

A 3D perspective view of a grid of white, glossy cubes. One cube in the upper right quadrant is colored red and stands slightly taller than the others, drawing attention. The background is a soft, out-of-focus gradient of light gray.

# Managerial Remuneration

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Company Secretary*



**Thank you**

**Indore Chapter of ICSI**

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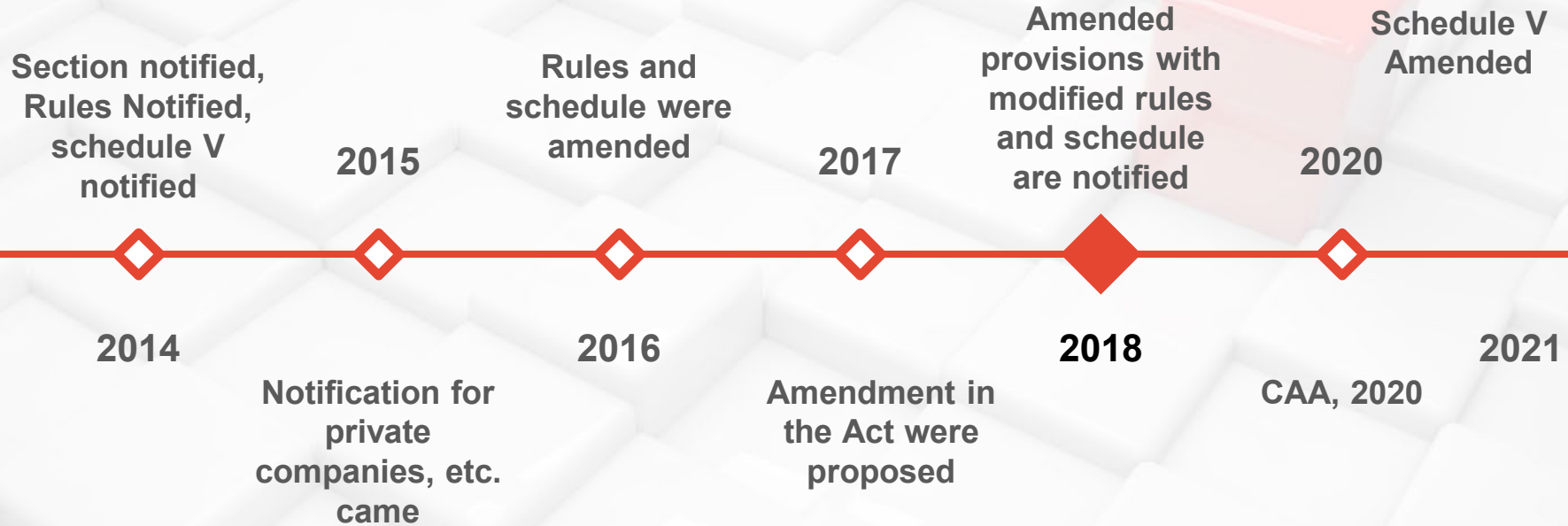
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**Section 196  
to  
Section 202  
and  
Schedule V**

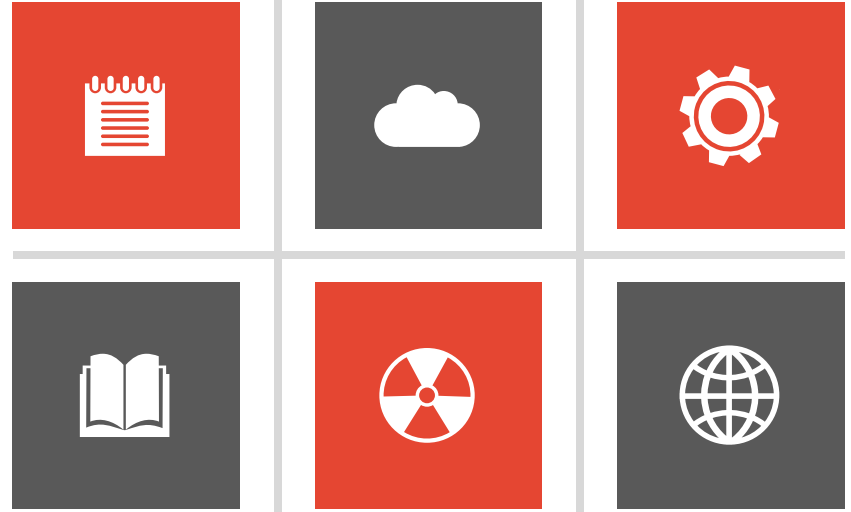


# Journey so far



# Remuneration

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.



