

# Redefining New Normal: A Comprehensive Checklist on Companies Act

A compilation of checklists by research empanelled professionals



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

Centre for  
Corporate  
Governance,  
Research &  
Training

## **“Dynamism is a function of change”**

These words of Hilary Clinton seem to perfectly befit the moment, the present times, the uncertainty entailing and the measures and counter initiatives undertaken by all of us as individuals, as professionals and even as professional bodies & institutions in this regard.

With the Government introducing and launching initiatives like the Aatmanirbhar Bharat, the role of professionals, especially Governance Professionals has heightened, now more than ever.

Understanding the need for dedicated support structure in place for the Company Secretaries to perform their duties and responsibilities with diligence and ensure compliance across the length and breadth of India Inc., the Institute has undertaken a novel initiative in this regard.

The ICSI-Centre for Corporate Governance, Research and Training (ICSI-CCGRT) has developed a unique e-bulletin under the aegis of **‘Redefining New Normal: A Comprehensive Checklist on Companies Act’**. The intent of the publication is to serve as a ready reckoner for the Governance Professionals in dispensing with their responsibilities.

We would like to acknowledge the efforts of the team of researchers at ICSI-CCGRT and Dr. K S Ravichandran for guiding the team in the completion of this task. We would also like to place on record our appreciation towards the team at ICSI-CCGRT and ICSI-COE (Hyderabad) led by Dr. Trupti Amit Karkhanis and Dr. Sapna Malhotra respectively for their dedicated efforts in compilation and presenting of this publication as well as the members of the review team comprising professional from across the nation.

The e-publication will be released on a Chapter-wise basis in the days to follow and the entire book compiling all checklists will be released soon. The compiled single volume will be published and offered to CS fraternity members.

The checklist will be available at the ICSI-CCGRT research initiative portal <https://www.icsi.edu/ccgrt/research-initiatives-2/>.

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**Checklist for Chapter on Appointment and Remuneration to Key Managerial  
Personnel and Secretarial Audit  
(Chapter – XIII of the Companies Act, 2013)**

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**Notes:**

1. This checklist is applicable only to private and public companies with share capital incorporated for profit making objectives.
2. This checklist is purely based on provisions of the 2013 Act and rules thereto. It does not include any reference to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 or any other law or rules and regulations that may apply to the subject matter of Chapter XIII of the 2013 Act.
3. This checklist is intended to serve a ready referencer for company secretaries in employment as well as those in practice. In other words, it is to be applied by persons who are qualified members of the Institute of Company Secretaries of India (ICSI).
4. This checklist takes into account amendments to the provisions and rules upto 6<sup>th</sup> Aug 2020.
5. While every care has been taken to incorporate all the applicable provisions and the rules falling with the subjects covered by Chapter XIII, it is possible that a particular aspect or point has not been factored. Hence, if any reader brings anything to be incorporated in this checklist or modified or varied, it may be brought to the knowledge of CCGRT of ICSI for consideration and necessary action as may be desirable. The views expressed in this checklist are of the research empanelled professionals of ICSI CCGRT - COE.
6. This checklist is not intended to serve as a full proof document to insulate members from any professional liability. Members are required to apply the same with due diligence and care as is expected of professionals.

**Appointment and Remuneration of Managerial Personnel  
Section 196 – 205**

**Legends**

- Companies Act, 2013 – the 2013 Act
- Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 – Rule – the Rules

**Class of Company Code**

- Private Company –PVC
- Unlisted Public Company –PC

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- Listed Company –LC
- All the above classes of Companies –AC
- Specified Class of Companies –Companies having prescribed thresholds specified in the 2013 Act read with the Rules; say, for e.g., the class of companies to which s. 203 or s. 204 applies.
- Registrar of Companies – ROC
- Managerial Personnel - Managing Director or Whole-time Director or Manager
- Net Profits – Net Profits computed in accordance with s. 198 of the 2013 Act
- Nomination and Remuneration Committee – NRC

### Activity Code

- Data Collection Question –DCQ
- Audit Question -AQ

### The Concise Checklist for Chapter XIII (Sections 196 to 205)

Sl. No.	Provision Code	Class of Company Code	Activity Code	Question / Check point	Notes, if any
1.	Section 196	AC	AQ	<p>Has the company appointed or already employed at the same time, one person as its managing director and another person as its manager?</p> <p>Has the company appointed its Managerial Personnel for a period more than 5 years at a time?</p> <p>Has the company made any re-appointment of its managing director or manager or whole-time director earlier than one year before the expiry of his / her term?</p> <p>Check if the person who is appointed as Managerial Personnel is not less than 25 years of age and is not an un-discharged insolvent or has not been adjudged at any time as an insolvent and is not a person who has at any time suspended payment to his creditors or makes</p>	<p>Filing of DIR12 or as the case may be MGT 14 are check points connected to this question though they will be checked under respective sections only.</p> <p>In view of Sl.No.16 of Notification No.GSR 464(E)dated 05th June 2015, Part I of Schedule V does not apply to private companies</p>

