

Remuneration to Managerial person(s) and 'other' director(s)

(Section 197 of the Companies Act, 2013)

(A) Not Permitted for a 'Public' Limited Company 'without' passing a special resolution in AGM/EGM

1. A 'public' limited company is not permitted to pay managerial remuneration to the managerial person(s) and 'other' director(s) **exceeding 11%** of net profit 'without' passing a special resolution in AGM/EGM **where company has sufficient net profit** as computed under the section 198.
2. A public limited company is not permitted to pay managerial remuneration to the managerial person(s) and 'other' director(s) **exceeding** the following limits 'without' passing a special resolution in AGM/EGM **where company has inadequate profits or losses** as specified under schedule V Part II section II of The Companies Act, 2013 as below:-

Sl.No.	Effective capital	Remuneration to Managerial person(s)	Remuneration to 'other' director(s)
(i)	Negative or less than 5	60 lakhs	12 Lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores"

(B) Important Clarifications

1. **Definition of Managerial Person(s) for 'public' and 'private' limited company to include:-**
 - (i) Managing Director(s)
 - (ii) Whole-Time Director(s)
 - (iii) Manager(s)
2. **Monetary limits @ 11% for 'public' limited company for managerial remunerations to include:-**

Individual limit for managing director, whole time director and manager is maximum 5% per director and maximum 10% for 2 or more director's balance 1% for 'other' director(s) like Non-Executive Directors ("NEDs") and Independent Directors ("IDs").

3. Mandatory specified conditions for 'public' limited company for Managerial remuneration 'exceeding' the limits

- (i) (a) A public company should not have committed any default in payment of dues to bank, public financial institution, non-convertible debenture holders or any 'other' secured creditors.
- (b) Prior approval is required from abovementioned lenders where any default is made in payment of their dues.
- (ii) A 'special resolution' in AGM/EGM is permitted for maximum **3** years.
- (iii) A public company is required to obtain a certificate from statutory auditors or company secretary of the company or company secretary in whole time practice for compliance of the conditions of Schedule- V Part II Section II, section 197 and 198 of Companies Act, 2013
- (iv) Board of Directors of the company is required to pass a resolution before calling of AGM/EGM for passing a 'special resolution'

4. Monetary Limits for 'public' limited company only

- (i) Monetary limit for remuneration to Managerial person(s) and 'other' director(s) is not applicable on a 'Private' limited company. Hence private limited company is permitted to pay managerial remuneration exceeding the monetary limits 'without passing special resolution' in AGM/EGM.
- (ii) Monetary limits for inadequate profits or losses are applicable annually. Hence 'proportionate' amount is permitted where period of employment of Managerial persons(s) and 'other' director(s) is less than 12 months.
- (iii) Monetary limits are also applicable for nomination and remuneration committee

(C) Approval from Central govt. for appointment of Managerial person(s) for 'Public' and 'Private' Limited Company

1. Appointment with approval from Central govt.

- * A 'public' or 'private' limited company is not permitted to appoint the managerial person(s) without approval from Central govt.

- (i) Where the person had been sentenced to imprisonment for 'any period' or to a fine 'exceeding' Rs. 1,000/- for the conviction of an offence under any of the following Acts:-
- (a) The Indian Stamp Act, 1899 (2 of 1899)
 - (b) The Central Excise Act, 1944 (1 of 1944)
 - (c) The Industries (Development and Regulation) Act, 1951 (65 of 1951)
 - (d) The Prevention of Food Adulteration Act, 1954 (37 of 1954)
 - (e) The Essential Commodities Act, 1955 (10 of 1955)
 - (f) The Companies Act, 2013 (18 of 2013) or any previous company law
 - (g) The Securities Contracts (Regulation) Act, 1956 (42 of 1956)
 - (h) The Wealth-tax Act, 1957 (27 of 1957)
 - (i) The Income-tax Act, 1961 (43 of 1961)
 - (j) The Customs Act, 1962 (52 of 1962)
 - (k) The Competition Act, 2002 (12 of 2003)
 - (l) The Foreign Exchange Management Act, 1999 (42 of 1999)
 - (m) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986)
 - (n) The Securities and Exchange Board of India Act, 1992 (15 of 1992)
 - (o) The Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992)
 - (n) The Prevention of Money-Laundering Act, 2002 (15 of 2003);
 - (o) The Insolvency and Bankruptcy Code, 2016 (31 of 2016)
 - (p) The Goods and Services Tax Act, 2017 (12 of 2017)
 - (q) The Fugitive Economic Offenders Act, 2018 (17 of 2018)]
- (ii) Where the person had been detained for 'any period' under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974)
- (iii) (a) Where the person has not completed the age of 21 years and has completed the age of 70 years:
- (b) However Central govt. approval is not required where the person has completed the age of 70 years but he is 'in continuity' of his existing tenure and also 'special resolution' has been passed in AGM/EGM.
- (iv) **Appointment of non-resident as managerial person(s)**
- (a) Non-Resident is not permitted for appointment as managerial person(s) 'without' approval of Central govt.
 - (b) Non-Resident is not include the followings:-

(ba) Where a person is staying in India for a minimum period of 12 months 'continuously' before the date of appointment as a managerial person(s) and also purpose of coming to stay in India for taking employment in India or carrying on a business or vocation in India and also the person should have his VISA to stay in India accordingly.

(bb) Where a person is being appointed in SEZ as notified by Department of commerce from time to time

(D) Conclusion

1. A 'special resolution' is required in AGM/EGM for 'public' limited company only

(i) Where remuneration to Managerial person(s) and 'other' director(s) is exceeding 11% or

(ii) Where the payment to Managerial person(s) and 'other' director(s) are 'exceeding' the limits as prescribed in case of the net profits is inadequate profits or losses under Schedule- V Part II Section II under The Companies Act, 2013. The table is already given under Para A(2) of this article.

2. (i) An 'ordinary' resolution is required in AGM/EGM for 'public' limited company to appoint and to pay Managerial remuneration beside the Managerial remuneration is 'not exceeding' 11% of net profits or annual payments against inadequate profits or losses are 'not exceeding' the limits under Schedule-V Part II Section II under The Companies Act, 2013. The table is already given under Para A(2) of this article.

(ii) An 'ordinary' resolution is also required in AGM/EGM for 'private' limited company to appoint and to pay managerial remuneration 'without' any monetary limits.

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