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Subject: Secretarial Practice

Topic: Managerial Remuneration

Remuneration of managing director, whole time director or manager

Presented By,

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B.com. Part I Sem. II

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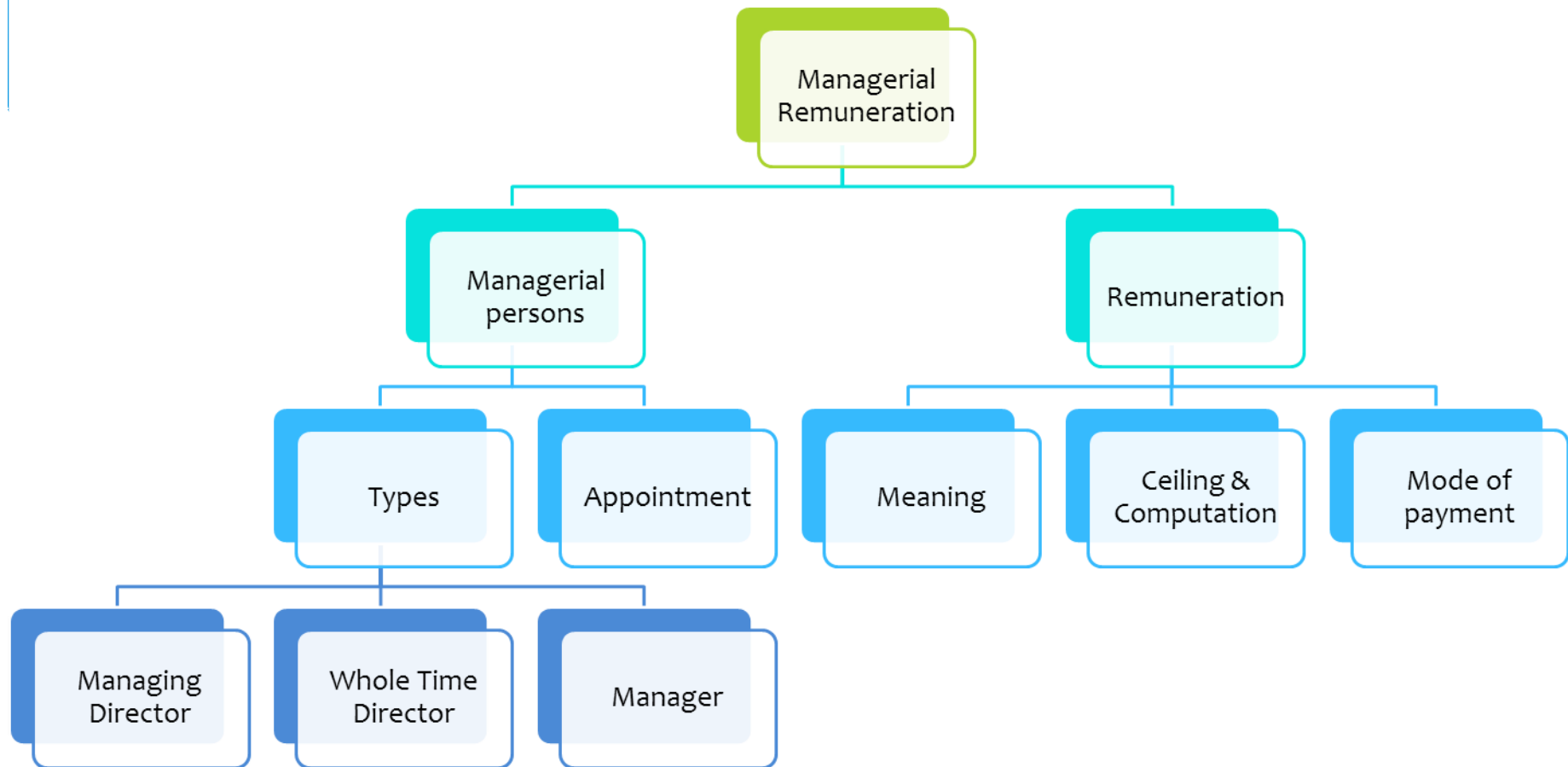
OFFICIAL

