



Appointment, Qualification of Directors & KMPs and Managerial Remuneration

Harsha Kedia
August 22, 2023



Disclaimer

- ▶ Views expressed are my own and not of the Company in which I am employed
- ▶ This presentation is to the best of my understanding of the subject.

INDEX

- Appointment of Directors
- Qualification of Directors
- Appointment of KMPs
- Managerial Remuneration



Appointment of Directors

Definition, Maximum and minimum No. of Directors

Director means a Director appointed to the Board of a Company

Board of Directors or Board, in relation to a company, means collective body of the Board of Directors of the Company.

Minimum number of Directors


- Public Company – 3 Directors
- Private Company – 2 Directors
- One Person Company – 1 Director

Maximum number of Director

- 15 Directors, if exceeding 15, special resolution is required

Under SEBI LODR

- Top 2000 listed entities – not less than 6 Directors



**What are the various categories of
Directors?**

Categories of Directors

- Executive Directors / Whole-Time Directors
- Managing Directors
- Non-Executive Directors
- Independent Directors
- Nominee Directors
- Small Shareholders' Director



Woman Director and Resident Director

Composition of BOD – Companies Act, 2013

Woman Director

- At least 1 woman Director, in case
 - Listed companies
 - Public companies having
 - Paid-up capital of Rs. 100 crore or more or
 - Turnover of Rs. 300 crore or more
- Vacancy of a woman Director to be filled up by Board
 - at the earliest but not later than immediate next Board meeting or
 - 3 months from the date of such vacancy whichever is later.

Resident Director

- at least one director who has stayed in India for a total period of not less than 182 days during the FY.



Independent Director

Composition of BOD – Companies Act, 2013

Independent Director (ID)

- 1/3rd of total no. of Directors as IDs, in case of listed public companies
- At least 2 directors as IDs, in case Public companies having
 - Paid-up capital of Rs. 10 crore or more or
 - Turnover of Rs. 100 crore or more or
 - Outstanding loans, debentures and deposits in aggregate exceeding Rs. 50 crore
- Vacancy of an ID to be filled up by Board
 - at the earliest but not later than immediate next Board meeting or
 - 3 months from the date of such vacancy whichever is later
- Exemption to unlisted Public Companies, namely
 - A joint venture
 - A wholly-owned subsidiary
 - A dormant Company
- **Non-Applicability** – in case Company ceases to fulfill any of the above criteria for 3 consecutive years.



Composition of BOD – SEBI LODR

Composition of BOD – SEBI LODR


- Optimum **combination of EDs and NEDs with at least 1 woman director** and minimum 50% of BOD shall be NEDs
- **Top 1000 listed entities** to have at least **1 independent woman director**
- If chairperson is regular NED – 1/3rd of BOD shall be ID
- If no regular Non-Executive Chairperson – 50% of BOD shall be ID
- If regular non-executive chairperson is promoter of LE or is related to Promoter – at least 50% of BOD shall be IDs
- If listed company has SR Equity Shares – 50% of BOD shall be IDs

Person related to promoter means

- i. if the promoter is a listed entity, its directors other than IDs, its employees or its nominees shall be deemed to be related to it;
- ii. if the promoter is an unlisted entity, its directors, its employees or its nominees shall be deemed to be related to it

Appointment of Directors – Companies Act, 2013

- Names of the **1st Directors** are provided **in the AOA** of the Company
- **If not provided – subscribers to the MOA who are individuals** shall be the 1st Directors until directors are appointed
- Every Director shall be appointed by the Company in General Meeting.
- **Pre-requisite for appointment** of a Director
 - shall have DIN
 - provide consent in form DIR 2
 - Disclosure that he is not disqualified in form DIR 8
- **2/3rd** of the total number of directors **shall be liable to retire by rotation**
- **1/3rd** of the directors who are **liable to retire by rotation** shall retire at AGM




**What happens if retiring director is
not re-appointed?**

Vacancy in case of retiring Director (152(7))