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Sl. No.	Provision Code	Class of Company Code	Activity Code	Question / Check point	Notes, if any
				<p>or has at any time made a composition with his creditors and further check if such person has at any time been convicted by a court of an offence and sentenced to imprisonment for a period of more than 6 months.</p> <p>Where the company has appointed a person as its Managerial Personnel without being in compliance of Part I of Schedule V to the 2013 Act, check if it has secured or made application for securing approval of Central Government?</p> <p>Where the person appointed as the Managerial Personnel is a person who has already attained 70 years of age, check such appointment is approved by members at a general meeting by a special resolution and further check if the notice of such general meeting contains with an explanatory statement that justifies the need for appointing such an aged person.</p> <p>Where no such special resolution has been passed, check if the votes in favour had exceeded votes against the appointment of such an aged person and further check if the company has secured the approval of Central Government for appointment.</p> <p>Check if the notice convening Board or general meeting for considering appointment of Managerial Personnel had stated 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.</p> <p>Check if the company that has appointed its Managerial Personnel has filed Form MR-1 with ROC within the prescribed time.</p>	

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Sl. No.	Provision Code	Class of Company Code	Activity Code	Question / Check point	Notes, if any
2.	Section 198	PC and LC	AQ	Check if the company has computed its Net Profits in accordance with s. 198 of the 2013 Act for the purpose of ascertaining if the remuneration it pays to its directors including managerial personnel amongst the directors is within the limits prescribed under s. 197 of the 2013 Act?	
3.	Section 201(1)	AC	AQ	Check if the appointment of Managerial Personnel required approval of Central Government and further check if such approval has been obtained.	
4.	Section 197(1) r/w first proviso under s. 197(1)	PC and LC	AQ	Where the total managerial remuneration payable exceeds 11% of the Net Profits of the company, check if the same has been approved by the company in general meeting, subject to the provisions of Schedule V to the 2013 Act?	“subject to the provisions of Schedule V to the 2013 Act” means a company which suffers from inadequacy of profits or no profits must ensure that it complies with the provisions of Schedule V.
5.	Section 197(1) r/w clause (i) of second proviso under s. 197(1)	PC and LC	AQ	Check if the company has secured the approval of the general meeting by way of a special resolution for paying more than 5% of its Net Profits to any one of its Managerial Personnel or more than 10% of its Net Profits in the aggregate to all its Managerial Personnel?	
6.	Section 197(1) r/w clause (ii) of second proviso under s. 197(1)	PC and LC	AQ	Where the company has appointed any Managerial Personnel, check if the company has secured the approval of the general meeting by way of a special resolution for paying more than 1% of its Net Profits to its directors other than its Managerial Personnel;  Where the company has not appointed any Managerial Personnel, check if the company has secured the approval of the general meeting by way of a special resolution for paying more than 3%	

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				of its Net Profits to its directors other than its Managerial Personnel;	
7.	Section 197(1) r/w third proviso under s. 197(1)	PC and LC	AQ	Where the company has defaulted in payment of dues to any bank or public financial institution or its non-convertible debenture holders, check if it has secured prior approval from the bank or banks or public financial institutions or non-convertible debenture holders concerned for paying remuneration to its directors before obtaining approval of the shareholders at a general meeting.	
8.	Section 197(3), (11) r/w Schedule V	PC and LC	AQ	<p>Where the company is suffering from inadequacy of profits or absence of profits, check if the remuneration to Managerial Personnel or any increase thereof from time to time is in terms of conditions specified in Section II of Part II of Schedule V.</p> <p>Where the company is suffering from inadequacy of profits or absence of profits, and where the remuneration payable to Managerial Personnel is in excess of the limits specified in Table A of Part II of Section II of Schedule V to the 2013 Act, check if the same has been approved by a special resolution passed at a general meeting of the company.</p> <p>Where the Managerial Personnel is functioning in a professional capacity, if the remuneration payable is of the level specified in Table A of Part II of Section II of Schedule V to the 2013 Act, check if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries, directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding</p>	