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# ACQUISITIONS

due diligence

# Managerial Remuneration Content



# Managerial Persons -Types





## CEO

- Section 2(18)
- "Chief Executive Officer" means an officer of a company, who has been designated as such by it;*

## CFO

- Section 2(19)
- "Chief Financial Officer" means a person appointed as the Chief Financial Officer of a company;*

## CS

- Section 2(24)
- "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;*

## MANAGER

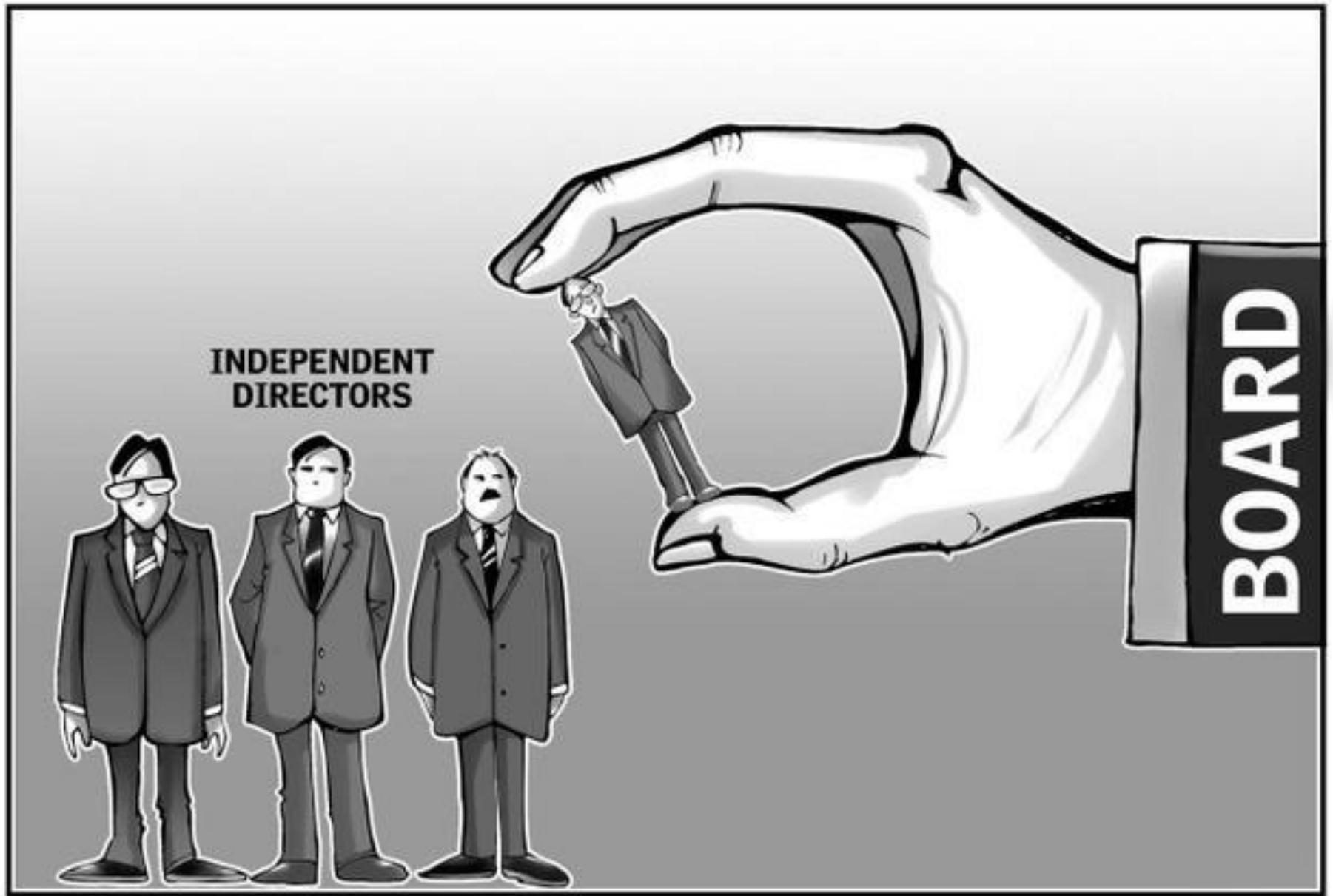
- Section 2(53)
- "manager" means an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not*

