



Company Law Corner

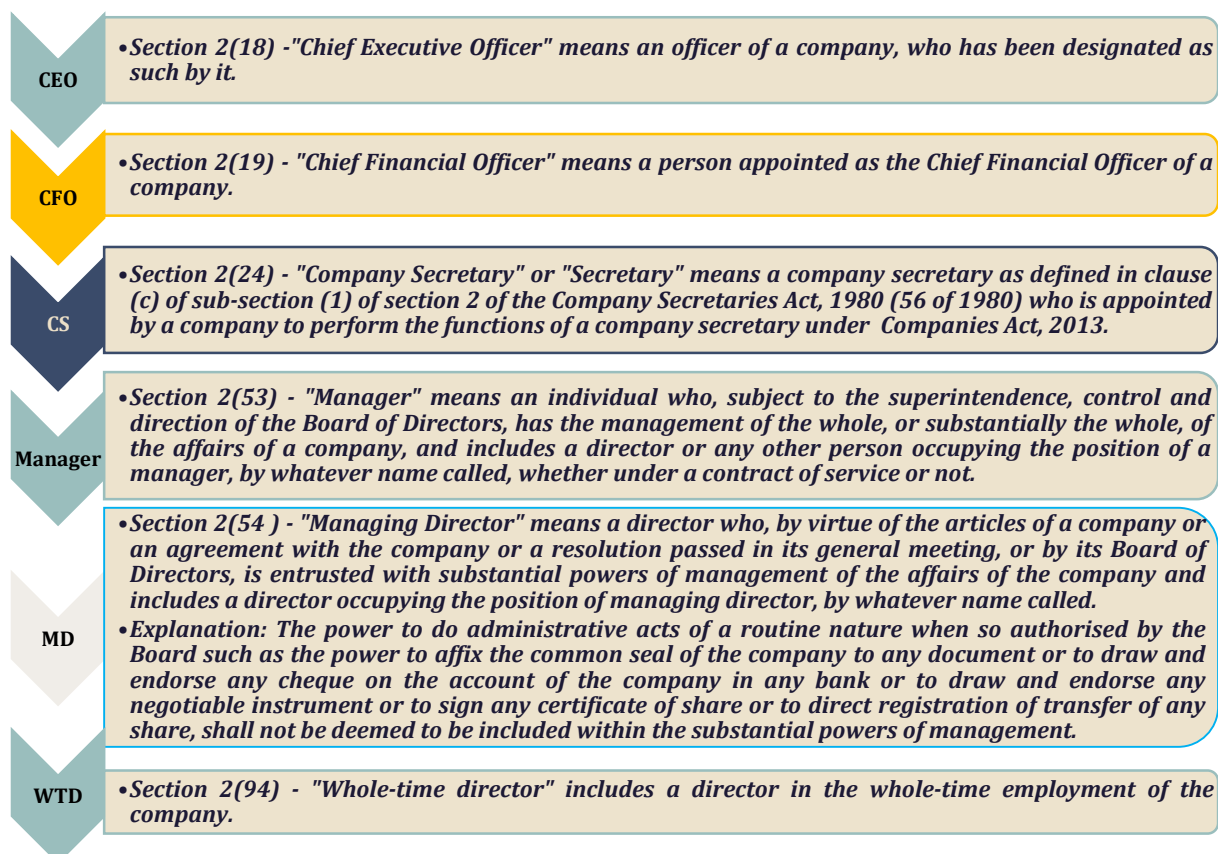
Key Managerial Personnel (KMP) under the Companies Act, 2013

The executive management of a company is responsible for the day to day functioning of the company. The Companies Act, 2013 has used the term key managerial personnel to define the executive management. The key managerial personnel are the point of first contact between the company and its stakeholders. While the Board is responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation.

