The Board of every company should have the most talented people to enable it to grow in this era of fierce competition. No company wants to lose its bright talent to its competitors. Remuneration is one of the vital aspects for the retention of the talent in the company. The legal framework for the remuneration of Directors is complex and requires compliance of various provisions of the Companies Act, 1956, SEBI regulation etc. Both appointment of and remuneration to a Director require a careful understating of the various provisions of the Companies Act and other applicable Acts. Sections 197A, 198, 268, 269, 309, 310, 311 read with Schedule XIII of the Companies Act, 1956 contain provisions relating to the appointment and remuneration of a Manage. The purpose of this article is to understand the practical aspects of the Managerial Remuneration.

Applicability of the provisions

The provisions contained in the Companies Act, 1956 relating to the appointment and remuneration of managerial personnel are not applicable to an independent private company. However, an independent private company can appoint them in accordance with the provisions contained in the Articles of Association (AOA). If Articles of the concerned independent private company does not provide for such office then the AOA will have to be first altered under section 31 of the Companies Act.

Definition of Remuneration

The word “remuneration” is defined in the Explanation appended to Section 198 of the Companies Act, 1956. Accordingly, for the purposes of Sections 198, 309, 310, 311, 381, 387, remuneration shall include the following:

(a) Any expenditure incurred by the company in providing any rent free accommodation, or any other benefit or amenity in respect of accommodation, free of charge, to any of the company’s directors and manager;

(b) Any expenditure incurred by the company in providing any other benefit or amenity free of charge or at a concessional rate to any of the company’s directors and manager;

(c) Any expenditure incurred by the company in respect of any obligation or service, which, but for such expenditure by the company, would have been incurred by any of the company’s directors and manager; and

(d) any expenditure incurred by the company to effect any insurance on the life of, or to provide any pension, annuity or gratuity for, any of the company’s directors and manager or his spouse or child.

This is an inclusive definition and not an exhaustive definition. It covers almost all the expenditure incurred by the company on behalf of the managerial personnel.

TOTAL CEILING OF MANAGERIAL REMUNERATION

1. Section 198(1) limits the overall maximum managerial remuneration. The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its manager in respect of any financial year shall not exceed 11% of the net profits of the company for that financial year.
2. Net profits shall be computed in a manner laid down under sections 349 and 350, except that the remuneration of the directors shall not be deducted from the gross profits.

3. However such limit is exclusive of the sitting fee payable to the directors for attending the Board meeting.

For the purpose of remuneration, Directors may be classified as executive and non executive directors.

A. REMUNERATION TO EXECUTIVE DIRECTORS

As per Section 269 of the Companies Act, 1956, appointment of managerial personnel can be made by following two methods.

(i) With the approval of the Central Government : - A company can pay to its managerial personnel any amount with the approval of the Central Government. Form 25A, with necessary annexure and with the justification of the remuneration, should be filed with ROC within 90 days of the appointment. A company can pay whatever amount it wants to pay to its managerial personnel with the approval of the Central Government.

(ii) In accordance with conditions specified in Parts I and II of Schedule XIII (Without the approval of the Central Government) :

Part I of Schedule-XIII of the Companies Act, 1956 sets out the eligibility criteria of a person for being appointed as managerial personnel.

Part II of Schedule XIII of the Companies Act, 1956 deals with remuneration of Managerial Personnel. If the appointment of Managerial Personnel is made without the approval of the Central Government, then remuneration must be paid as per the Part-II of Schedule XIII of the Companies Act, 1956.

Part II of Schedule XIII of the Companies Act, 1956 is divided into 3 Sections. Section-I deals with Remuneration payable by the Companies having profits. Section-II deals with Remuneration payable by the Companies having no profits or inadequate Profits. Section-III deals with Remuneration payable to managerial personnel in two companies.

REMUNERATION PAYABLE BY COMPANY HAVING PROFITS

Section-I of Part II of Schedule-XIII deals with Remuneration payable by the Companies having profits. This section is subject to provisions of sections 198 and 309 of the Companies Act, 1956.

