Special resolution for such appointment, then pass a special resolution with three-fourth majority [Section 114]. In case of Special resolution see [Section 117]
10. File Form MGT-14 within 30 days from the date of General Meeting.
11. File Form DIR-12 within 30 days of appointment.
12. Fees can be paid through e-banking/NEFT
13. Such Director need to make a [intimation] in the first board meeting to the other companies in which he is already a director, Managing Director, manager, Secretary. (Section 184)
14. File [Form MR-1] with the concerned ROC within 60 days from the date of Appointment. (Pursuant to Section 196 read with Section 197 and Schedule V of the Companies Act, 2013 and pursuant to Rule 3 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014]
15. Make necessary entries in the Register of Directors and in the Register of Director's Shareholding. [Section 170 ]
16. Notify the Stock Exchange with which shares of the Company are listed about the change in the company directors [Clause 30(a) of the Standard Listing Agreement]

**Notes :** Section 196(4) provides that subject to the provisions of section 197 and Schedule V of the Companies Act, 2013, 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.



### **Remuneration to Managerial Personnel**

The word remuneration is defined under section 2(78) of Companies Act, 2013 which says that "remuneration" means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961.

The provisions for Remuneration to directors are governed through Section 197 and Schedule V of the Companies Act, 2013.

**Basic Concept:** - The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, either by the articles of the company, or by a resolution (special resolution if the articles so require), passed by the company in general meeting and the remuneration payable

to any such director determined as per the said provisions shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

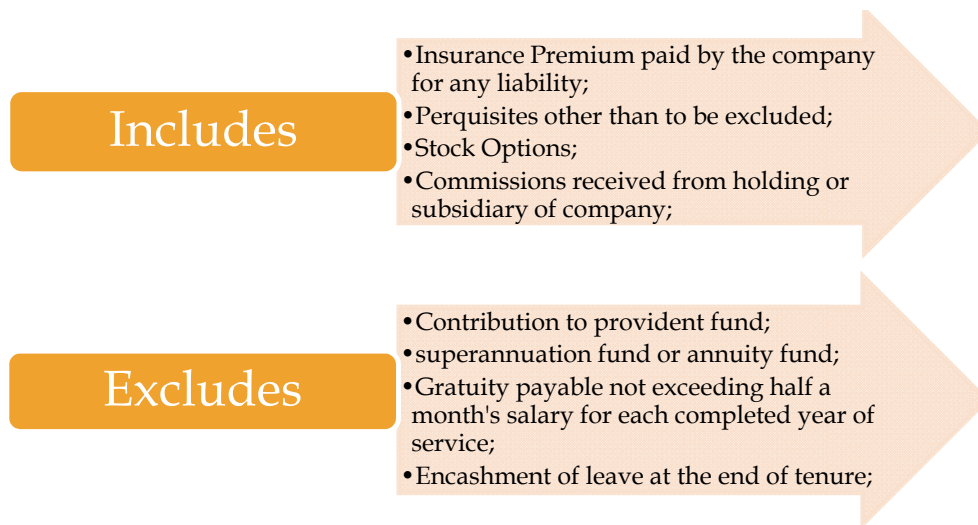
### **Manner of payment**

A director who is neither in the whole-time employment of the company nor a managing director may be paid remuneration, either

- i) By way of a monthly, quarterly or annual payment with the approval of the Shareholder; **or**
- ii) By way of commission if the company by special resolution authorizes such payment;

However, any remuneration for services will not be so included if the services are of a professional nature and in the opinion of the Central Government, the director possesses the requisite qualifications.

### **7. Items inclusive or exclusive of remuneration**



In addition to above an expatriate managerial person shall be eligible for the following:

- i. Children's education allowance for children studying outside India - Maximum of Rs. 12000 p.m or actual expenses incurred whichever is less (maximum two children).
- ii. Holiday passage for children studying outside India or family staying abroad: Return once a year by economy class or once in two years by first class.
- iii. Leave travel concession: Return passage for self and family in accordance with the rules specified by the company.



## Calculation of remuneration

### **Governing Provisions**

- There is no restriction relating to managerial remuneration for a Private Company.
- The provisions for Remuneration to directors by Public Company are governed through Section 197 and Schedule V of the Companies Act, 2013.

### **In Case of Private Companies**

For private company there is no ceiling limit of Profit for payment of remuneration to directors in a financial year as prescribed in section 197.

In general the board of directors is authorized to decide Remuneration of individual directors subject to overall limit (if any) set by the shareholders in a general meeting. However, in such a decision by the board, the directors concerned is considered as “interested” and cannot vote on the proposal. In other words Director whose remuneration is fixed while passing Resolution for the same cannot vote.

Thus from the view point of Companies Act 2013

**Private Company may fix any Amount of remuneration without considering profits of the company.**

### **In Case Of Public Companies**

- **Case I :- Companies having Adequate Profits**

In case company having profits, The total managerial remuneration payable to its directors and its manager in any financial year must not exceed 11 % of the net profits of the company

### **Overall Remuneration Limits**

<b>Managerial Remuneration</b>	<b>Maximum Limits</b>	<b>Approvals</b>
Payable to its directors, including managing director and whole-time director, and its manager	Up to 11% of net profits	Shareholders
	Exceeding 11% of net profit	Central Government

### **Individual limits of remuneration in case of Executive Directors**

<b>S. No.</b>	<b>Limits</b>	<b>Remuneration exceeding the limits</b>
1.	If one MD or WTD 5% of net	Remuneration exceeding the said limits but subject to the



	Shall not exceed	profit	maximum limit of 11% can be paid with the approval of shareholders.
2.	If more than one MD or WTD shall not exceed	10 % of net profit	

### **Individual limits of remuneration in case of Non - Executive Directors**

S. No.		Limits	Remuneration exceeding the limits
1.	If Co. have one MD or WTD or Manager it shall not exceed	1% of net profit	Remuneration exceeding the said limits but subject to the maximum limit of 11% can be paid with the approval of shareholders
2.	If there is no MD or WTD or Manager	3 % of net profit	

If any director earns remuneration from a company in excess of the above limits without prior approval of the Central Government, he shall refund the excess to the company and until such repayment; hold the money in trust with him.