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Sl. No.	Provision Code	Class of Company Code	Activity Code	Question / Check point	Notes, if any
				<p>company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialized knowledge in the field in which the company operates.</p> <p>Where s. 178 of the 2013 Act applies, check if the remuneration payable to Managerial Personnel in the case of company not having adequate profits or suffering from absence of profits is approved not only by the Board of Directors of the Company but also by the NRC of the Board of Directors of the company.</p> <p>Where the company is in default of dues payable to any bank or public financial institution or its non-convertible debenture holders, check if it has secured prior approval from the bank or banks or public financial institutions or non-convertible debenture holders concerned for paying remuneration to its directors despite inadequacy or absence of profits before obtaining approval of the shareholders at a general meeting.</p> <p>Check if such remuneration payable in the event of inadequacy or absence of profits is approved only for a maximum period of 3 years.</p> <p>Check if the notice calling the general meeting has a statement containing particulars specified in Para (iv) of third proviso under Section II of Part II of Schedule V to the 2013 Act.</p> <p>Where Section III of Part II of Schedule V to the 2013 Act applies, check if the conditions specified therein have been complied with.</p> <p>If the Managerial Personnel is</p>	



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				drawing remuneration from more than one company, check if 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.	
9.	Section 197(4)	PC and LC	AQ	<p>Check if the payment of remuneration to Managerial Personnel has been duly approved by members of the company at a general meeting and where Articles of Association so requires by a special resolution.</p> <p>Check of such Director renders service in any other capacity?</p> <p>Check whether such other Service is rendered in professional Capacity and in the opinion of the NRC (wherever applicable) or Board is satisfied about the Director's professional qualification to render the service?</p>	
10.	Section 197 r/w Section IV of Part II of Schedule V	PC and LC	AQ	<p>Check if the company has computed its "effective capital" in terms of the Explanation I given in Section IV of Part II of Schedule V.</p> <p>Check, wherever applicable, the company has checked who fall within the meaning of the expression "family" for the purpose of perquisites referred to in Para 2 of Section IV of Part II of Schedule V</p> <p>Check if the company, wherever applicable, has computed its "net effective capital" in terms of Explanation V of Section IV of Part II of Schedule V.</p>	
11.	Section 197 r/w Section IV of Part II of Schedule V	PC and LC	AQ	<p>Check if the NRC (wherever applicable) has considered the following factors while approving remuneration to its Managerial Personnel:</p> <p>(a) the financial position of the</p>	On objectivity aspect, minutes of NRC must be checked if they have deliberated and asserted the rationale

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				<p>company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;</p> <p>(b) there is objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders</p>	
12.	Section 200 r/w rule 6 of the Rules	PC and LC	AQ	<p>Check if the company has taken into consideration the following parameters / aspects while fixing remuneration to its managerial personnel in the event of inadequate or no profits in the meeting of the NRC (where applicable) or at the meeting of the Board of Directors.</p> <p>(a) the financial position of the company;</p> <p>(b) the remuneration or commission drawn by the individual concerned in any other capacity;</p> <p>(c) the remuneration or commission drawn by him from any other company;</p> <p>(d) professional qualifications and experience of the individual concerned;</p> <p>(e) the Financial and operating performance of the company during the three preceding financial years.</p> <p>(f) the relationship between remuneration and performance</p> <p>(g) 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 receive remuneration and employees or executives of the company.</p>	

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				<p>(h) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.</p> <p>(i) the securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.</p>	
13.	Section 197 (5) r/w Rule 4 of the Rules	PC and LC	AQ	<p>Check if the sitting fees payable to directors for attending meetings of Board of Directors or meetings of Committees of Directors or for any other purpose is within the limits prescribed.</p> <p>Where the company pays sitting fees to its directors for purposes other than attending meetings of Board of Directors or meetings of Committees of Directors, check if the same has been duly approved by the Board of Directors.</p>	
14.	Section 197(9) & (10)	PC and LC	AQ	<p>Where remuneration paid to any Managerial Personnel is found to be in excess of the limit prescribed under s. 197 or is paid without the requisite approved under s. 197, check if the company has recovered the excess from the Managerial Personnel concerned unless the same has been waived by a special resolution of the general meeting passed within 2 years from the date the sum becomes refundable.</p> <p>Where the company is in default of dues payable to any bank or public financial institution or its non-convertible debenture holders, check if it has secured prior approval from the bank or banks or public financial institutions or non-convertible debenture holders before granting such waiver.</p>	
15.	Section 197(12) r/w Rule 5 of the Rules	PC and LC	AQ	Check if the company has made necessary disclosures in its Board's Report issued under s. 134 of the 2013 Act.	