# Section 196

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



01

02

03

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

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

# Disqualifications

Age – 21 to 70  
Beyond 70 Special  
Resolution

CG Approval, if Ordinary is  
passed

convicted by a court of an  
offence and sentenced for a  
period of more than six months

01

02

03

04

an undischarged insolvent or  
has at any time been adjudged  
as an insolvent

any time suspended payment to  
his creditors or makes, or has at  
any time made, a composition  
with them



# Various Terms

**01**

**Adjudged Insolvent**

**02**

**Undischarged Insolvent**

**03**

**Convict**

**04**

**Suspend**

**05**

**Composition**

**These disqualifications are the permanent disqualification and the same cannot be removed by the central govt. i.e. if a person attain disqualification under this clause then he cannot be appointed as whole-time director, managing director or manager forever....!**

# What is the meaning of Court – Section 2(29)

the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);

the district court, in cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district;

the Court of Session having jurisdiction to try any offence under this Act or under any previous company law;

Special Court u/s 435;

Metropolitan Magistrate or Judicial Magistrate of the First Class having jurisdiction;

**Therefore, for this section 'court' means court in India. Accordingly, if a person is convicted by any court outside India then that person is not disqualified for the appointment as whole-time director, managing director or manager under this Act.**

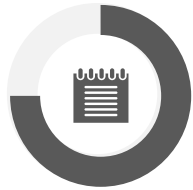
# Sridhar Sundararajan vs Ultramarine & Pigments Limited

It will not be possible therefore to say that section 196(3)(a) would operate separately from other sections viz. Section 196(3)(b) to (d). Section 196(3)(a) to (d) mentions various disqualifications which prohibit appointment or continuation of Managing Director as a matter of public policy.

If appointment to the post of Managing Director is made after coming into force of the Amendment Act, 2013 on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfillment of the proviso. On the other hand, if he was already appointed prior to 1-4-2014 when he was below the age of 70 years, on account of operation of statute, disqualification, whenever incurred after the Amendment Act, would operate automatically, subject to proviso i.e. special resolution being passed by the Company.



# Section 196 – Appointment Process



Subject to provisions of section 197 and schedule V



Approval at the Board Meeting and Resolution at Next General Meeting  
what is next?



Central Government Approval if not in compliance of Part – I of Schedule V



Terms and Conditions, Remuneration interest, etc. to be given in Notice of Board and General Meeting

# Return to be filed

Return in the prescribed form shall be filed within sixty days of such appointment with the Registrar

## 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, 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

**Form no. MR-1**  **Return of appointment of managerial personnel**

*[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]*

Form Language  English  Hindi

Refer instruction kit for filing the form.

1.(a) \*Corporate identity number (CIN) of company

(b) Global location number (GLN) of company

2.(a) Name of the company

# What if the resolution is not passed by members

**Whether acts of MD/Manager/WTD shall be invalid, if member does not pass the special resolution?**



## **Section 196(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.

***What is the meaning of the word subject to provisions, which provisions?***

# Exemption to Companies

## Private Companies

Sub-sections (4) and (5) of  
Section 196

## IFSC Public Companies

Sub-section (4) of section 196 shall  
not apply

01

02

03

## Government Companies

Sub-sections (2), (4) and (5) of  
Section 196 shall not apply

# Overall Remuneration

By a Public Company: Overall 11% of net profit to its Directors including MD/WTD/Manager

It is in respect of a financial year

Net profit is to be calculated as per section 198 of the Act

In section 198, the remuneration of the directors shall not be deducted from the gross profit