- **It is not filed up** and at the AGM it has **not expressly resolved not to fill up** the vacancy, the AGM shall **stand adjourned** to the next week, same day, same place
- If in adjourned meeting also, vacancy is not filled, **retiring director deemed to have been appointed** unless
 - at that meeting or at the previous meeting a **resolution** for the re-appointment of such director **has been put to vote and lost**
 - the retiring director has, by a notice in writing, **expressed his unwillingness to be so re-appointed**
 - He is not qualified, or **he is disqualified**
 - **Ordinary or special resolution** is necessary under the Act

Right of person other than retiring Director to stand for Directorship (160)

- A person **not a retiring director shall be eligible or appointment** as Director, if
 - He, or some other member intending to propose him as a Director, has, left **a notice, intending his candidature as a director, 14 days** before the meeting.
 - Along with **deposit of Rs. 1 lakh**, which shall be refunded, if the person proposed, gets elected as a director or gets more than 25% of the total valid votes.
- Requirement of deposit of Rs. 1 lakh is not applicable, in case appointment of an Independent Director or a Director is recommended by the NRC or the BOD.



**Additional Director, Alternate Director,
Nominee Directors and casual vacancy**

Additional Director and Alternate Director

Additional Director

- If permitted by AOA, BOD can appoint any person as an Additional Director any time
- shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

Alternate Director

- If authorized by AOA or by resolution passed in general meeting, BOD can appoint alternate directors
- for absence of a director for a period of not less than 3 months from India
- Can not serve as alternate director for more than one director
- Should vacate the office if the terms of original director ends or he returns to India

Nominee Director and Casual Vacancy

Nominee Director

- If permitted by AOA, BOD can appoint any person as a Nominee Director
- Nominated by institution pursuant to provision of any law or of any agreement, or by the Central Government or State Government by virtue of its shareholding.

Casual Vacancy

- In public company, if director vacates before term expires, casual vacancy be filled by the BOD subject to regulation in the AOA and subsequent approval by members in the immediate next general meeting.
- Person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Appointment of Directors – SEBI LODR

- **Appointment of NED** – if attained age of 75 years, then special resolution
- **Approval of shareholders for appointment / re-appointment of Directors**
 - At the next general meeting or within 3 months from date of appointment, whichever is earlier
 - In case of public sector undertakings, approval to be taken at next general meeting
- **Appointment or re-appointment of Director / MD / WTD rejected** earlier by shareholders, shall be made only with prior approval of the shareholders
 - Explanatory statement to contain detailed explanation and justification by the NRC and the BOD for recommending such a person for appointment or re-appointment.

Appointment of Directors – SEBI LODR

Removal of practice of permanent Board Seats

- the continuation of a director serving on the BOD shall be subject to the approval by the shareholders in a general meeting at least once in every 5 years from the date of their appointment/reappointment, as the case may be w.e.f April 1, 2024.
- continuation of the director serving on the board of directors of a listed entity as on March 31, 2024, without the approval of the shareholders for the last five years or more shall be subject to the approval of shareholders in the first general meeting to be held after March 31, 2024.

Appointment of Directors – SEBI LODR

Removal of practice of permanent Board Seats – Exclusions

- Whole-Time Director, Managing Director, Manager,
- Independent Director or a Director retiring as per Section 152(6) of the Companies Act, 2013
- director appointed pursuant to the order of a Court or a Tribunal
- nominee director of the Government on the board of a listed entity, other than a public sector company
- nominee director of a financial sector regulator on the board of a listed entity
- director nominated by a financial institution registered with or regulated by RBI under a lending arrangement in its normal course of business
- nominated by a Debenture Trustee registered with SEBI under a subscription agreement for the debentures issued by the listed entity

Appointment of Directors – SEBI LODR

- Any **vacancy in office of director**, to be filled at the earliest and not later than 3 months from date of such vacancy
- Reg 17(1) requires that a listed entity shall have an optimum combination of executive and non-executive directors with at least 1 woman director and not less than 50% of the BOD shall comprise of non-executive directors.