1. Remuneration of the Directors shall be determined in accordance with and subject to Sections 198 and 309 of the Companies Act, 1956 only by the following ways.

   – By Articles of Association or
   – By a resolution passed by the Company in General Meeting or
   – If the Article so required by a Special Resolution passed by company in General Meeting.

2. The remuneration payable to any such Director determined as per the said provisions shall be inclusive of the remuneration payable to such Director for services rendered by him in any other capacity.

3. However, any remuneration for services will not be so included if the services are of a professional nature and in the opinion of the Central Government, the Director possesses the requisite qualifications. It is immaterial, whether the professional fees, which are paid to him is on a monthly basis or on a case to case basis.

4. The Board of Directors has no power to decide the remuneration. It can only recommend the remuneration.

MODE

As per Section 309, a company can remunerate its Executive Directors i.e. Managing Director or Whole time Directors either by way of a monthly payment or at a specified percentage of net profits of the company or partly by one way and partly by the other.

QUANTUM

A company can pay a maximum of 5% of its profits calculated as per section 198 read with sections 349 and 350 in any financial year as remuneration to its managerial personnel (Managing Director/WTD). Where there are more than one managerial personnel, the company can pay a maximum of 10% of its profits in any financial year as remuneration to all such managerial personnel. For example, if a Director is appointed as MD in May 2009, in the financial Year 2009-10, his total remuneration up to March 2010 should not exceed the 5% of the net profit of the financial year ended 2010 calculated as per section 198 read with section 349 and 350. (With an assumption that company has only one MD.)

A company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances.
Article 7

Note:
1. If the appointment of the managerial personnel has been made as per Schedule XIII, then this remuneration is also subject to the approval of shareholders by way of ordinary resolution in the General Meeting.
2. A return in Form-25C must be filed with ROC within 90 Days of the appointment of the managerial personnel.

LIMITS

<table>
<thead>
<tr>
<th>Total Managerial Remuneration Payable (Section 198)</th>
<th>11% of the net profits of the company calculated in accordance with the provisions of sections 349 and 350.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only One Managing Director or Whole Time Director (Section 309)</td>
<td>Not exceeding 5% of the net profits computed in the manner as stated above.</td>
</tr>
<tr>
<td>More than One Managing Director or Whole Time Director (Section 309)</td>
<td>Not exceeding 10% of the net profits computed in the manner as stated above.</td>
</tr>
</tbody>
</table>

REMUNERATION PAYABLE BY COMPANY HAVING NO PROFITS OR INADEQUATE PROFITS

Section-II of Part II of Schedule-XIII deals with Remuneration payable by the Companies having no profits or inadequate Profits.

Meaning of ‘No Profit’ or ‘Inadequate Profit’
Inadequate profit means that the remuneration paid/payable to a managerial person in the financial year is more than 5% of the net profit of that financial year.

Let’s assume that a company has appointed a managerial personnel on 1st day of May 2009 in the financial Year 2009-10 and fixed his monthly remuneration as Rs. 1 Lac. His total remuneration for the financial Year ended March, 2010 would be Rs. 10 Lacs. If the profits of the company for the financial year ended March 2010, calculated as per sections 349 & 350, is Rs. 30 Lacs, the company can pay to a managerial personnel for the financial year ended March 2010, only up to 5% of Rs. 30 Lacs which comes to Rs. 1.5 Lacs. In this case company is paying Rs. 10 Lacs as remuneration to its managerial personnel. Therefore in this case, one can say that the profit is inadequate to pay the managerial personnel Rs. 1 Lac per month for the financial year ended March-2010.

CEILING LIMIT
Section-II of Part II of Schedule-XIII contains a different situation for applying different ceiling limits. The different situations can be classified into following category.
1. Where only the approval of the Remuneration Committee is required.
2. Where approval of the Remuneration Committee as well as approval of the shareholders by way of Special Resolution is required.
3. Where approval of the Central Government apart from approval of remuneration Committee and shareholders approval by way of special resolution is also required.
4. Limit for SEZ.

