

## CHAPTER XIII APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

**13.1** For the purposes of second proviso to sub-section (4) of section 196, a company shall file a return of appointment of a managing director, whole time director or manager with the Registrar in Form No. 13.1 along with such fee as specified in Annexure 'B'.

### **Sitting fees.**

**13.2 (1)** For the purposes of first and second proviso to sub-section (5) of section 197, companies or class of companies may pay the following amount of fees to their directors for attending the meeting of its Board or committees thereof:

(2) The amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which shall not exceed the sum of rupees One Lakh per meeting of the Board or committee thereof:

Provided that the Board may decide different sitting fee payable to independent and non-independent directors other than whole-time directors.

### **Disclosure in Board's report.**

(1) For the purposes of sub-section (12) of 197, every listed company shall disclose in the Board's report:

- i. the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year ;
- ii. Percentage increase in remuneration of each director and CEO in the financial year;
- iii. Percentage increase in the median remuneration of employees in the financial year;
- iv. Number of permanent employees on the rolls of company;
- v. Explanation on the relationship between average increase in remuneration and company performance;
- vi. Comparison of the remuneration of the Key Managerial Personnel against the performance of the company;
- vii. The key parameters for any variable component of remuneration availed by the directors;
- viii. The ratio of the remuneration of the highest paid director to that of the employees who are not directors but receive remuneration in excess of the highest paid director during the year.
- ix. Affirmation that the remuneration is as per the remuneration policy of the company

Explanation I: For the purposes of this rule, median means the numerical value separating the higher half of a population from the lower half. The median of a finite list of numbers may be found by arranging all the observations from lowest value to highest value and picking the middle one. If there is an even number of observations, the median shall be the average of the two middle values.

Explanation II: For calculating median of salaries:-

- Arrange the salary data for all the employees (falling under one category) in ascending order. (Salary shall be inclusive of all perquisites and allowances calculated on the basis of cost to the company.)
- Count total number of employees.
  - **If the number of employees is odd then**, Median = Salary of nth employee where  $n = (\text{total number of employees} + 1) / 2$

Table : 1

	Salary (INR)
Employee 1	10,000
Employee 2	15,000
Employee 3	16,000
Employee 4	25,000
Employee 5	30,000

In the example shown under Table 1, number of employees is five, Median will be salary of 3rd employee [ $n = (5+1)/2 = 3$ ]. Hence the median will be INR 16,000.

**If the number of employees is even** then, Median = Average of the salaries of nth and (n+1) th employee where n = total number of employees / 2

Table: 2

	Salary (INR)
Employee 1	10,000
Employee 2	15,000
Employee 3	16,000
Employee 4	25,000
Employee 5	30,000
Employee 6	35,000

In example, shown under Table 2, number of employees is six, Median will be average of salaries of 3rd and 4th employee [ $n = (6/2) = 3$  and  $(n+1) = (3+1) = 4$ ]. Hence the median will be INR 20,500 (average of INR 16,000 and INR 25,000).

(2) The board's report shall include a statement showing the name of every employee of the company who-

- (i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than sixty lakh rupees;
- (ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than five lakh rupees per month;
- (iii) if employed throughout the financial year or part thereof, was in receipt of remuneration in that year which, in the aggregate, or as the case may be, at a rate which, in the aggregate, is in excess of that drawn by the managing director or whole-time director or manager and holds by himself or along with his spouse and dependent children, not less than two percent of the equity shares of the company.

(3) Statement referred to in sub-rule (2) above shall also indicate -

- (i) Designation of the employee;
- (ii) Remuneration received;

- (iii) Nature of employment, whether contractual or otherwise;
- (iv) Qualifications and experience of the employee;
- (v) Date of commencement of employment;
- (vi) The age of such employee;
- (vii) The last employment held by such employee before joining the company;
- (viii) The percentage of equity shares held by the employee in the company within the meaning of sub-clause (iii) of sub-rule (2) above; and
- (ix) Whether any such employee is a relative of any director or manager of the company and if so, name of such director.

**Provided** that particulars of employees posted and working in a country outside India, not being directors or their relatives, drawing more than sixty lakh rupees per financial year or five lakh rupees per month, as the case may be, shall not be included in such statement of the Board's report but such particulars shall be filed with the Registrar of Companies while filing the financial statement and Board Reports:

**Provided further** that such particulars shall be made available to any shareholder on a specific request made by him during the course of annual general meeting wherein financial statements for the relevant financial year are proposed to be adopted by shareholders.

#### **Applications to the Central Government.**

**13.4** For the purposes of item (e) of section 200, the Central Government or the company shall have regard to the following matters:

- (1) Financial and operating performance of the company during the three preceding financial years.
- (2) Relationship between remuneration and performance.
- (3) The principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other executive directors on the board and employees or executives of the company.
- (4) Whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
- (5) The securities held by the director, including options and details of the shares pledged as at the end of the preceding financial year.

**13.5. (1)** For the purposes of sub-section (1) of section 201, every application made to the Central Government under the provisions of Chapter XIII shall be made in Form No. 13.2. and shall be accompanied by fee as provided under Annexure 'B'.

(2) Companies other than listed companies and subsidiary of a listed company may without Central Government approval pay remuneration to its managerial person in the event of no profit or inadequate profit beyond ceiling prescribed in section II, part II of Schedule V subject to complying with the following conditions:-

- (i) Payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of section 178 also by the Nomination and Remuneration Committee, if any and will doing so record in writing clear reason and justification for payment of remuneration beyond the said limit;
- (ii) the company has not 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 person;

(iii) Prior approval of shareholders by way of a special resolution at a general meeting of the company for payment of remuneration for a period not exceeding three years;

(iv) A statement along-with a notice calling the general meeting referred to clause (iii) of sub-rule (2) above, shall contain the information as per sub clause (iv) of second proviso to clause (B) of section II of part-II of Schedule V of the Act including reasons and justification for payment of remuneration beyond the said limit.

## **Appointment of Key Managerial Personnel**

**13.6.** For the purposes of sub-section (1) of section 203, every listed company and every other company having a paid-up share capital of five crore rupees or more shall have whole-time key managerial personnel.

## **SECRETARIAL AUDIT**

**13.7.** (1) For the purposes of sub-section (1) of section 204, the other class of companies shall be as under:

(a) Every public company having a paid-up share capital of one hundred crore rupees or more.

(2) For the purposes of sub-section (1) of section 204, the format of the Secretarial Audit Report shall be in Form No.13.3.

## **Duties of Company Secretary**

**13.8.** For the purposes of clause (c) of sub-section (1) of section 205, the duties of Company Secretary shall also include-

- 1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
- 2) to convene and attend Board, committee and general meetings, and maintain the minutes of these meetings;
- 3) To obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act.
- 4) To represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
- 5) to assist the Board in the conduct of the affairs of the company;
- 6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- 7) to discharge such other duties as may be assigned by the Board from time to time.
- 8) Such other duties as have been prescribed under the Act and Rules.