# What if, more than 11% whether possible?

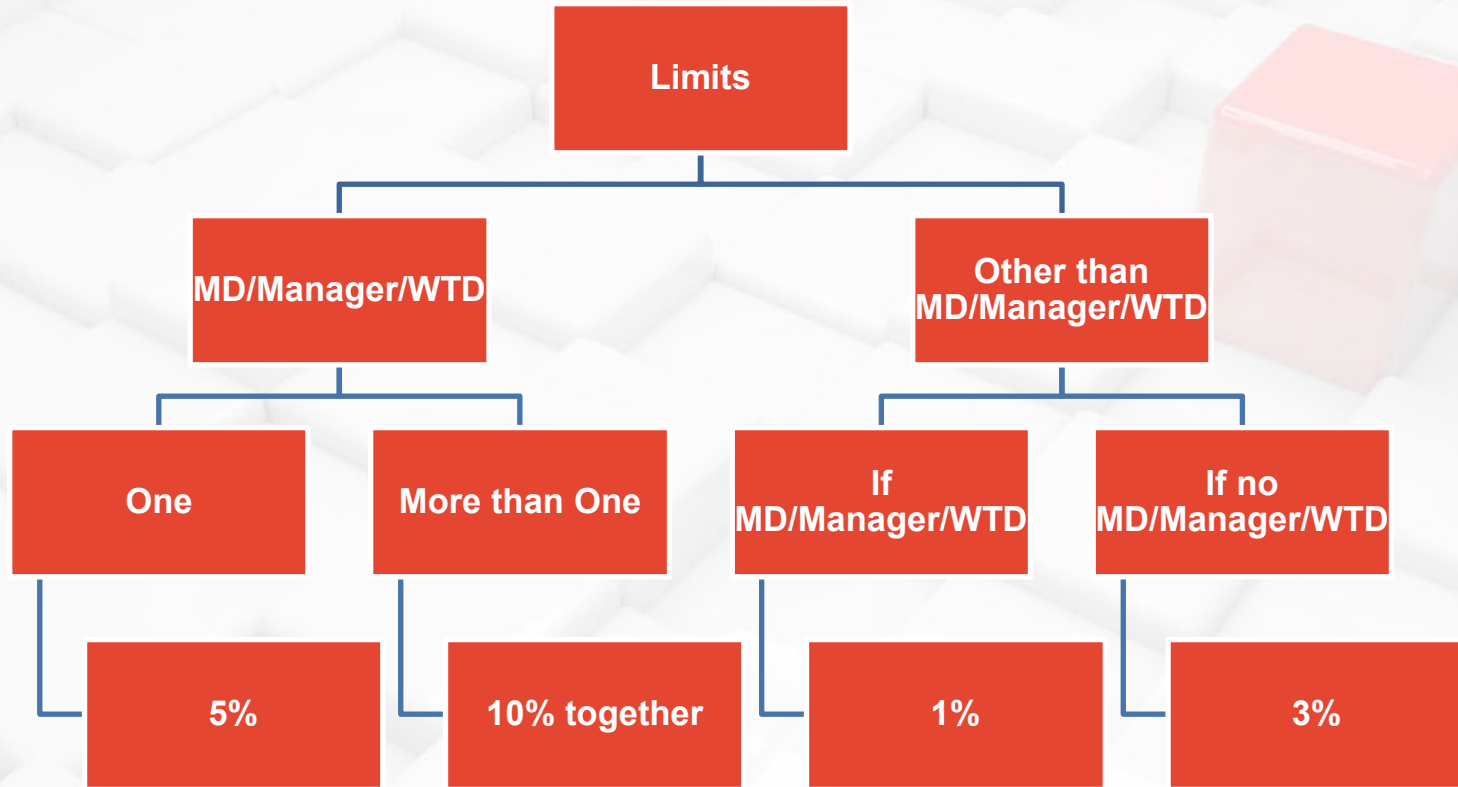
Yes, it is possible: resolution passed by members in general meeting

Compliance of Schedule V

First Proviso to Section 197 v/s Schedule V – Subject to???

No Central Government Approval except Part I of Schedule V

# Limits u/s 197



## **What** if, more than the individual limits, whether possible?

Yes, it is possible: special resolution passed by members in general meeting

Prior permission of various authorities, if default

Default in payment of dues of any bank, PFI, NCD holder, secured creditor

Word used is dues – hence, both principal and interest – What if default is not subsisting?

