



Compliances with Companies Act, 2013 in relation to Key Managerial Personnel – Part X

The Companies Act 2013 (the Act) has introduced the concept of Key Managerial Personnel (KMP) to enhance accountability of officers of an organisation as well as improve overall corporate governance whether or not the organisation is board managed or promoter-driven. KMP are employees of the company holding crucial positions at a company with responsibility of operations of the company as well as the interests of all the stakeholders of the company. In addition to imposing responsibility on KMPs, the Act goes an additional length of mandating that certain prescribed classes of companies shall mandatorily ensure whole time positions to certain of the KMPs.

Appointment of KMP

As per Section 203 of the Act read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 the following class of companies require to appoint whole-time KMP –

- Every listed company, and
- Every other public company (including a subsidiary of a public company) having a paid-up share capital of INR 10 crore or more.

The above classes of companies are required to ensure that the following whole time key managerial positions are filled up at all times:

- 1) Managing Director (MD) or Chief Executive Officer (CEO), or manager and in their absence, a whole-time director;
- 2) Company secretary; and
- 3) Chief Financial Officer (CFO).

Additionally, as per Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a company other than a company which is required to appoint a whole-time key KMP as described above and which has a paid up share capital of INR Five Crores or more shall have a whole-time company secretary. There is merely a reiteration of a position under the previous Companies Act.

Corporate Governance – Drawing a line between Non-executive and Executive functions

The proviso to Section 203(1) provides that no individual shall be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless –

- the articles of such a company provide otherwise; or
- the company does not carry multiple businesses i.e. the Company carries on a single business.



The MCA has, pursuant to its powers under the second proviso to Section 203(1), vide a [notification](#) dated 25th July, 2014, prescribed the class of companies to whom the second proviso shall apply as public companies (which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business) having paid-up share capital of INR 100 crores or more and annual turnover of INR 1000 crores or more. In short, public companies (which are engaged in multiple businesses and have appointed Chief Executive Officer for each such business) having paid-up share capital of INR 100 crores or more and annual turnover of INR 1000 crores or more shall not be required to comply with the first proviso mentioned above.

The MCA has imposed a dual requirement or threshold test for the public company, which seeks to enjoy the exemption under the second proviso to Section 203(1).

Whole-time KMP not to hold office in more than one company

Section 203(3) puts a bar on a whole-time KMP to hold office in more than one company except in its subsidiary company at the same time. The strict view on this provision is that no whole-time KMP shall hold office in more than one subsidiary company where the company has more than one subsidiary. However, a liberal interpretation may be taken otherwise.

A relaxation has been offered in the Act on a KMP being a director of any company provided the Board permits such appointment.

The provisions of Section 203 have retrospective application inasmuch as the whole-time KMP simultaneously holding office in more than one company on the date of commencement of the Act, shall, within a period of six months from such commencement, choose any one company, in which he/she wishes to continue to hold the office of whole time KMP.

Exception: Appointment of managing director in more than one company

Notwithstanding the position contained in Section 203(3), a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one other company, subject to the following conditions –

- i. such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting; and
- ii. specific notice has been given to all the directors then in India for conducting the meeting and passing the resolution to be moved thereat.

Procedure for appointment

Board Resolution

As per Section 203(2) of the 2013 Act every whole-time key managerial personnel of a company shall be appointed by means of a board resolution of the Board containing the terms and conditions of the appointment including the remuneration. A vacancy in the office



of a whole time KMP is also to be filled up at a board meeting by the Board of Directors within 6 months from the date that such vacancy is created.

MCA Filing

In accordance with Section 170 (2) and Rule 18 of Companies (Appointment and Qualification of Directors) Rules, 2014 a return containing the particulars of appointment of director or KMP and changes therein shall be filed with the Registrar in Form DIR-12 along with such fees as maybe prescribed in the Companies (Registration Offices and Fees) Rules, 2014 within 30 days of such appointment or change, as the case maybe.

Vacancy

The Board is required to fill up the vacancy in the position of a whole-time KMP within 6 months from the date of such vacancy arising.

Penalty for non-compliance

On company in default	Minimum fine of <u>INR 1 Lakh</u> but which may extend to <u>INR 5 Lakhs</u> .
On every director and KMP of the company who is in default	Fine upto INR 50,000, and for continuing contraventions a further fine, of INR 1000 for every day after the first day during which the contravention continues.

Retrospective Operation

As regards, persons occupying whole time KMP positions prior to the inception of the new Act, it would be necessary to bring such persons within the four corners of Section 203 and other provisions of the Companies Act specifically applicable to certain types of KMPs. Companies will be required to formalise appointment of whole time KMP where mandated by the Act and Rules i.e. for the prescribed classes of public companies. A window of 6 months has been provided to make this change vis-à-vis reduction in the number of positions held by a whole-time KMP.