



Ministry of Corporate Affairs  
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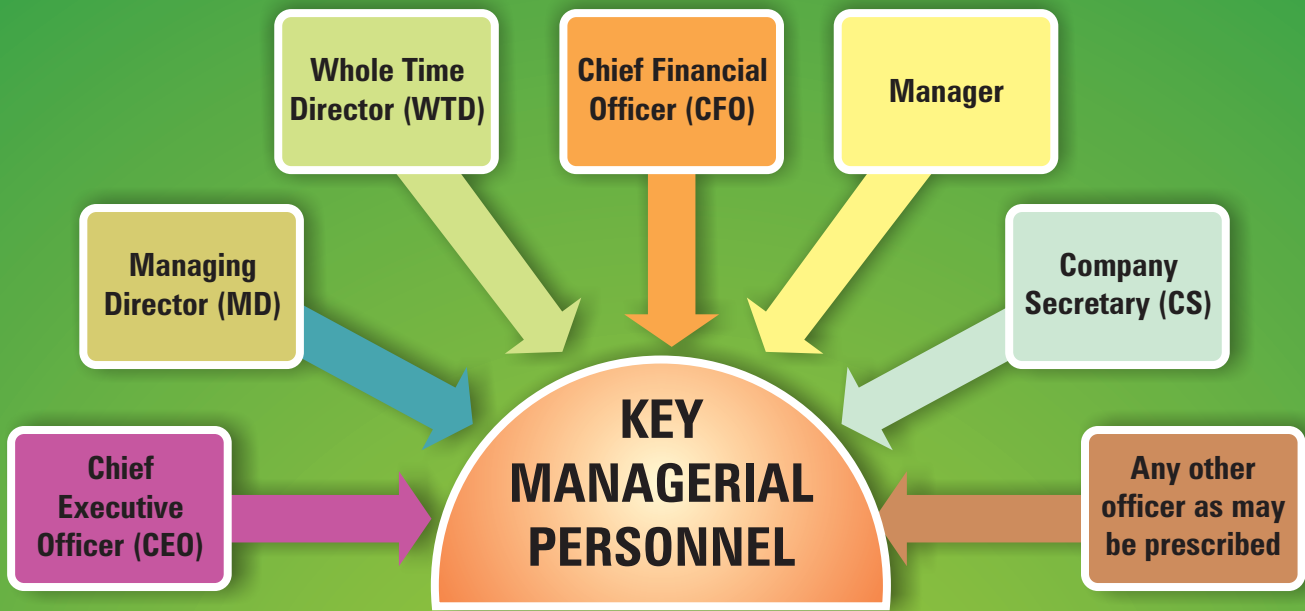
# APPOINTMENT OF KEY MANAGERIAL PERSONNEL



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# WHO IS A KEY MANAGERIAL PERSONNEL?



<b>Chief Executive Officer (CEO)</b> <b>Section 2(18)</b>	Chief Executive Officer means an officer of a company, who has been designated as such by it.
<b>Chief Financial Officer (CFO)</b> <b>Section 2(19)</b>	Chief Financial Officer means a person appointed as the Chief Financial Officer of a company.
<b>Company Secretary (CS)</b> <b>Section 2(24)</b>	Company Secretary or Secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretary Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.
<b>Manager</b> <b>Section 2(53)</b>	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.
<b>Managing Director (MD)</b> <b>Section 2(54)</b>	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.
<b>Whole-Time Director</b> <b>Section 2(94)</b>	Whole-time Director includes a director in the whole-time employment of the company.



## APPOINTMENT OF KEY MANAGERIAL PERSONNEL (SECTION 203)

As per section 203(1) of the Companies Act, 2013 read with the Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies are required to appoint KMP-

- Every listed company, and
- Every other public company having paid up share capital of Rs. 10 Crores or more. Such Companies shall have the following whole-time key managerial personnel,-
  - Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;
  - Company secretary; and
  - Chief Financial Officer

Further, as per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole time key managerial personnel as discussed above and which is having paid up share capital of Rs. 5 Crores or more shall have a whole time Company Secretary.

### No Person shall act as Chairman or Managing Director

First proviso to section 203(1) 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 after the date of commencement of this Act unless,--

- (a) the articles of the company contain provision for appointment of same person, or
- (b) the company carries only a single business, or
- (c) the company is engaged in multiple businesses and has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

### Exception under second proviso to section 203(1)

MCA notification (S.O. 1913(E)) on 25th July, 2014- In exercise of the powers conferred by the second proviso to sub-section (1) of Section 203 of the Companies Act, 2013 (18 of 2013), the Central Government hereby notifies that public companies having paid-up share capital of rupees one hundred crore or more and annual turnover of rupees one thousand crore or more which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business shall be the class of companies for the purposes of the second proviso to sub-section (1) of Section 203 of the said Act.

MCA further explains for the purposes of this notification, the paid-up share capital and the annual turnover shall be decided on the basis of the latest audited balance sheet.

### MANNER OF APPOINTMENT OF KMP

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

- A Whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time.
- A 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.

### VACANCY OF KMP

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of 6 months from the date of such vacancy.

### PENALTY FOR CONTRAVENTION

- **On Company** : Fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-
- **On every director and key managerial personnel of the company who is in default** : 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

### OTHER PROVISIONS REGARDING KMP

Section 196 of the Companies Act, 2013 provides the provision for appointment of Managing Director, Whole-Time Director and Manager

- **Tenure** : Appointment of Managing Director, Whole-Time Director or Manager shall not be for a term exceeding five years at a time.
- **Re-appointment**: The company may re-appoint them for next term before expiry of their present 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.
- **Disqualification of managing Director, Whole-Time Director or Manager**: No company shall 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. 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 for such motion shall indicate the justification for appointing such person;
  - 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 a period of more than six months.

## Role of KMP

- Financial statement to be signed by CEO, if any, if director & by CFO & by CS.
- Prohibited from insider trading/forward dealing in securities.
- Included in officer/officer in default/related party along with relatives.
- Sign document/proceedings/contract on behalf of company.
- Disclosure in annual return.
- Register of KMP & their shareholding in holding/subsidiary/associate.
- Disclose interest/concern & changes to company within 30 days of appointment/relinquishment.
- KMP has right to be heard in Audit Committee meetings when the committee considers auditor's report, But KMP shall not have right to vote.
- Nomination & Remuneration Committee to recommend policy for remuneration of KMP.
- Disgorgement of asset/personal liability if undue benefit proved in inspection of company.
- Statement annexed to notice of general meeting to contain items of special business to show financial/other interest. If such item relates to other company & KMP holds more than 2% shares in other company, disclosure of shareholding to be made. In case of Non-disclosure, KMP has to compensate company benefit received. Default punishable with Rs. 50000 or 5 times of benefit.

## Functions of Company Secretary (section 205)

The functions of the company secretary shall include:- to report to the Board about compliance with the provisions of this Act, the rules made there under and other laws applicable to the company;

- To ensure that the company complies with the applicable secretarial standards;
- To discharge such other duties as may be prescribed.

## Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provides for the following duties of Company secretary:

- (1) 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;
- (2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
- (3) to obtain approvals from the board, general meeting, the government and such other authorities as required under the provisions of the Act;
- (4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
- (5) to assist the board in the conduct of the affairs of the company;
- (6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices;
- (7) to discharge such other duties as have been specified under the Act or rules; and
- (8) such other duties as may be assigned by the Board from time to time.

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