# What if, No profits or inadequacy of profit, whether possible?

Yes, it is possible MD/Manager/WTD/NED/IDs: go to Schedule V

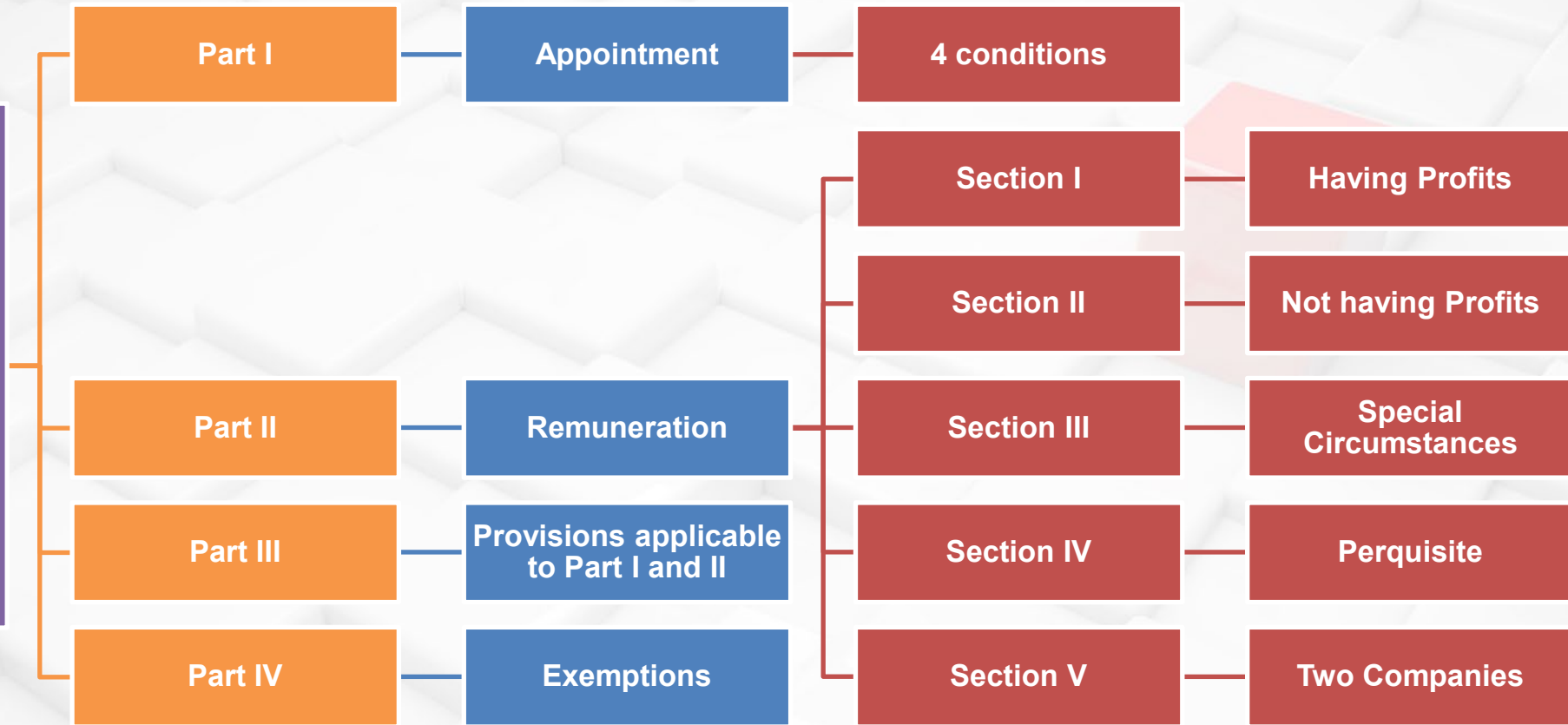
Schedule V – Originally notified w.e.f. April 1, 2014

1<sup>st</sup> Modification on September 12, 2016

2<sup>nd</sup> Modification on September 12, 2018 – Coincidence

3<sup>rd</sup> Modification on March 18, 2021

# Schedule V



# Part I

## Appointments

Conviction of offence in  
19 Acts

Imprisonment for any  
period

Fine of Rs. 1000 more

Detention of any period  
under COFEPOSA

Completed 21 years

Age Restrictions

Not attained 70 years  
(no further approval if  
SR)

Resident of India

Preceding 12 months

# List of 19 Acts

- the Indian Stamp Act, 1899 (2 of 1899);
- the Central Excise Act, 1944 (1 of 1944);(Repealed)
- the Industries (Development and Regulation) Act, 1951 (65 of 1951);
- the Prevention of Food Adulteration Act, 1954 (37 of 1954);
- the Essential Commodities Act, 1955 (10 of 1955);
- the Companies Act, 2013 or any previous company law;
- the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- the Wealth-tax Act, 1957 (27 of 1957); (Repealed)
- the Income-tax Act, 1961 (43 of 1961);
- the Customs Act, 1962 (52 of 1962);
- the Competition Act, 2002 (12 of 2003);
- the Foreign Exchange Management Act, 1999 (42 of 1999);
- **the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986); (Repealed)**
- the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);
- the Prevention of Money-Laundering Act, 2002 (15 of 2003);
- **the Insolvency and Bankruptcy Code, 2016 (31 of 2016)**
- **the Goods and Services Tax Act, 2017 (12 of 2017)**
- **the Fugitive Economic Offenders Act, 2018 (17 of 2018)**



Once approved –  
forever  
approved????