Situation- I - Where only the approval of the Remuneration Committee is required
Where in any financial year during the currency of the tenure of the managerial personnel, a company has no profit or inadequate profit, maximum remuneration payable should not exceed Rs. 2 Lacs per month or Rs. 24 Lacs per annum depending upon the effective capital of the company as per following table.

<table>
<thead>
<tr>
<th>If the effective capital of the Company is:</th>
<th>Monthly Remuneration not exceeding:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than Rs. 1 Crore</td>
<td>Rs. 75,000</td>
</tr>
<tr>
<td>Rupees 1 Crore or more but less than Rs. 5 Crores</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td>Rupees 5 Crores or more but less than Rs. 25 Crores</td>
<td>Rs. 1,25,000</td>
</tr>
<tr>
<td>Rupees 25 Crores or more but less than Rs. 50 Crores</td>
<td>Rs. 1,50,000</td>
</tr>
<tr>
<td>Rupees 50 Crores or more but less than Rs. 100 Crores</td>
<td>Rs. 1,75,000</td>
</tr>
<tr>
<td>Rupees 100 Crores or more</td>
<td>Rs. 2,00,000</td>
</tr>
</tbody>
</table>

For paying remuneration as per above table following conditions should be satisfied.
1. Payment of remuneration is approved by the resolution of the Remuneration Committee.
2. The Company should not have made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial personnel. Therefore, if a Company has committed any of the above said default it shall not give remuneration to a Managerial Personnel.
Personnel under the provisions of Schedule XIII of the Companies Act and it shall be required to obtain approval of the Central Government for that purpose.

Note: As per Part-III of Schedule XIII, all remuneration is subject to approval by a resolution of the Shareholders in the General Meeting.

**Situation- II - Where approval of the Remuneration committee as well as approval of the Shareholders by way of Special Resolution is required.**

Where in any financial year during the currency of the tenure of the managerial personnel, a company has no profit or inadequate profit, maximum remuneration payable should not exceed Rs. 4 Lacs per month or Rs. 48 Lacs per annum depending upon the effective capital of the company as per following table.

<table>
<thead>
<tr>
<th>If the effective capital of the Company is:</th>
<th>Monthly Remuneration not exceeding:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than Rs. 1 Crore</td>
<td>Rs. 1,50,000</td>
</tr>
<tr>
<td>Rupees 1 Crore or more but less than Rs. 5 Crores</td>
<td>Rs. 2,00,000</td>
</tr>
<tr>
<td>Rupees 5 Crores or more but less than Rs. 25 Crores</td>
<td>Rs. 2,50,000</td>
</tr>
<tr>
<td>Rupees 25 Crores or more but less than Rs. 50 Crores</td>
<td>Rs. 3,00,000</td>
</tr>
<tr>
<td>Rupees 50 Crores or more but less than Rs. 100 Crores</td>
<td>Rs. 3,50,000</td>
</tr>
<tr>
<td>Rupees 100 Crores or more</td>
<td>Rs. 4,00,000</td>
</tr>
</tbody>
</table>

For paying remuneration as per above table following condition should be satisfied.

Apart from complying with the conditions mentioned under Situation-I, a Special Resolution has to be passed at the General Meeting of the Company for fixing the remuneration of the managerial personnel for a period not exceeding 3 Years. Along with the notice of the General Meeting as is referred to above, a statement is given to the Shareholders containing the information as is mentioned in Para B of Section II of Part II of this Schedule.

Such Statement shall give the following information:

1. General information
2. Information about the appointee
3. Other information
4. Disclosures

This information is mainly related with the Corporate Governance norms.