### **Case II Companies having Inadequate Profit**

**Note:** - There are two terms under remuneration i.e. No Profits and Inadequate Profits.

- First one [No Profit] means when the company has losses , and
- Second situation [Inadequate Profit] is when company has profits but the amount of remuneration it wish to pay to the directors exceeds the maximum amount allowed under the Act.

### **Automatic Routes**

**Situation I :-** 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 only by way of approval of company by **Ordinary Resolution** in General Meeting

Where 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	60 lakhs

than 250 crores	
iv) 250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

**However Company may pay** to its Manger or Managing Director or Whole Time Director **200% of abovementioned remuneration** if shareholders give their consent **through Special Resolution** passed in General Meeting.

**Situation II :-** 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:—

i) Where the remuneration in excess of the ceiling is paid by any other company and that other company is either a foreign company

ii) Where the company-

is a newly incorporated company, for a period of seven years from the date of its incorporation, or

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.

iii) 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

**Situation III:** 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 ,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) 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.

### **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.



### **Penalty for Contravention**

<b>On Company</b>	Fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-
<b>On every director and key managerial personnel of the company who is in default</b>	Fine which may extend to Rs. 50,000/- and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000/- for every day after the first during which the contravention continues.



## **NOTIFICATION**

### **A. G.S.R. (E) COMPANIES (SHARE CAPITAL AND DEBENTURES) THIRD AMENDMENT RULES, 2015**

**Dated 06/11/2015**

In exercise of the powers conferred by sub-sections (1) and (2) of Section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Share Capital and Debentures) Rules, 2014, namely:-

1. (I) These rules may be called the Companies (Share Capital and Debentures) Third Amendment Rules, 2015.  
  
(2) They shall come into force from the date of their publication in the Official Gazette.
2. In the Companies (Share Capital and Debentures) Rules, 2014, (i) in rule 18,-
  - (a) In sub-rule (I), in clause (a) for sub-clause (iii) following sub-clauses shall be substituted, namely:-  
  
"(iii) Infrastructure Debt Fund Non-Banking Financial Companies' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011 ;

- (iv) Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years."

**B. G.S.R(E) COMPANIES (MANAGEMENT AND ADMINISTRATION) THIRD AMENDMENT RULES, 2015**

**Dated 16.11.2015**

In exercise of the powers conferred under sub-sections (2) and (3) of section 92 read with sub-sections (1) and (2) of section 469 of the Companies Act 2013(18of2013), the Central Government hereby makes the following rules further to amend the Companies (Management and Administration) Rules, 2014, namely:-

1. Short title and commencement,-

(1) These rules may be called the Companies (Management and Administration) Third Amendment Rules, 2015.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Companies (Management and Administration) Rules, 2014, for Form No. MGT-7, the following form shall be substituted.

**CIRCULAR**

**A. GENERAL CIRCULAR NO.15/2015**

**Subject: - RELAXATION OF ADDITIONAL FEES AND EXTENSION OF LAST DATE OF IN FILING OF FORMS MGT-7 (ANNUAL RETURN) AND AOC-4 (FINANCIAL STATEMENT) UNDER THE COMPANIES ACT, 2013-REG.**

In continuation of this Ministry's General Circular 1412015 dated 28.10.2015, keeping in view requests received from various stakeholders, it has been decided to relax the additional fees payable on e-forms AOC4, AOC (CFS) AOC-4 XBRL and e- Form MGT-7 up to 30.12,2015, wherever additional fee is applicable.

**IMPACT OF ABOVE MENTIONED CIRCULAR:**

Form AOC-4, AOC-4 XBRL and MGT-7 can now be filed till 30<sup>th</sup> December, 2015 without paying any additional fees.

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- (Listing Obligations and Disclosure Requirements) Regulations, 2015 vis-à-vis Equity Listing Agreement
- Formats for condonation of delay of charges( Section 87)
- Black money probe: SIT finds 2,672 persons on board 20 firms, flags 77,696 shell companies
- Event Based Compliances for Listed Companies
- Companies (Share Capital and Debentures) Third Amendment Rules, 201
- News Highlight :- Companies Act amendments likely for clarity on CSR norms
- Concept of Loan from Director
- Companies (Management and Administration) Third Amendment Rules, 2015
- Help Kit of MGT- 7
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- Draft Secretarial Audit Report
- Management Representation Letter for Secretarial Audit
- News Highlight :- Govt eases requirement in annual returns form under Companies Act
- Procedure for fixation of remuneration to Managing Director/Whole Time Director/Manager
- News Highlight :- Company Secretary to act as compliance officer: SEBI
- News Highlight:- Government to set up new agency to probe corporate accounting frauds
- News Highlight:- Companies Law committee will give its final report next month
- Procedure for Conversion of One Person Company into other kind of Company
- Relaxation of additional fees and extension of last date of in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013-reg

## EDITORS COLUMN

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