# Part II

Section I

Companies having profits – section 197

Section II

No Profit/Inadequacy of Profit

Section III

Remuneration in certain special circumstance

Section IV

Perquisite not to be included

Section V

Remuneration in two companies

Table giving details

Professional Directors

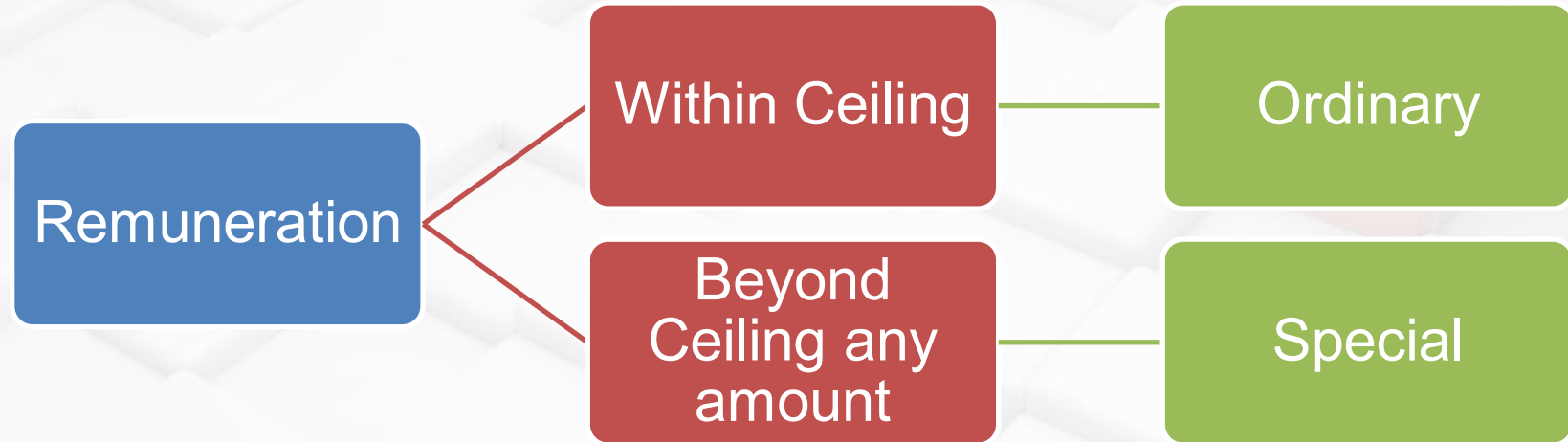


# Is there any ceiling?

Effective capital	Limit yearly remuneration in Rs. MD/WTD/Manager	Limit yearly remuneration in Rs. Other Directors
Negative or less than 5 crore	60 lakhs	12 lakhs
5 crores and above but less than 100 crores	84 lakhs	17 lakhs
100 crores and above but less than 250 crores	120 lakhs	24 lakhs
250 crores and above	120 lakhs plus 0.01% of effective capital in excess of Rs. 250 crore	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

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.

