Chief Executive Officer [Sec. 2(18)] and Chief Financial Officer [Sec. 2(19)]

1. Meaning of Chief Executive Officer

“Chief Executive Officer” means an officer of a company, who has been designated as such by it.

There was no corresponding section or definition under the Companies Act, 1956, it is introduced for the first time in the Act. However, section 581W provided for appointment of a full time Chief Executive, by whatever name called, in a Producer Company. Such person was to be appointed by the Board from amongst persons other than Members. Such Chief Executive shall be ex officio director of the Board, not liable to retire by rotation. The qualifications, experience and the terms and conditions of service of such Chief Executive are to be determined by the Board.

It is a borrowed concept from United States of America (USA). The chief executive officer (CEO) is a top level executive of a company, who is responsible for developing and implementing strategies, taking major corporate decisions, managing the overall operations and resources of a company.

The term CEO is defined for the first time in the Act. Any person appointed as a CEO of the company shall be one of the key managerial personnel (KMP) as per definition of clause (51) of section 2 of the Act when such person is designated/appointed under section 203 the Act. Such officer shall be one of the officers who is in default under clause (60) of section 2 of the Act in the event of violation of provisions of the Act.

Instances covered other than under section 203, the CEO is not required to be appointed by the Board of Directors by means resolution passed at its meeting.

As per sub-section (1) of section 134 of Act, if CEO is also a director in the company, CEO is required to sign financial statements whether he is KMP or not.

2. Position of Chief Executive Officer under other countries laws

Position of CEO in the United States:
American companies are generally led by a CEO. In some companies, the CEO also has the title of president. In other companies, the President is responsible for internal management of the company while the CEO is responsible for external relations.

Position of CEO in Britain and Commonwealth:
In British English, the title of managing director is generally synonymous with that of chief executive officer. Managing director does not have any particular authority.
under the Companies Act in the UK, but does have implied authority based on the
general understanding of what his position entails, as well as any authority
expressly delegated by the board of directors.

3. Distinction between CEO, Manager and Managing Director

CEO
A CEO need not be a director of the company. He may be merely an employee of
the Company. Any officer of the company may be appointed/ designated as CEO of
the Company. Further, the CEO who is not a director may be appointed by the
Board of Directors. He need not be appointed by the Shareholders of the Company
nor his appointment is subject to shareholders’ approval, unless he is a Director of
the Company. A CEO can be a director, managing director (MD), chairman or an
employee, but no person other than the director can become a MD.

Managing Director

Only a director can be appointed as MD of the Company. In case of a public
limited company appointment and payment of remuneration to the MD are subject
to confirmation of shareholders of the Company. In cases of such class of public
companies, the appointment and payment of remuneration to managing director
is also subject to approval of central government.

The position of MD has a statutory recognition both under the Companies Act,
1956 and Act. MD has to discharge statutory duties and responsibilities as given
under the Act. On the other hand, a CEO is a person who is appointed by the
management to run the operations of the company.

Both CEO and the MD are recognised as KMP under the Act. However the
appointment of MD shall also be governed by the provisions of section 196 and
197 read with schedule V of the Act apart from the provisions of section 203 of
the Act wherever applicable. Whereas the CEO, though holds the equal position of
MD, his appointment and remuneration doesn’t require the compliance of
schedule V read with section 196 and 197 of the Act. However, in case of
restatement of accounts due to fraud or noncompliance of any provisions the
access remunerations paid to the both MD and CEO may be recovered.

The position of manager is similar to that of CEO. Both the manager and CEO need
not be directors of the Company. However both will be treated as officers who are
in default.

Whether appointment may be on contractual basis

The CEO or manager or a managing director may be appointed for a fixed period or
contractual basis or otherwise. In case of managing director the appointment shall
not exceed for more than period of 5 years at a time. Whereas the CEO may be
appointed for either permanently or appointment is limited for specific period.
4. **Departure from the definition**

The definition of ‘Chief Executive Officer’ as discussed above is to be referred for all the purposes except where the context otherwise provides. In the following context, the definition given is not required to be referred.

<table>
<thead>
<tr>
<th>Section 2</th>
<th>Definition/ Term</th>
<th>Term used in other sections of Companies Act, 2013</th>
<th>Relevant Text</th>
</tr>
</thead>
<tbody>
<tr>
<td>(18)</td>
<td>Chief Executive Officer</td>
<td>125(5)</td>
<td>The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>125(6)</td>
<td>The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.</td>
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<td></td>
<td>184(2)</td>
<td>(This reference to Chief Executive Officer under Section 125 is to an officer appointed by Central Government)</td>
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<td>(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate.</td>
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<td></td>
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<td></td>
<td>(This reference to CEO is for a body corporate. Hence, wider connotation.)</td>
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</tbody>
</table>

5. **Meaning of Chief Financial Officer**

“Chief Financial Officer” means a person appointed as the chief financial officer of a company. There was no corresponding section or definition under the Companies Act, 1956, it is introduced for the first time in the Act.
The CFO may be appointed either by the board of directors or by the managing
director unless such person is designated as a key managerial person under
section 203.

As per the provisions of section 203 every public Company having a paid up share
capital of Rs. 10 Crores or more shall have a whole time key managerial
personnel, which includes whole time Chief financial officer.

6. Position and Responsibility of Chief Financial Officer

The position of Chief Financial Officer (CFO) is recognized for the first time under
the Act. He shall be a person who is occupying the position as CFO having 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.

The CFO need not be a director of the company. However he has been recognised
as a KMP under Section 203 and his designation is equated with other
managerial personnel such as the managing director, the manager or in their
absence, the whole time director. The remuneration payable to CFO shall not be
subject to regulation under Section 197 of the Act read with Schedule V in the Act,
unless he is part of the Board or he is appointed as a manager in addition to his
designation as CFO. The Act does not prescribe any qualification for the
appointment of CFO.

Sub-section (1) of section 134 of the Act, requires the CFO to sign the financial
statements whether he is KMP or not, as he is responsible for overseeing the
financial activities of an entire company. His duties include financial planning and
monitoring cash flow. In few companies, the finance director might be the CFO
and vice versa. 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.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per
notified law as on 30th September, 2016.