**Situation- III - Where approval of the Central Government apart from approval of Remuneration Committee and Shareholders approval by way of Special Resolution is also required.**

Apart from Complying with the condition mentioned under Situations -I & II, prior approval of Central Government is also required in the following situation.

1. Where the effective capital of the company is negative.
2. Where the remuneration is more than Rs. 4 Lacs per month or Rs. 48 Lacs per annum depending upon the effective capital of the company as per following table.

<table>
<thead>
<tr>
<th>If the effective capital of the Company is:</th>
<th>Monthly Remuneration payable exceeds:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than Rs. 1 Crore</td>
<td>Rs. 1,50,000</td>
</tr>
<tr>
<td>Rupees 1 Crore or more but less than Rs. 5 Crores</td>
<td>Rs. 2,00,000</td>
</tr>
<tr>
<td>Rupees 5 Crores or more but less than Rs. 25 Crores</td>
<td>Rs. 2,50,000</td>
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<tr>
<td>Rupees 25 Crores or more but less than Rs. 50 Crores</td>
<td>Rs. 3,00,000</td>
</tr>
<tr>
<td>Rupees 50 Crores or more but less than Rs. 100 Crores</td>
<td>Rs. 3,50,000</td>
</tr>
<tr>
<td>Rupees 100 Crores or more</td>
<td>Rs. 4,00,000</td>
</tr>
</tbody>
</table>

**Situation- IV – For SEZ**

Companies in Special Economic Zones can pay to a managerial personnel up to Rs. 2,40,00,000 per annum or Rs. 20,0,00,000 per Month. Central Government approval is not required in this case. However following conditions should be satisfied.

1. Company has not raised any money by public issue of shares or debentures in India.
2. Company should not have made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year.

**EXEMPTION FROM CEILING LIMIT**

In addition to the above, managerial personnel are entitled for the following perquisites which are not to be considered for the ceiling as prescribed under Section II of Part II of Scheduled XIII of the Companies Act, 1956:
(i) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961,
(ii) Gratuity payable at a rate not exceeding half a month’s salary for each completed year of service, and
(iii) Encashment of Leave at the end of the tenure.

**Note:** It may be noted that clause (d) of the Explanation to section 198 includes expenditure incurred by the company to take out insurance on the life of managerial personnel or his spouse or child or to provide any pension, annuity or gratuity to them. Therefore when there are adequate profits, expenditure in respect of contribution to provident fund, superannuation fund, gratuity would all form part of remuneration. In this case limit of 5%or 10% as the case may be should apply.

**Maximum remuneration payable to managerial personnel in case he is managerial personnel in two companies**

Section III of Part II of Schedule XIII to the Companies Act, 1956 *inter alia* provides that the total remuneration which can be paid by two companies in which an individual is a managerial personnel shall not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial personnel. It is to be noted that Section III is also subject to the provisions of Sections I and II.

For example, if the remuneration payable by Company A as per Schedule XIII is Rs.75,000/- per month and Company B is Rs.1,00,000/- per month, then the total remuneration from both the companies shall not exceed Rs.1,00,000/- per month.

Press Note No. 2/96, dated 16-9-1996 issued by the Department of Company Affairs vide F. No. 1/18/96-CL V *inter alia* provides that a person who is a managerial personnel in more than one company shall be able to draw Remuneration from one or both the companies.

**REMUNERATION PAYABLE TO FOREIGN DIRECTOR**

Provisions for the payment of the remuneration applicable to Indian director are also applicable to the Foreign Director. However foreign director who has been appointed as managerial personnel is also eligible for the following perquisites in addition to those which is payable to Indian Director which shall not be included in the computation of the ceiling on remuneration specified in the above paragraphs.

(i) **Children’s Education Allowance**: For maximum 2 children not exceeding Rs. 5,000 per month per child or actual expenses incurred, whichever is less whether children are studying in India or abroad.

(ii) **Holiday passage for children studying abroad or family residing abroad**: Return holiday passage once in a year by economy class or once in 2 years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India with the Managerial Personnel.