# Type of Resolution



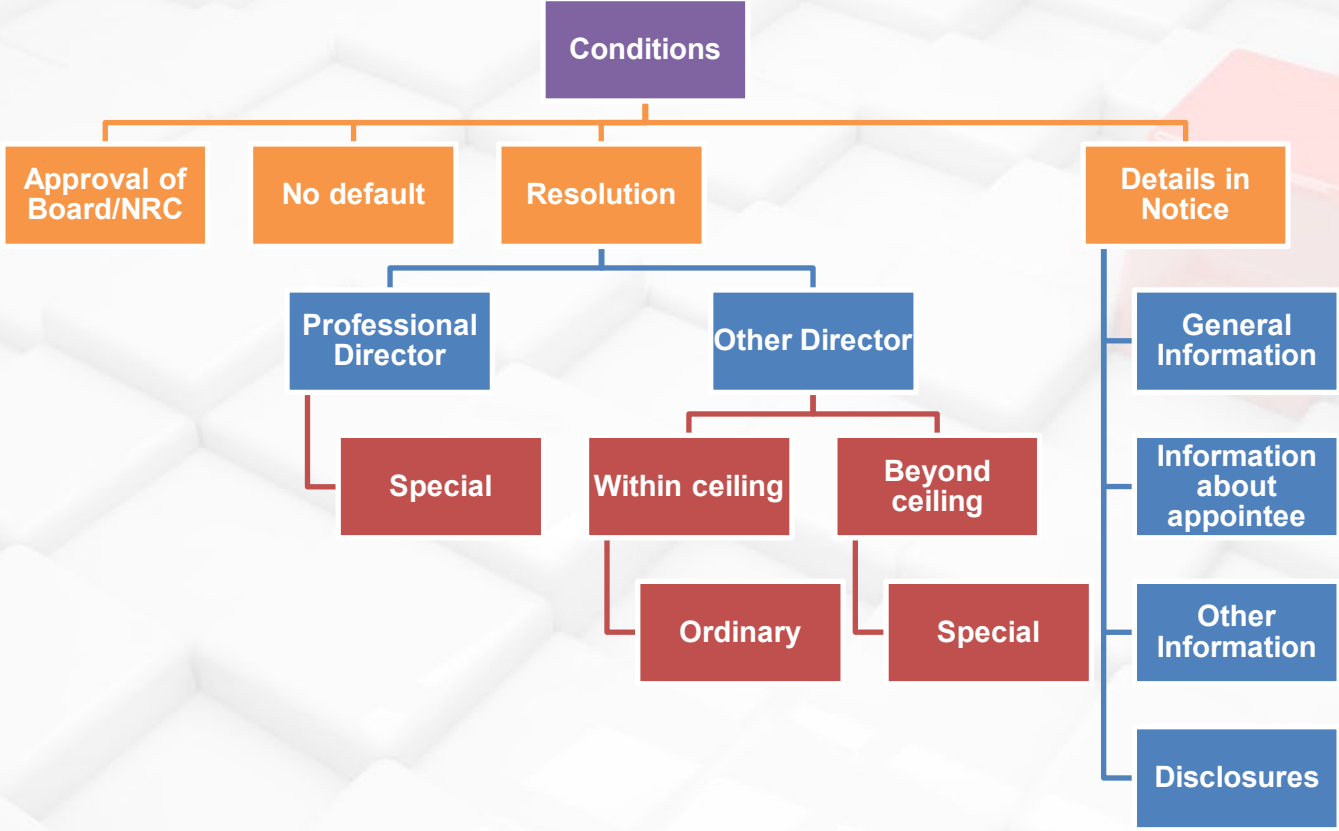
# Professional Director

Remuneration

Any Amount

Special

# Other Conditions



# Special Circumstances

Conditions

```
graph TD; Conditions[Conditions] --- Other[Other Company]; Conditions --- Foreign[Foreign Company]; Conditions --- Newly[Newly Incorporated]; Conditions --- Sick[Sick Company]; Conditions --- Resolution[Resolution Plan IBC];
```

Other  
Company

Foreign  
Company

Newly  
Incorporated

Sick  
Company

Resolution  
Plan IBC

## Indian

contribution to provident fund, superannuation fund or annuity fund

gratuity payable at a rate not exceeding half a month's salary for each completed year of service

encashment of leave at the end of the tenure

## Expatriate/NRI

3 which are for Indian

Children's education allowance

Holiday passage for children studying outside India or family staying abroad

Leave travel concession

**Perquisite not to be included**

# 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.**

# Remuneration payable to a managerial person in two companies

**Case 1: Mr. A is MD of A Limited and B Private Limited, whether two companies?**

**Case 2: Mr. A is holding the position of Managing Director of ABC Limited and XYZ Limited. Maximum remuneration limit of ABC Limited as per section 197 & Schedule V is INR 1.2 Crore and maximum remuneration limit of XYZ Limited as per section 197 & Schedule V is INR 1.5 Crore. How much remuneration can be paid from each company?**



# Provisions applicable to Part I and II of Schedule V



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



The auditor or the Secretary of the company or where the company is not required to be appointed a Secretary, a Secretary in whole-time practice shall certify that the requirements 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