If the listed entity becomes non-compliant with the requirements under Reg 17(1) owing to the expiration of term of the office of any director



The resulting vacancy shall be filled by not later than the date of such office is vacated

If the listed entity fulfills the above requirements under Reg 17(1) without filling the vacancy



These provisions do not apply



Qualification of Directors

Disqualification for appointment of a Director (164(1))

Person shall not be eligible for appointment as Director, if

- he is of unsound mind and stands so declared by a competent court,
- he is an undischarged insolvent
- he has applied to be adjudicated as an insolvent and his application is pending
- he has not complied with 152(3) i.e., he has not obtained DIN
- He has not complied with 165(1) i.e., no. of directorship exceeding 20 companies
- he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call

Disqualification for appointment of a Director (164(1))

Person shall not be eligible for appointment as Director, if


- he has been **convicted by a court of any offence**, whether involving **moral turpitude** or otherwise, and **sentenced to imprisonment for not less than 6 months** and a period of 5 years has not elapsed from the date of expiry of the sentence
if a person has been convicted of any offence and **sentenced** to imprisonment for a **period of 7 years or more**, he is not be eligible to be appointed as a director in any company.
- **an order disqualifying** him for appointment as a director has been passed by a court or Tribunal and the order is in force
- he has been convicted of the **offence dealing with RPTs u/s 188** at any time during the last preceding 5 years

The above disqualifications shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification

Disqualification for appointment of a Director (164(2))

Ineligible for appointment or re-appointment as director for 5 years

- Person is or has been director of the Company, which
 - Has not filed Financial Statement or annual return for continuous period of 3 FY or
 - has failed to repay the deposits or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more
 - **where a person is appointed as a director of a company which is in default as above, he shall not incur the disqualification for a period of 6 months from the date of his appointment**



**Maximum number of companies in which
director can hold directorship?**

Number of Directorship (Section 165)

Maximum no. of directorship

- Not more than 20 companies (dormant co shall not be included)
- Not more than 10 in case of public company (directorship in private companies which are holding or subsidiary company of public company to be included)

Number of Directorship (SEBI LODR)

- Not more than 7 listed companies
- Not act as ID in more than 7 listed companies
- If WTD/MD in listed entity – can not be ID in more than 3 companies

For above count, directorship in equity listed entity shall only be considered.

Vacation of office of Director (167)

Office of Director shall become vacant in case

- Director incurs any disqualifications as provided in Section 164
In case of disqualification under 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default
- absents from all the meetings of the BOD held during a period of 12 months
- acts in contravention of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested
- fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of section 184
- he becomes disqualified by an order of a court or the Tribunal
- he is removed in pursuance of the provisions of this Act
- he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company


Vacation of office of Director (167)

Office of Director shall become vacant in case

- he becomes disqualified by an order of a court or the Tribunal
- he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months:

In above cases, the office shall not be vacated by the director:

- for 30 days from the date of conviction or order of disqualification;
- where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
- where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.



**What happens when all directors vacate
their office?**

Vacation of office of Director (167)

When all Directors vacate their office

- the promoter or in his absence,
- the Central Government
- appoints the required number of Directors
- who shall hold office till the Directors are appointed by the Company in the general meeting

Removal of Director (169)

- A Director, other than a director appointed by Tribunal **can be removed by ordinary resolution** of the Company.
- **ID who is appointed for 2nd term**, can be removed **only by passing special resolution** and after giving opportunity of being heard.
- **A special notice is required to remove** a director or to appoint somebody in place of director so removed
- Upon receipt of such notice of removal of director, the Company
 - Forthwith send copy of the notice to director concerned and
 - He can make representation in writing and request its notification to members
- **Removed director can not be reappointed**, however, nothing deprives him from receiving termination benefit or compensation from the Company.