According to **Section 2(51) "Key Managerial Personnel"**, in relation to a company, means—

- (i) The Chief Executive Officer or the Managing Director or the Manager;
- (ii) The Company Secretary;
- (iii) The Whole-Time Director;
- (iv) The Chief Financial Officer;
- (v) Such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) Such other officer as may be prescribed

Various KMP's Positions & Definition thereof under the Companies Act, 2013



Provisions governing appointment of KMP

- Sections 203 of the Companies Act, 2013 read with rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that the 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 i.e. MD or CEO or Manager and in their absence a WTD, CS and CFO.

Further, Sections 203 of the Companies Act, 2013 read with rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides that every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time company secretary.

- Section 196 and 197 read with schedule V of the Companies Act, 2013 provides for conditions for appointment and remuneration of Managing Director, Whole-time director or Manager.

Key Role & Responsibilities of Managing Director /Whole time Director/ Manager in a Company

- Managing Director is entrusted with substantial powers to manage the affairs of the company in accordance with the memorandum and articles of association of the company.
- To oversee the company's operations, financial performance, investments, and ventures and to give strategic guidance and direction to the board to ensure that the company achieves its mission and objectives.
- Developing and implementing business plans to improve cost-efficiency.
- Maintaining positive and trust-based relations with business partners, shareholders, and authorities.
- Supervising, guiding, and delegating executives in their duties.
- Assessing, managing, and resolving problematic developments and situations.
- Signing documents/financial-statements/proceedings/contract on behalf of company.
- To discharge such other duties as have been specified under the Companies Act, 2013 or rules made thereunder.

Key Function & Duties of Company Secretary in a company

A company secretary is a compliance officer of the company, he ensures that company complies with relevant legislation and regulations, and keeps board members informed of their legal responsibilities. Company secretary represents before the statutory and regulatory authorities on behalf of the company for ensuring compliances required under various laws. It is also his responsibility to act as a mediator between company, director and shareholder.

Apart from the functions specified under various sections of the Companies Act, 2013, Section 205 read with Rule 10 of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014 prescribes functions & duties of Company Secretaries

The functions and duties of the Company Secretary includes,-

- to report to the Board about compliance with the provisions of Companies Act, 2013, the rules made thereunder and other laws applicable to the company;
- to ensure that the company complies with the applicable secretarial standards;
- 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;
- to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Companies Act, 2013;
- to represent before various regulators, and other authorities under the Companies Act, 2013 in connection with discharge of various duties under the Act;
- to assist the Board in the conduct of the affairs of the company;
- to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- to discharge such other duties as have been specified under the Companies Act, 2013 or rules made thereunder; and
- such other duties as may be assigned by the Board from time to time.

Role & Responsibilities of CFO in a Company

Chief Financial Officer is involved in day to day financial affairs of the company. He has been also included as an officer in default due to his role and responsibility in the company.

Section 134 of the Companies Act, 2013 requires the CFO to sign the financial statements, as he is responsible for overseeing the financial activities of an entire company.

Some of the duties of CFO include the following:

- Financial planning and monitoring cash flow.
- The CFO being an internal person in the organization has responsibility towards presenting the financial statements truly and fairly which are subsequently audited by the statutory auditors of the Company.
- CFOs are required to protect the vital assets of the company, ensure compliance with financial regulations, close the books correctly, and communicate value and risk issues to investors and boards.
- CFOs have to operate an efficient and effective finance organization providing a variety of services to the business such as financial planning and analysis, treasury, tax, and other finance operations.
- To formulate financial strategies and influence the future direction of the company
- CFOs are required to stimulate and drive the timely execution of change in the finance function of the Company.
- To discharge such other duties as have been specified under the Companies Act, 2013 or rules made thereunder.

Position of KMP is a whole time position

Section 203 of the Companies Act, 2013 mandatorily requires engaging KMPs on “whole time basis” in certain prescribed class of companies KMP should hold office on whole time basis means that the KMP must contribute all his time in management of the company.

Whereas for companies not covered under section 203(1) of the Companies Act, 2013 may also voluntarily appoint any or all Key Managerial Personnel for efficient management of their company.