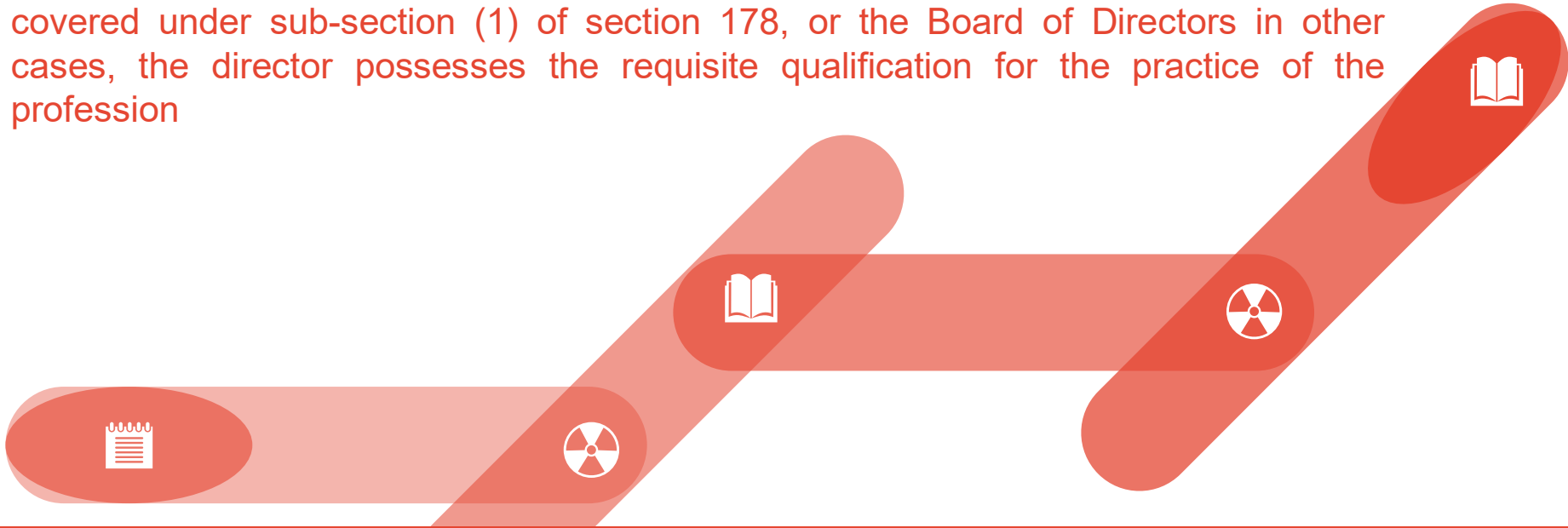
# Exemption to Certain Companies



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

# Remuneration on other capacity

the services rendered are of a professional nature; and 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



# 198 profit

To arrive at the profit of the Company which is purely in the course of business

By adjustment of entries which are not of routine nature / not incurred in the course of routine business activities of the Company

# Change made

Profits, by way of premium on shares or debentures of the company, which are issued or sold by the company, unless the company is an investment company as referred to in clause (a) of the explanation to section 186

The investment companies now not required to reduce the profits/ premium received on shares issued / sold by it, as it is a part of their routine business activity.

any amount representing unrealised gains, notional gains or revaluation of assets

The said clause has been added because of the introduction of Ind-AS accounting. Any unrealised /notional gain needs to be deducted from profit

# Sitting Fee

**Fee for attending meeting of the Board, Committees or for any other purpose**

**for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors**

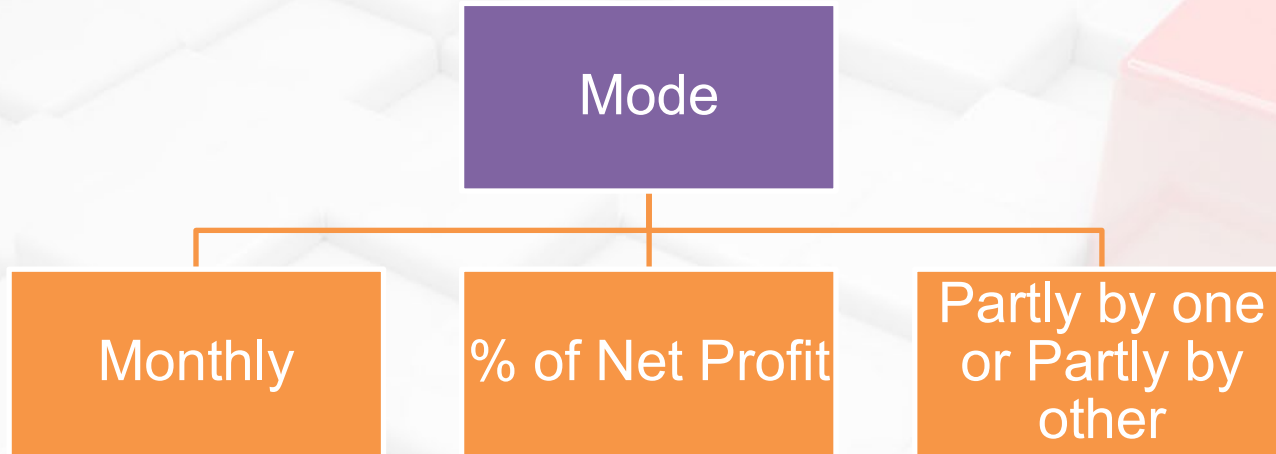
**01**

**02**

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**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:**