(iii) **Leave Travel Concession**: Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

**REPARTIATION FACILITIES**

Foreign nationals employed in India would like to repatriate best part of their income. Salary earned by foreign nationals being current account transaction is regulated by the Foreign Exchange Management (Current Account Transactions) Rules, 2000. The amount that can be repatriated outside India can be classified as follows:

1. Repatriation by a foreign National (Other than citizen of Pakistan) who is a person resident in India but not permanent resident in India- Up to net salary of the person [Net salary is computed after deduction of taxes, contribution to provident fund and other deductions.]

2. Repatriation by a foreign National (Other than citizen of Pakistan) who is a person resident in India but not permanent resident in India - Up to US $ 1,00,000 per year per recipient.

A national of a foreign state could continue to be an employee of foreign company and posted in Indian operations on deputation to the joint venture or branch in India. In such cases they are not employee of Indian company and are allowed to open, hold and maintain foreign currency account with bank outside India.

**IMPORTANT DEFINITIONS UNDER SECTION – II OF PART-II OF SCHEDULE XIII**

**Effective Capital**

Company’s effective capital has to be calculated to determine the amount that can be paid to the Managerial Personnel. **Effective Capital** means the aggregate of paid-up share capital (excluding share application money or advances against shares) amount, if any, standing to the credit of share premium
account, reserves and surplus excluding revaluation reserve, Long term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee etc., and other short term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities) accumulated loss and preliminary expenses not written off.

**Calculation of Effective Capital**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid-up Share Capital (Excluding Share application money or advance against shares)</td>
<td></td>
</tr>
<tr>
<td>Share Premium</td>
<td></td>
</tr>
<tr>
<td>Reserves and Surplus (- Revaluation reserve)</td>
<td></td>
</tr>
<tr>
<td>Long term Loans</td>
<td></td>
</tr>
<tr>
<td>Deposits repayable after one year</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
</tr>
<tr>
<td>Less : Investments</td>
<td></td>
</tr>
<tr>
<td>Accumulated loss (not written off)</td>
<td></td>
</tr>
<tr>
<td>Preliminary expenses (not written off)</td>
<td></td>
</tr>
<tr>
<td><strong>Effective Capital</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Remuneration Committee**

Remuneration Committee as per Explanation IV of the Schedule, means a committee which consists of at least three Non-Executive Independent Directors including nominee Director or nominee Directors, if any.

**Independent Director**

Companies Act does not define the term “Independent Director”. However Clause 49 of the Listing Agreement defines this term.

**Negative Effective Capital**

Negative effective capital as defined under this Schedule means the effective Capital which is less than Zero.

**Important Points**

1. In case of loss or inadequacy of profits, and the company still wants to pay a remuneration to its managerial personnel which is more than the ceiling limit under section 198, then it shall be compulsory for a public company or a private company, which is a subsidiary of a public company to constitute and appoint a remuneration committee of the directors for deciding the remuneration of the Managerial Personnel.

2. The company should not have made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial personnel. Therefore, if a company has committed any of the above said defaults it shall not pay remuneration to a managerial personnel under the provisions of Schedule XIII of the Companies Act and it shall be required to obtain approval of the Central Government for that purpose.

3. In the case of a profit making company the provisions of Section 1 of Part II of Schedule XIII are applicable. Accordingly the company can pay managerial remuneration upto 5% of net profits to one such managerial personnel and if there is more than one person, 10% of the net profits for all of them put together. However, if the company incurred losses or earned inadequate net profits in any subsequent financial year, then the company has to either re-fix the remuneration within the applicable ceiling limits specified in Section II of Part II or to obtain the approval of the Central Government for payment in excess of Schedule XIII limits.

4. Where remuneration is fixed as per Section II of Part II, but effective capital is reduced in any subsequent financial year then, the remuneration package has to be scaled down or the approval of the Central Government has to be obtained.