Appointment of KMPs

Key Managerial Personnel

KMP, in relation to a Company, means 2(51)

- CEO or MD or the Manager
- The Company Secretary
- The whole-time Director
- The Chief Financial Officer
- **such other officer**, not more than one level below the Directors who is in whole-time employment, **designated as KMP by the Board.**

Every Company **belonging to such class of companies**, shall have following **KMPs** (203)

- MD or CEO or Manager and in their absence, WTD
- Company Secretary and
- Chief Financial Officer
- **Chairperson and MD/CEO shall not be same person**



**Which companies are required to
appoint KMPs?**

Appointment of Key Managerial Personnel (203)

- **Who shall appoint KMP?**

- Every listed company and every other public company
 - Having paid-up capital of Rs. 10 crore or more
- Every private company having paid-up capital of Rs. 10 crore or more to appoint whole-time Company Secretary

A person shall not be appointed as chairperson as well as CEO or MD at the same time unless company is in multiple businesses and AOA provides for it.

Multiple businesses – companies with paid-up share capital of Rs. 100 crore or more and annual turnover of Rs. 1,000 crore or more

Appointment of Key Managerial Personnel (203)

- **How KMP appointment is made?**
 - Appointed by means of board resolution containing terms and conditions including remuneration
 - KMPs can not hold office in more than 1 company except in its subs company.
 - MD can be appointed in 1 more company with the approval of the board and consent of all the Directors present at the meeting and, specific notice has been given to all the Directors then in India.
 - Vacancy in the office of KMPs to be filled-up by the Board within a period of 6 months from the date of such vacancy



Appointment of Managerial Personnel

Appointment of Managerial Personnel (196)

Appointment of Managing Director, whole-time Director or Manager

- Company can not employ or appoint Managing Director and a Manager at the same time

Tenure



- MD / WTD / Manager can not be appointed for a term exceeding 5 years at a time and **no re-appointment shall be made 1 year before expire of the term.**
- The above does not apply to Government Company



What is the difference between Managing Director and Manager?

Managing Director and Manager

Managing Director	Manager
<p>By virtue of the AOA or an agreement or by resolution passed in general meeting, or by its BOD, is entrusted with Substantial power of the Management of the affairs of the Company.</p>	<p>subject to the superintendence, control and direction of the BOD, has the management of the whole, or substantially the whole, of the affairs of a company</p>
<p>Includes director occupying the position of Managing Director by whatever name called.</p>	<p>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</p>
<p>Substantial power of Management does not include,</p> <ul style="list-style-type: none">• Power to affix common seal• draw or endorse any cheque or negotiable instrument• Sign certificate of shares or directing registration of transfer of shares	



Conditions for appointment of managerial personnel

Disqualification for MD/WTD/Manager (196)

- Below the age of **21 years** and above **70 years** of age
 - **Appointment of a person above 70 years can be made by special resolution or when votes cast in favor exceeds votes cast against and on approval of the Central Government**
- **Undischarged insolvent** or adjudged as an insolvent
- Has **suspended payment** to creditors
- **Convicted by court** of an offence and **sentenced for more than 6 months**

Disqualification for MD/WTD/Manager (Sch V – Part I)

- Sentenced to **imprisonment for any period** and **fined** for **more than Rs. 1,000** for conviction of an offence **under specified 19 Acts**
- **Detained** under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Less than **21 years** and more than **70 years**
- **Not a resident of India**
 - If stayed in India for continuous period of 12 months immediately before the date of appointment as a managerial person and has come to India
 - For taking up employment in India or
 - For carrying on a business or vacation in India
 - He is considered resident of India



Managerial Remuneration

Overall maximum managerial remuneration (197)

- **Total managerial remuneration payable by a public company to,**
 - Its Directors
 - Managing Director
 - Whole-Time Director and
 - Manager

Shall not exceed 11% of the net profit of the Company for that financial year computed in terms of Section 198

Limits on overall managerial remuneration (197)


SN	Condition	Maximum remuneration in a FY
1	Overall limit for all Directors on managerial remuneration	11% of the net profits of the Company
2	Company with one Managing Director / Whole-time Directors/Manager	5% of the net profits of the Company
3	Company with more than one Managing Director / Whole-time Directors/Manager	10% of the net profits of the Company
4	Remuneration payable to Directors who are neither managing director nor whole time directors	1% of net profit if there is managing director or whole-time director
5	Remuneration payable to Directors who are neither managing director nor whole time directors	3% of net profit if there is no managing director or whole-time director



**Can managerial Remuneration be paid
beyond the limits provided in 197?**

Managerial remuneration beyond limits under 197

- **YES**, Managerial remuneration beyond the limits prescribed under 197 can be paid
 - approval of shareholders by special resolution is required
 - **Schedule V does not prescribe any limits for companies having profits**
- approval of the bank or public financial institution or the non-convertible debenture holders or other secured creditor required
- If default is made by the Company.
- It is required before obtaining shareholders approval



What are the provisions relating to waiver of excess remuneration?

