

**Lecture  
14**

**Chapter - 3  
"Appointment and Remuneration of Managerial Personnel"**

Chapter XIII of Companies Act, 2013				
Appointment of MD/WTD/Manager	Managerial remuneration	Compensation for loss of office MD/WTD/Manager	Appointment of KMP	Secretarial aspects
- Sec. 196 and 201 - Part I of Sch. V - Rule 3 and Rule 7	- Sec. 197 and 198 - Sec. 199 and 200 - Part II of Sch V	- Sec. 202	- Sec. 203 - Rule 8 - Rule 8A	- Sec. 204 - Sec. 205 - Rule 9 - Rule 10

**(i) Definition of Manager, Managing director and Whole - time director:**

Sec. 2(53), Sec. 2(54) and Sec. 2(94) - Self Study from main Book

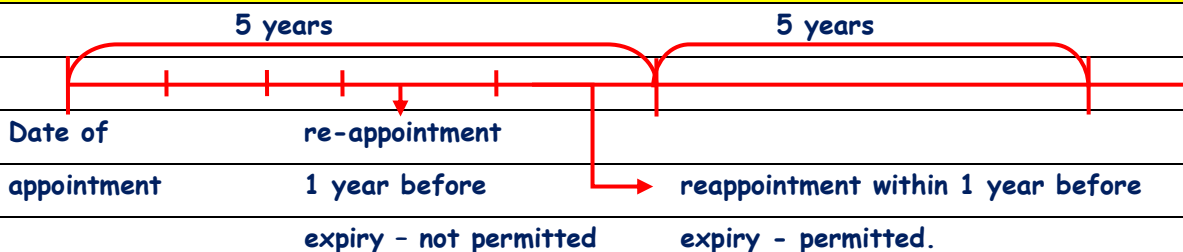
**(ii) Appointment of M.D, WTD and Manager (Sec. 196):**

**Sec. 196(1): No Company shall appoint or employ**

a M.D. and a Manager → at the same time.

**Sec. 196(2): No company shall appoint/reappoint any person as its M.D., WTD or Manager for a term exceeding 5 years at a time. (i.e. ≤ 5 years)**

**Note: No re-appointment shall be made earlier than 1 year before the expiry of his term.**



**Exemption: Sec. 196(2) shall not apply to Government companies.**

**Sec. 196(3):** No Company shall appoint or continue the employment

↓

of any person as M.D, WTD or Manager, who

(a) is below the age of 21 years or has attained the age of 70 years.

**Note:** Appointment of a person who has attained the age of 70 years may be made by passing a special resolution in which case the explanatory statement shall indicate the justification for appointing such person.

If SR not passed, but votes cast in favour of motion exceeds the votes, if any, cast against the motion and C.G. is satisfied that such appointment is most beneficial to the company, appointment of the person who has attained the age of 70 years may be made.

(b) is an undischarged insolvent

or

has at any time been adjudged as an insolvent.

(c) has at any time suspended payment to his creditors

or

makes, or has at any time made a composition with them.

(d) has at any time been convicted by a court of an offence and sentenced for a period > 6 months.

**Part I of Schedule V: Conditions to be fulfilled for the appointment of a MD or WTD or a Manager without the approval of the Central Government:**

No person shall be eligible for appointment as a MD or WTD or a manager 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 ₹ 1,000, for the conviction of an offence under any of the specified Acts.

(b) he had not been detained for any period under the COFEPOSA Act.

	(c) he has completed the age of 21 years and has not attained the age of 70 years.
	<b>Note:</b> Where a person has attained the age of 70 years; and the appointment is approved by a SR, no further approval of the C.G. shall be necessary for such appointment.
	(d) he is resident of India.
	<b><u>Explanation I:</u></b> Resident in India includes a person who has been staying in India for a continuous period of $\geq 12$ months immediately preceding date of his appointment as a managerial person and who has come to stay in India:
	(i) for taking up employment in India; or
	(ii) for carrying on a business or vacation in India.
	<b><u>Explanation II:</u></b> This condition shall not apply to the companies in SEZ as notified by Department of Commerce from time to time:
	<b><u>Sec. 196(4): Procedure for appointment (with Rule 3)</u></b>
	(i) <b><u>Approvals required:</u></b> - BOD (at a meeting)
	- General Meeting (OR)
	and
	- C.G. (if appointment is at variance to conditions specified in Part I of Schedule V*)
	<b>* Procedure for obtaining approval is prescribed u/s 201 and Rule 7.</b>
	(ii) <b><u>Notice to include:</u></b> - terms and conditions of appointment;
	- remuneration payable; and
	- such other matters including interest of director(s) in such appointments, if any.
	(iii) <b><u>Filing of return:</u></b> - in form MR 1
	<b><u>(Rule 3)</u></b> - within 60 days of appointment.