## MD

- Section 2(54)
- "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called*

## WTD

- Section 2(94)
- "whole-time director" includes a director in the whole-time employment of the company;*



# Managing Director

**Section 2(26)** defines Managing Director as under:

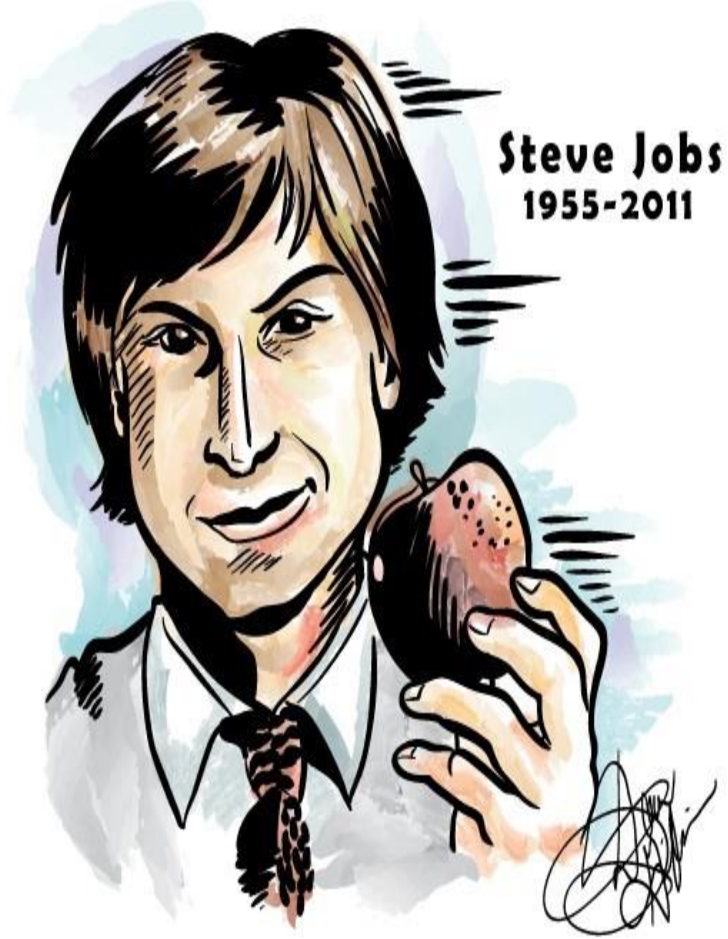
“Managing Director” means a director, who, by virtue of an agreement with the company, or of a resolution passed by the company in general meeting or by its Board of Directors or, by virtue of its memorandum or articles of association, is entrusted with substantial powers of management which would not otherwise be exercisable by him, and includes a director occupying the position of managing director, by whatever name called.



# Whole Time Director

As per Explanation to **Section 269**, a whole-time director includes a director in the whole-time employment of the company.

Thus it means director who is in employment or who devotes his whole time in the management of the company business unlike non executive director who may renders expert services to the company.





# Manager

**Section 2(24)** defines Manager as under:

“Manager” means an individual who, subject to the superintendence, control and direction of the Board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.



# Appointment of Managerial Person in a public company

more

- No – in other cases

## **Appointment of Manager (Section 386)**

A person can be appointed as Manager if he is Manager/MD of not more than one other company. However, CG can permit if he is Manager of more than 2 companies.

## **Disqualifications (Sections 202, 203 & 267)**

- Undercharged insolvent
- Fraudulent person
- Suspension of payment to creditors
- Offence involving moral turpitude

## **Whether CG approval required?**

- a) Yes – if Schedule XIII is not complied with
- b) No – if Schedule XIII is complied with

## **Procedure for CG approval**

- Publish notice in newspapers
- Apply in Form 25A within 90 days of appointment

# Appointment of Managerial Person

the terms & conditions are not fair and reasonable.