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16.	Section 197(13)	PC and LC	AQ	Check if due to any Managerial Personnel or Chief Executive Officer, or Chief Financial Officer or Company Secretary is found to have been guilty of any negligence, default, misfeasance, breach of duty or breach of trust, and in such case if the company has taken put any insurance policy for indemnifying such Managerial Personnel or other officer specified above, check if the company treated the premium paid on such insurance as part of the remuneration payable to any such personnel.	
17.	197(14)	PC and LC	AQ	Check if necessary disclosure in the Board's Report issued under s. 134 of the 2013 Act has been duly made if any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company has been receiving any remuneration or commission from any holding company or subsidiary company of such company.	
18.	197(16)	PC and LC	AQ	Check if the auditor has, in his report under section 143, made a statement whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, and further whether the remuneration paid to any director is in excess of the limit laid down under S. 197 of the 2013 Act. Check if the auditor has given all requisite details.	
19.	Section 199	AC	DCQ	Check whether the Company has been required to restate its financial statements due to fraud or non-compliance with any requirement under the 2013 and the rules made thereunder.  If yes, check whether any past or present managing director or whole-time director or manager or Chief Executive Officer (by whatever name called) received the	

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				<p>remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements?</p> <p>If yes, check if any such excess remuneration has been recovered from such officers?</p>	
20.	Section 202(1), (2),	AC	DCQ	<p>Check if the company has paid any sum by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement to any director other than its Managing Director or Whole-time Director or Manager.</p> <p>If the company has paid any compensation for loss or retirement of office of its Managing Director or Whole-time Director or Manager, for services rendered by such person in the capacity as managing director or whole-time director or manager, check if the payment is not prohibited under s. 202(2) of the 2013 Act.</p> <p>Check if the amount of compensation paid to its managing or whole-time director or manager exceeds 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.</p> <p>Check if such payment has been made in spite of 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, and in such a case further check if the</p>	

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				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.	
21.	Section 203 and Rule 8 and 8A of the Rules	SPC	DCQ	Check whether the company belongs to a class of companies which must have specified whole-time key managerial personnel as per s. 203 of the 2013 Act read with Rule 8 and 8A of the Rules.	
22.	Section 203 (1) and Rule 3	SPC	AQ	<p>Check whether the Company has filed MR.1 for appointment of a Managing Director, Whole Time Director or Manager, and DIR.12 for the appointment of Chief Executive Officer or Chief Financial Officer or Company Secretary within the prescribe?</p> <p>Check if the company has appointed same individual as Chairperson as well as the Chief Executive Officer?</p> <p>If so, check if it is a company that falls within a class of companies specified in the second proviso to s.2093(1) of the 2013 Act and further check if has appointed one or more Chief Executive Officer for each of its such businesses?</p> <p>If it not so, check if the Company's Articles of Association contains any clause not permitting the appointment of same individual chairperson of the Company as well as its managing director or Chief Executive Officer of the company at the same time and further check if the company carries on multiple business?</p>	
23.	Section 203 (2)	SPC	AQ	Check whether the whole time Key Managerial Personnel have been appointed by means of a resolution of the Board of Directors containing	

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				the terms and conditions of the appointment including the remuneration of the said whole time Key Managerial Personnel?	
24.	Section 203 (3)	SPC	AQ	<p>Check whether any whole-time key managerial personnel of the Company holds office in more than one company except a subsidiary of the Company, at the same time?</p> <p>Where such person is the Managing director of the company, check if he is the managing director or manager of one, and not more than one, other company.</p> <p>In such a case, check whether 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?</p>	
25.	Section 203 (3)	SPC	AQ	Check whether any of the Key Managerial Personnel is a Director on the Board of any other Company and if yes, whether he has obtained the permission of the Board of Directors of the Company in which he is a Key Managerial Personnel to continue as a Director?	
26.	Section 203 (4)	SPC	AQ	Check whether any vacancy that had arisen in the positions of any Key Managerial Personnel, and is so, the resulting vacancy was filled-up at a meeting of the Board of Directors within a period of six months from the date of such vacancy?	
27.	Section 204 and Rule 9 of the Rules	SPC	DCQ	Check whether the Company is a Listed Company or a company belonging to a class of company to which s. 204 applies.	

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28.	Section 204 (3)	SPC	AQ	<p>Check whether the Company has engaged a practising company secretary for carrying out a secretarial audit and board resolution is passed for the same? Has an engagement letter been issued with detailed terms and conditions of appointment?</p> <p>Check whether the Company has filed MGT-14 within 30 days with respect to the appointment of practising company secretary for carrying out the secretarial audit?</p> <p>Check if the practising company secretary has issued his / her report in Form MR.3?</p> <p>Check if the company has annexed the secretarial audit report with the Board's Report under Section 134(3) of the 2013 Act?</p> <p>Check whether the Board of Directors of the Company, in their report under Section 134 (3) have explained in full any qualification or observation or other remarks made by the company secretary in practice in his secretarial audit report?</p>	
29.	Section 205 and Rule 10 of the Rules	AC	AQ	<p>Check if the company has a company secretary, whether the Company Secretary has provided a report to the Board of Directors of the Company about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the Company and check with the company secretary of the company if he / she is ensuring compliance of secretarial standards and performing other duties as Rule 10 of the Rules?</p>	