**Sec. 196(5): Validity of acts of M.D., WTD or manager**

Where an appointment of a M.D, WTD or Manager



is not approved by the company in general meeting



any act done by them before such approval shall be considered valid.

**Note: Sec. 196(4) and 196(5) shall not apply to Govt. and private companies.**

**Hence, in these companies, appointment of MD, WTD or Manager shall be approved by BOD which is ratified by members.**

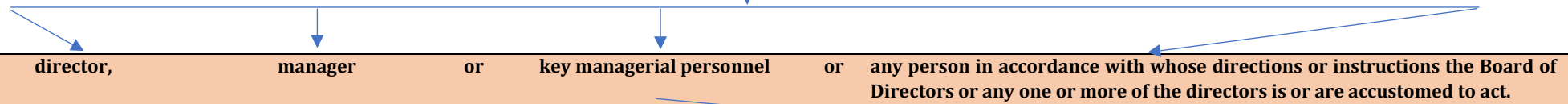
**Sec. 201 and Rule 7: Every application made to C.G. u/s 196 shall be in Form No. MR 2**

and shall be made within a period of 90 days from the date of such appointment.

**DO Practice - Questions on Sec. 196**

## Analysis of definition of term "Officer" under the Companies Act, 2013

### Sec. 2(59) - "Officer" includes any



Meaning of Director	Meaning of Manager		Meaning of Key Managerial Personnel			
<p>Sec. 2(34): "<b>director</b>" means a director <b>appointed</b> to the <b>Board</b> of a company</p> <p>↓</p> <p>Sec. 2(10): "<b>Board of Directors</b>" or "<b>Board</b>", in relation to a company, means the collective body of the directors of the company.</p>	<p>Sec. 2(53): "manager" means an <b>individual</b> who,</p> <p>⇒ subject to the superintendence, control and direction of the Board of Directors,</p> <p>⇒ has the <b>management of the whole, or substantially the whole</b>, of the affairs of a company,</p> <p style="text-align: center;"><b>and</b></p> <p>⇒ includes a director, or</p> <p>⇒ any other person occupying the <b>position of a manager</b>, by whatever name called, whether under a contract of service or not.</p>		<p>Sec. 2(51): "key managerial personnel", in relation to a company, means—</p> <p>(i) the <b>Chief Executive Officer</b> or the <b>managing director</b> or the <b>manager</b>;</p> <p>(ii) the company secretary;</p> <p>(iii) the <b>whole-time director</b>;</p> <p>(iv) the <b>Chief Financial Officer</b>;</p> <p>(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and</p> <p>(vi) such other officer as may be prescribed.</p>	Meaning of Terms used in definition of "KMP"	<p><b>CEO</b></p> <p><b>Sec. 2(18)</b></p> <p>"Chief Executive Officer" means an officer of a company, who has been <b>designated</b> as such by it;</p>	<p><b>Managing Director</b></p> <p><b>Sec. 2(54)</b></p> <p>"managing director" means a director who, by</p> <p>⇒ virtue of the <b>articles</b> of a company or</p> <p>⇒ an <b>agreement</b> with the company or</p> <p>⇒ a <b>resolution</b> passed in its general meeting, or by its Board of Directors, is entrusted with <b>substantial powers of management</b> of the affairs of the company and</p> <p>includes a director occupying the <b>position of managing director</b>, by whatever name called.</p>
			<p><b>Manager</b></p> <p><b>Sec. 2(53)</b></p> <p>Already defined</p>			
			<p><b>Company Secretary</b></p> <p><b>Sec. 2(24)</b></p> <p>"company secretary" or "secretary" means a company secretary as defined in Sec, 2(1) (c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.</p>			
			<p><b>Whole Time Director</b></p> <p><b>Sec. 2(94)</b></p> <p>"whole-time director" <b>includes</b> a director in the whole-time employment of the company.</p>			
			<p><b>Chief Financial officer</b></p> <p><b>Sec. 2(19)</b></p> <p>"Chief Financial Officer" means a person <b>appointed</b> as the Chief Financial Officer of a company.</p>			