## **Consequence of rejection of application**

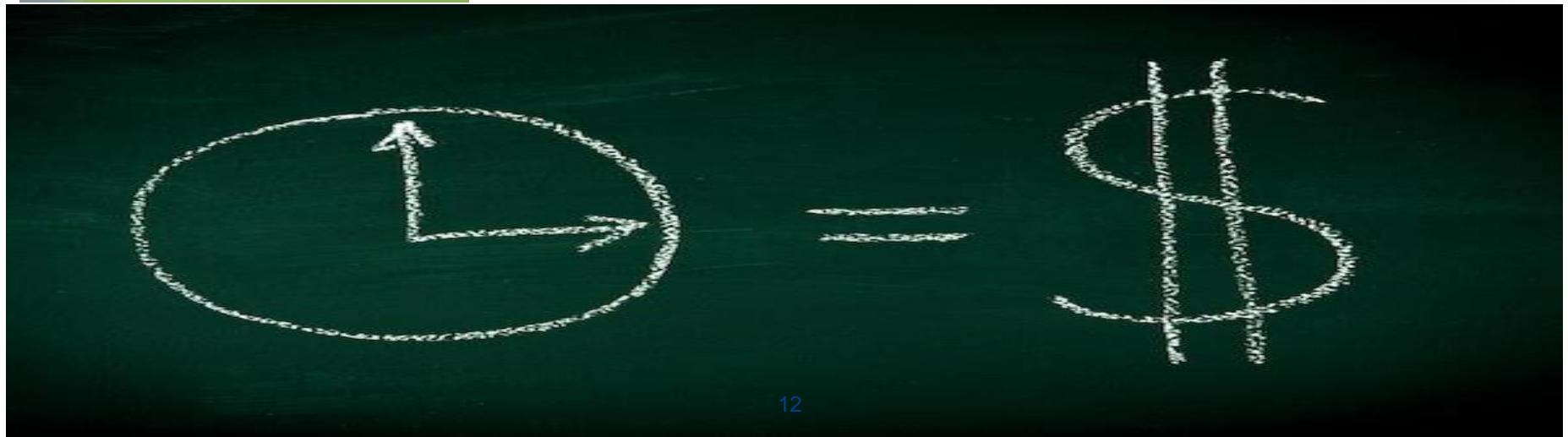
- Office to be vacated from the date of communication of decision
- Remuneration already received need not be refunded

## **Returns to be filed**

- Form 23 (only for MD or variation of his terms)
- Form 32 (for first appointment or change of designation)
- Form 25C (if Sch. 13 complied with)

## **Further action to be taken**

- Forward abstract to members u/s 302
- Inform stock exchanges (in case of listed companies)
- Make entry in register of directors



# Remuneration

## Includes:

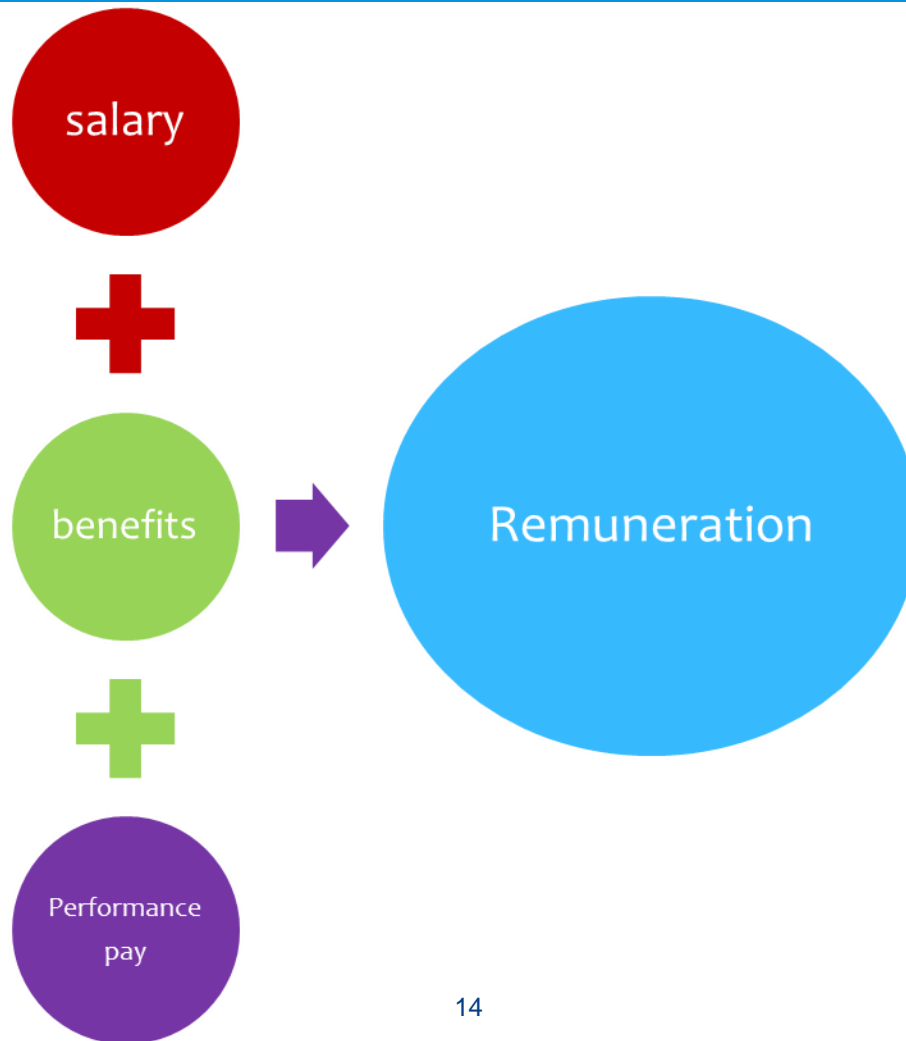
- Salary, DA, perquisites, commission & other allowances
- Any other benefit free of charge or at concessional rate
- Any expenditure for personal liability
- Life insurance premium for self, spouse or child
- Remuneration for services rendered in other capacity (except professional services by qualified persons)

