

A Preview on the “Appointment & Remuneration of the Managerial Personnel (KMP)”

navneet k. arora & co.
COMPANY SECRETARIES

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Proprietor 's Profile at a Glance

Navneet K. Arora & Co., Company Secretaries

BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3rd March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21st July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20th November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

An Overview of Appointment & Remuneration of Managerial Personnel (KMP)

- Company may appoint a Director / Person as Managing Director (MD), Manager, Chief Executive Officer, Company Secretary, Chief Financial Officer and other officer as Key Managerial Personnel (KMP) with or without remuneration as per recommendation of the Remuneration Committee and with the approval of the Board of Directors and Shareholders in the General Meetings.
- The remuneration includes pay, compensation, or reward for work, etc. paid by the Company to his employees. Payment or compensation received for services or employment. This includes the base salary, any bonuses or other economic benefits that an employee or executive receives during employment from the Company. Managerial remuneration is compensation for services provided to a company in a managerial capacity. This can include cash payments, along with benefits like stock options, health insurance, and bonuses. Managers are typically paid more than the people they supervise, although they tend to make less than the executives at the head of the company.
- **Section 197 to 199 of the Companies Act, 2013, Schedule V read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 specify the law and procedures regarding the appointment and remuneration to KMP.**

Appointment of Managerial Personnel

- **Extract of the provisions of Section 196 of the Companies Act, 2013 as under;-**
 - No company shall appoint or employ at the same time a managing director and a manager
 - 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 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
 - is an un discharged 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.
- Subject to the provisions of section 197 and Schedule V, 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

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- **Relevant Extract of the provisions of Schedule V of the Companies Act, 2013 as under;-**
 - No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—
 - (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 Acts mentioned in the Schedule V of the Companies Act, 2013,
 - he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
 - he has completed the age of twenty-one years and has not attained the age of seventy years
 - (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 of India

Key Managerial Person

- **Extract of the provisions of Section 2 (51) of the Companies Act, 2013 as under :-**
 - 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 and
 - (v) such other officer as may be prescribed

Appointment of Key Managerial Person

- **Relevant Extract of the provisions of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 :-**
 - 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.

Remuneration

- **Extract of the provisions of Section 197 of the Companies Act, 2013 as under :-**
 - **Remuneration payable by companies having profits**
 - As per the Companies Act, 2013 and Subject to the provision of Schedule V :-
 - The total managerial remuneration payable by a public company, to its directors, including managing director and whole-time director, and its manager in respect of any financial year shall not exceed **eleven per cent.** of the net profits of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits.
 - Provided that the company in general meeting may, with the approval of the Central Government, authorise the payment of remuneration exceeding eleven per cent. of the net profits of the company.
 - Provided further that, except with the approval of the company in general meeting :-
 - (i) the remuneration payable to any one managing director; or whole-time director or manager shall not exceed **five per cent.** of the net profits of the company and if there is more than one such director remuneration shall not exceed **ten per cent.** of the net profits to all such directors and manager taken together;

Cont...

- (ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed, **one per cent.** of the net profits of the company, if there is a managing or whole-time director or manager; **three per cent.** of the net profits in any other case.
- Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if :-
 - (a) the services rendered are of a professional nature; and
 - (b) 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

Remuneration

- **Relevant Extract of the provisions of Schedule V of the Companies Act, 2013 as under :-**
 - **Remuneration payable by companies having no profit or inadequate profit without Central Government approval**
 - As per the Companies Act, 2013 and Subject to the provision of Schedule V :-
 - Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole time director or manager, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V and if it is not able to comply with such provisions, with the previous approval of the Central Government
 - 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 under (A) and (B) given below :-

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- (A):

Where the 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 than 250 crores

60 lakhs

(iv) 250 crores and above

60 lakhs plus 0.01% of

the effective capital in of Rs. 250 crores

- Provided that the above limits shall be doubled if the resolution passed by the shareholders is a special resolution.
- (B) In the case of a managerial person who was not a security holder holding securities of the company of nominal value of rupees five lakh or more or an employee or a director of the company or not related to any director or promoter at any time during the two years prior to his appointment as a managerial person, — **2.5%** of the current relevant profit
- Provided that if the resolution passed by the shareholders is a special resolution this limit shall be doubled

Sitting Fees

- **Relevant Extract of the provisions of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 :-**
 - 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:
 - Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

Form to be filed

- ❖ **MR-1** :- Return of Appointment of Managing Director, Whole Time Director or Manager, CEO, Company Secretary and CFO
- ❖ **MR-2** :- Every application made to the Central Government under the provisions of Chapter XIII.
- ❖ **MR-3** :- The format of the Secretarial Audit Report.

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Thanking you

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Assuring of best services at all times

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