Waiver of excess remuneration (197)


In case excess remuneration is paid, which is beyond 197 limits,

- Special resolution is required within 2 years or Director shall refund the excess amount within 2 years
- Until above, director has to hold it in trust for the Company

In case of default, in payment of dues to any bank or public financial institution or NCD holders or any other secured creditor, their prior approval is required before obtaining approval of such waiver from shareholders.

Schedule V – Part II - Remuneration

- **Section I** – remuneration by companies having profits
- **Section II** – remuneration by companies having no profits or inadequate profits
- **Section III** - remuneration by companies having no profits or inadequate profits in certain special circumstances
- **Section IV** – perquisites not included in managerial remuneration
- **Section V** – remuneration to managerial personnel in two companies



**What are the provisions in case of
'no profit or inadequate profit'**

Remuneration in case of no profits or inadequate profits

- In case of **no profits or inadequate profits**, the remuneration may be paid to the managerial person or other director **not exceeding the limit A and limit B given in Schedule V.**
- limits are set basis the **effective capital** of the Company. Separate limits are provided for managerial person and other directors.
- Remuneration **exceeding the limits can be paid by passing special resolution.**
- For remuneration for a period of less than 1 year, the limits shall be pro-rated.

Remuneration in case of no profits or inadequate profits

- Remuneration **to Managerial person or other director in professional capacity** may be paid as per limit A.
 - Such person shall **not have any interest in the capital of the Company/holding/subs**
 - Employee holding **ESOP/share not exceeding 0.5% of the paid-up capital shall not be considered to have interest**
 - Shall **not be related to director/promoter** of the Company/holding/subs during last 2 years
 - Shall **possesses necessary qualification and expertise** in the filed company operates

Conditions for remuneration as per limit A and limit B

- Payment of remuneration shall be **approved by Board and NRC also**, if applicable
- **No default in payment of dues** to banks / Public Financial Institutions / NCD holders / secured creditors
 - In case of default, prior approval required before shareholders approval
- **Ordinary or special resolution** for payment as per **limit A**
- **Special resolution** for payment as per **limit B**
- **Notice** of general meeting **to contain prescribed details**

Schedule V – Part II – Section III

Remuneration by companies having no profit or inadequate profit in certain special circumstances:

- Remuneration in excess of the Limit A & Limit B can be paid
 - In case of foreign company or it has obtained shareholders' approval and the total managerial remuneration payable by such company to its managerial persons or other Directors is within limits u/s 197.
 - In case of newly incorporated company, for a period of 7 years
 - In case of sick company, for whom a scheme of revival / rehabilitation has been ordered by BIFR for a period of 5 years from date of sanction of scheme of revival
 - In case of Company, for which a resolution plan has been approved by the NCLT under the IBC for a period of 5 years from the date of such approval
 - When remuneration is fixed by the BIFR or the NCLT



**What are the provisions relating to
managerial remuneration
under SEBI LODR?**

Managerial Remuneration – SEBI LODR

- **special resolution** is required every year, in case, **remuneration to a single NED exceeds 50% of the total remuneration** payable to all NEDs.
- **IDs are not entitled to any stock option.**
- The fees or compensation payable to **EDs who are promoters or members of the promoter group**, will require approval of the shareholders by **special resolution**, in case-
 - **remuneration to ED exceeds Rs. 5 crore or 2.5 % of the net profits**, whichever is higher; or
 - where there is **more than one such director**, the aggregate remuneration to such directors **exceeds 5% of the net profits**.
 - Above approval is valid only till the expiry of the term of such director .



THANK YOU