## Excludes:

- Interest on loans taken from directors
- Guarantee commission



# FORMULA FOR REMUNERATION



## remuneration in case of profit

1 Managerial Person	• 5% of net profit
More than 1 Managerial Persons	• 10% of net profit

## remuneration in case of inadequate or no profit (Sch.13 – Part II)

Effective capital	Monthly remuneration (Rs.in lacks)		
	<u>Para A</u> Up to	<u>Para B</u> Up to	<u>Para C</u>
i) less than Rs.1 crore	0.75	1.50	Exceeding limits given in Para B
ii) Grater than Rs.1 crore less than or equal to Rs.5 crores	1.00	2.00	
iii) Grater than Rs.5 crores less than or equal to Rs.25 crores	1.25	2.50	
iv) Grater than Rs.25 crores less than or equal to Rs.50 crores	1.50	3.00	
v) Grater than Rs.50 crores less then or equal to Rs.100 crores	1.75	3.50	
vi) Grater than Rs.100 crores	2.00	4.00	

# Effective Capital

Effective capital means aggregate of:

- Paid-up share capital (excluding share application money)
- Share Premium Account
- Reserves & Surplus (excluding revaluation reserve)
- Long term loans & deposits repayable after one year.

As reduced by aggregate of:

- Any investments
- Accumulated losses
- Preliminary expenses not written off



# Net profit under section 349

Besides the above:

a) Certain extraordinary items as required under Accounting Standard-5 are shown after arriving at profit before tax, such items also need to be considered for arriving at the profit u/s 349

b) Bounties and subsidies received from any Government or any public authority constituted or authorized by any Government shall also be added notwithstanding the fact that they may have been directly credited to capital reserve.