5. The approval of members by way of special resolution will be valid at a time for a period of three years.

6. Remuneration as per Part C, Section-II Part-II of Schedule-XIII (In case a company proposes to pay managerial remuneration to a person in excess of Rs. 48, 00,000 p.a. or Rs. 4,00,000 p.m. calculated on the scale in terms of Schedule XIII of the Companies Act, and having negative zero effective capital), cannot be paid without the prior approval of the Central Government.

7. Remuneration under Part II is also subject to the approval of Shareholders by way of ordinary resolution in the General Meeting. (Part III of Schedule XIII of the Companies Act, 1956).

8. The auditor or secretary or secretary in whole-time practice...
will certify that all requirements have been complied with which shall be incorporated in the Return filed under Section 269(2) i.e. Form 25C.

B. REMUNERATION TO NON-EXECUTIVE DIRECTORS

Limits
If the company has Managing Director or whole time director or a manager: - 1% of net profits
If the company has no Managing Director or whole time director or a manager: - 3% of net profits

Mode of Payment
Section 309(4) authorizes payment of remuneration to non – executive directors in two ways:
(i) by way of monthly, quarterly or annual payment with the approval of the Central Government; or
(ii) by way of commission if the Company by way of Special Resolution authorizes such payment.

Approvals Required
1. In order to pay remuneration by way of commission, a Special Resolution in the General Meeting is required to be passed.
2. In order to pay such remuneration by way of a monthly, quarterly or annual payment the Company is required to obtain the approval of Central Government.
3. In order to pay the remuneration in excess of 1% or 3% (as mentioned above) to its directors a separate approval of the Central Government is required for paying such higher remuneration.
4. Such higher remuneration is authorized by the Company in its General Meeting.

Sitting Fee
A director may receive remuneration by way of a sitting fee for each meeting of the Board, or a committee thereof, attended by him. By virtue of sub-section (2) of Section198. Sitting fee paid to directors shall not be reckoned for the purpose of calculating Directors Remuneration.

Ceiling Limits for Sitting Fee
Rule 10-B of the Companies (Central Government’s) General Rules and Forms, 1956 provides that companies having a paid-up capital and free reserves of Rs. 10 Crores or above or companies having a turnover of Rs. 50 Crores or above can pay sitting fees not exceeding Rs. 20,000 and other companies can pay sitting fees up to Rs. 10,000.

Sitting Fees to Non-Resident Non-Whole-Time Directors
Companies in India can make payments in Indian rupees to their non Whole-Time Directors who are resident outside India and are on a visit to India for the company’s work such as attending Board meetings, etc., and are entitled to payment of sitting fees or commission or remuneration in accordance with the provisions contained in the concerned company’s entered into by it or in any Board resolution or General Body Resolution passed by the company, provided that the Central Government’s approval has been obtained by the company under section 309(4) or section 310 of the Companies Act, 1956, wherever it applies (RBI Notification No. FEMA -16/2000).

Important Points
1. If any director draws or receives, directly or indirectly, by way of remuneration any such sums in excess of the limit prescribed by section 309 or without the prior sanction of the Central Government, where it is required, he shall refund such sums to the company and until such sum is refunded, hold it in trust for the company.
2. The company shall not waive the recovery of any sum refundable to it unless permitted by the Central Government.
3. Payment of sitting fees to managerial personnel is part of Managerial remuneration and in case of Schedule XIII appointments, no such sitting fee is payable in the absence of any provision made therein. (DCA Vide letter no. 3/1/90-CL-V dated. 18.08.1990).
4. Expenditure incurred on maintenance of vehicles would fall within the meaning of ‘remuneration’ and once remuneration is fixed as provided under section 309 it is not possible to state that the expenditure incurred by the company on personal use of car by directors would not be allowable deduction. In so far as the company is concerned the expenditure is business expenditure, which could not be disallowed as such. [Sayaji Iron & Engineering Co. v. CIT (2002) Comp Cas 675 (Guj)].
5. It has been clarified vide Circular No. 1 of 1972, dated 2-2-1972 (DCA) that sitting fees, traveling allowances, etc., are
payable to a director who was present at the meeting of the Board or committees thereof with a view to participating in its proceedings though no business could be transacted at that meeting for want of quorum.