Acting as Chairman as well as Managing Director at the same time

First proviso to Section 203(1) of the Companies Act, 2013 states 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. However, in the following circumstances, the above restriction will not apply:

- (a) the articles of such a company provide otherwise; or
- (b) the company does not carry multiple businesses ; or
- (c) such public companies which are engaged in multiple businesses having paid-up share capital of rupees 100 crore or more and annual turnover of rupees 1000 crore or more and have appointed one or more Chief Executive Officer for each such business.

The paid-up share capital and the annual turnover stated above shall be decided on the basis of the latest audited balance sheet.

KMP to hold office in more than one subsidiary company

The CLC Committee, 2015 in its report mentioned that Section 203(3) provides that whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. The Committee noted that Section 13 of the General Clauses Act, 1897 provides that ‘singular’ shall include the ‘plural’, unless there is anything repugnant in the subject or the context. The CLC Committee is of the view that whole-time key managerial personnel may hold office in more than one subsidiary company. However, it is advised that the KMP should not hold office in more than one subsidiary company.

Conditions for appointment of Managing Director, Whole time Director or Manager (Section 196)

- The tenure of appointment shall be for a term not exceeding 5 years at a time.
- Re-appointment shall not be earlier than one year before expiry of the current term.
- Company shall not appoint or employ at the same time a Managing Director and a Manager.
- Company shall not appoint or continue the employment of any person as Managing Director, Whole-time director or Manager who is below the age of twenty-one years or has attained the age of seventy years
- 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
- Where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.
 - The person shall not be an undischarged insolvent or at any time been adjudged as an insolvent;
 - The person shall not at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
 - The person shall not at any time been convicted by a court of an offence and sentenced for a period of more than six months
 - The person 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 Acts as specified under Schedule V of the Companies Act, 2013
 - The person had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)
 - The person is resident of India.

Manner of Appointment of MD, WTD or Manager under Section 196 of the Companies Act, 2013

- The terms and conditions of the appointment and remuneration payable to them shall be approved by the Board of directors at the Board meeting, on the basis of recommendations of the Nomination and Remuneration Committee, wherever applicable subject to approval by the shareholders at the ensuing general meeting.
- The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board regarding their appointment.
- 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.
- Forms required to be filed regarding appointment of MD/WTD/Manager:
 - (i) E-form DIR-12
 - (ii) E-form MGT-14
 - (iii) E-form MR-1 (*Private Companies are exempted from filing e-form MR-1.*)

In case of appointment of Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO), return of appointment in form MR-1 is not required to be filed.
- Get approval of the shareholders by passing resolution in the ensuing general meeting of the company.
- In case, the appointment is in variance to the conditions specified in Part I of Schedule V of the Companies Act, 2013, application in e-Form MR-2 shall be made within a period of ninety days from the date of such appointment to the Central Government seeking the approval for such appointment.

- 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

Exemptions given to Private Limited Companies

As per exemption Notification dated : June 5, 2015, provisions of section 196(4) and 196(5) of the Companies Act, 2013 are not applicable on Private Limited Companies.

Manner of Appointment of KMP (CEO, CS, CFO under Section 203 of the Companies Act, 2013)

- Every whole-time key managerial personnel of a company shall be appointed in a duly convened board meeting by means of a Board resolution containing the terms and conditions of the appointment including the remuneration.
- The Nomination and Remuneration Committee shall recommend to the Board regarding appointment and remuneration of KMP.
- The Nomination and Remuneration Committee shall ensure while formulating policy of remuneration of key managerial personnel and senior management that a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goals.
- A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, key managerial personnel may become a director of any company with the permission of the Board.
- 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.
- On vacation of the office of any whole-time key managerial personnel, 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.
- Filing of e-form MGT-14 with the Registrar for the resolution passed by the board regarding appointment of KMP. ***Private Companies are exempted from filing e-form MGT-14 regarding appointment of KMP under section 117(3)(g) vide exemption notification dated June 5, 2015.***
- All companies need to file a return containing the particulars of appointment of key managerial personnel with the Registrar in e-form DIR-12 along with specified fees within thirty days of such appointment.