# Professional directors in listed companies

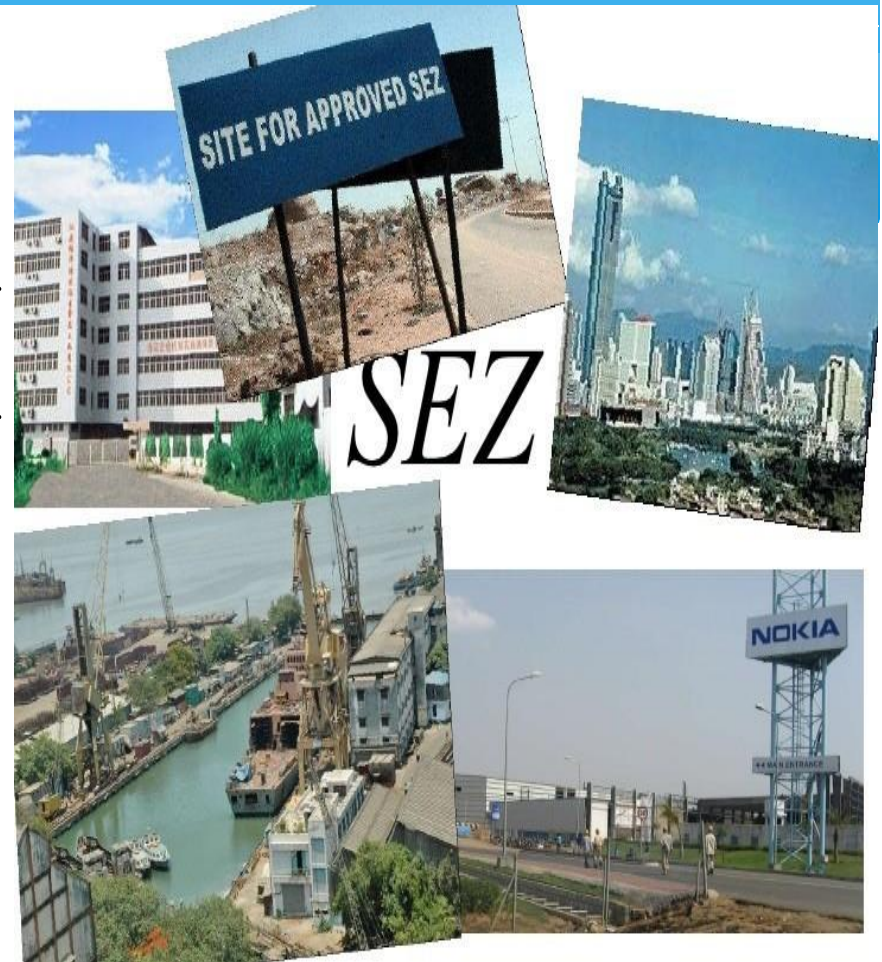
In case of listed companies approval of CG is not required if the managerial person is not having any interest in the capital of the company or its holding company directly or indirectly or through any other statutory structures and not having any direct or indirect interest or related to the directors or promoters of the company or its holding company at any time during last 2 years before or on the date of appointment and is having a graduate level qualification with expert and specialized knowledge in the field of his profession.





# Companies in SEZ areas

As per **Para D**, companies in notified **SEZ** areas can pay remuneration upto Rs.20 lacs p.m. if these companies have not raised any money by public issue of shares/debentures in India and have not defaulted in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for continuous period of 30 days in any financial year.



# Remuneration to ordinary directors

Maximum remuneration without CG approval	a) 1% of NP – if co. has MD/MTD/ Manager b) 3% of NP – if co. does not have any of these
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Mode of payment	Can be paid as commission if special resolution is passed (valid for maximum 5 years at a time)
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Maximum remuneration with CG approval.	No limit. Can be paid monthly, quarterly or yearly.
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# Sitting fees

**Whether included in remuneration?**

No

**Eligibility**

- Payable only to ordinary directors
- Payable for attending meetings of Board or Committee thereof
- Can be paid for meeting adjourned for want of quorum

**Maximum fee payable**

Rs.20,000/-

a)if aggregate of paid-up capital & free reserves is Rs.10 crores or more; or

b) if turnover is Rs.50 crores or more

Rs.10,000/- in other cases

# Increase in remuneration

	Whether CG approval required
a) Increase in sitting fee if within prescribed limit	No
b) Increase in remuneration of managerial person within limits prescribed u/s 198, 309, 387 or Schedule-XIII	No
c) Increase in remuneration of non-executive directors within prescribed limit	No

# Mode of payment of managerial remuneration

Mode of payment (Section 309)

## Category of directors

**MD**

- a) Monthly payment; or
- b) At specified %age of net profit as per Sec.198; or
- c) Partly by one way & partly by other.

**Director (other than MD )**

- a) Monthly, quarterly or annual payment (with approval of CG); or
- b) By commission if special resolution is passed.



# Foreign directors

<b>Whether CG approval required</b>	CG approval is mandatory in case he is not resident in India. However, this condition is not applicable to companies in notified SEZ provided that a non-resident shall enter India only after obtaining proper employment visa.
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<b>RBI permission for remittance</b>	RBI has granted general permission to companies in India to make payments in Indian rupees to non-whole time directors resident outside India and are on a visit to India for company' work.
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