6. Pension given to the retired director of the company is not remuneration. However, as a matter of abundant caution, in view of the judgment of the Supreme Court in Dr. A. Lakshmanaswamy Mudaliar v. Life Insurance Corporation of India AIR 1963 SC 1185, the company which is making the payment of monthly pension should ensure that its Memorandum of Association contains an enabling clause to pay pension to directors/former directors of the company.

7. No approval of the Central Government under section 198 will be necessary for an increase in the amount of sitting fee so long as such increase is within the limits prescribed by the Government.

8. Payment of guarantee commission to directors is not remuneration. In Sussen Textile Bearings Ltd. v Union of India (1984) 55 Comp Cas 492, it was held by Delhi High Court that guarantee Commission paid by a company to its director for standing surety for loans and credit facilities taken by the company was not a remuneration within the meaning of section 309 of the Companies Act, 1956 and approval of the Central Government was not necessary. [Circular No. 3/94 (F. No. 14/3/87-CLV).

9. For the payment of remuneration to non-executive directors by way of commission, prior approval of the company in general meeting accorded by a special resolution in terms of section 309(4) shall be made.

10. The special resolution passed under section 309(4)(b) is valid for a period of 5 years at a time, it may be renewed for a further period of five years at a time and any renewal must be done not earlier than one year from the date on which it is to come into force. (309(7)).

11. Whole-time Director or Managing Director who is in receipt of any commission from the company shall not be entitled to receive any commission or other remuneration from any subsidiary of such company.(309(6)).

12. Rule 4.3 of the Securities and Exchange Board of India (Employee Stock Option Scheme And Employee Stock Purchase Scheme) Guidelines, 1999 provides that “A director who either by himself or through his relative or through any body corporate, directly or indirectly holds more than 10% of the outstanding equity shares of the company shall not be eligible to participate in the ESOP.

13. Section 309 is not applicable to Government Companies. (Notification GSR 235 date 31.1.1978).

14. Section 309 is also not applicable to Private companies.

**LIMITS AT A GLANCE**

<table>
<thead>
<tr>
<th>Total Managerial Remuneration Payable</th>
<th>11% of the net profits of the company calculated in accordance with the provisions of sections 349 and 350.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only One Managing Director or Whole Time Director</td>
<td>Not exceeding 5% of the net profits computed in the manner as stated above.</td>
</tr>
<tr>
<td>More than One Managing Director or Whole Time Director</td>
<td>Not exceeding 10% of the net profits computed in the manner as stated above.</td>
</tr>
<tr>
<td>One or more Director(s), but no Managing Director or Whole Time Director</td>
<td>Not exceeding 3% of the net profits computed in the manner as stated above.</td>
</tr>
<tr>
<td>One or more Director(s) and also a Managing Director or Whole Time Director</td>
<td>Not exceeding 1% of the net profits computed in the manner as stated above.</td>
</tr>
</tbody>
</table>

**ANOMALIES**

1. Under Schedule XIII, all public Companies having loss or inadequate profit shall have Remuneration Committee. It is not so for profit making companies. Even Clause 49 of the listing agreement makes a non-mandatory recommendation for the constitution of a Remuneration Committee.

2. Part III of Section III of the Schedule says that appointment and remuneration referred to in Parts I and II shall be subject to approval by a resolution of the shareholders in general meeting. However conditions imposed under the Schedule call for a special resolution of the shareholders for the categories B and C.

3. Default in repayment of any of its debts or debentures or interest payable thereon for a period of thirty days in the preceding financial year disqualifies a company from making payment of any remuneration to its executive directors. However profit making companies can pay remuneration to its executive directors even if there is default in repayment of debts.