# How can remuneration be paid?

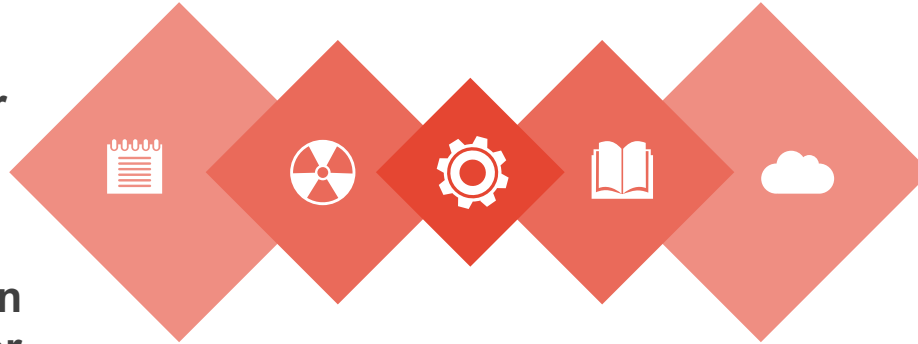


# Other conditions

**Stock Options to Independent Directors**

**Net Profit as per section 198**

**Excess remuneration within two years or such lesser period as may be allowed by the company**



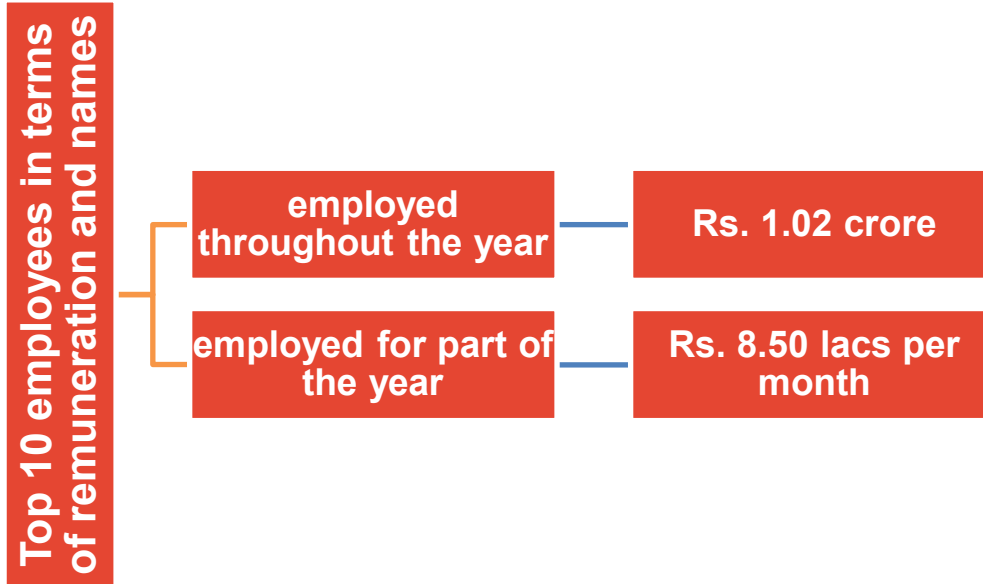
**The company shall not waive the recovery of any sum refundable to it under sub-section (9) unless approved by the company by special resolution within two years from the date the sum becomes refundable. (if default, then approval)**



# Disclosure in Board's Report – Listed Companies

- Ratio of remuneration of each director to the median employee's remuneration
- % increase in remuneration of each Director, CFO, CEO, CS or Manager, if any
- % increase in the median remuneration of employees
- Number of permanent employees on the rolls of the company
- Average percentile increase already made in salaries of employees other than the managerial personnel and its comparison with the percentile increase in the managerial remuneration with justification and point out exceptional circumstances for increase in managerial remuneration
- Affirmation that remuneration is as per Remuneration Policy

# Disclosure in Board's Report – Listed Companies



**If employed throughout or part thereof, in aggregate received remuneration / at a rate in excess of what was drawn by the MD / WTD / Manager and holds by himself or along with spouse and dependent children, not less than 2% of the equity shares of the company**

# Disclosure in Board's Report – Listed Companies

Particulars of employees posted and working abroad (except for directors and their relatives) drawing more than Rs.60 lacs p.a. or Rs.5 lacs p.m., need not be circulated with the Board's Report if decided so by the Board, but, shall be filed with the RoC

However, such particulars may be made available within 3 days upon receipt of a specific request made by a shareholder before the concerned AGM

If such a request is made after the AGM, it shall be furnished to the concerned shareholder within 7 days of receipt of request

# Insurance

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.

# Auditor's Responsibility

The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed

# What if the application is pending before the Central Government

## Status of Application

Abated

Approval within one year  
– Certain questions?

# Parameters for consideration of remuneration

the financial position of the company

the remuneration or commission drawn by the individual concerned in any other capacity

the remuneration or commission drawn by him from any other company

professional qualifications and experience of the individual concerned

# Parameters for consideration of remuneration

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

the relationship between remuneration and performance.

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.

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

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



# Recovery in certain cases

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

# General Notice

**Before making any application to central government -**

**a general notice to members of the company and also publication in newspapers**

**Copies of such notice and certificate as to publication shall be attached to the application**

# Listed Companies – other provisions

Fee/Compensation – NED/ID – Approval of Shareholders – except for sitting fee, if in limit

SR every year – if annual remuneration paid to one NED > 50% of total remuneration to all NEDs

No stock options to IDs

ED (promoter/promoter group) – SR if Rs. 5 crore or 2.5% of net profit, whichever is higher

If more than one ED (promoter/promoter group) – SR if exceed 5% of net profit



***A presentation by:***

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**Thank you**



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