

M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws and Governance

UNIT -III : The Company Act, 2013

Topic: Managerial Remuneration under the Companies Act, 2013

Lecture: 11

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Managerial Remuneration

The responsibility to ensure the success of a company's affairs lays on its directors i.e the people at the helm of affairs of the company. They need to make efforts in a collective manner while ensuring the best interest of the shareholders and stakeholders. Since, the future of the company depends on the abilities of the directors the company must carefully consider their appointment, remuneration and other related matters.

1. What is 'Remuneration?'
2. What is the permissible managerial remuneration payable under the Companies Act 2013?
3. Important Pointers

1. What is 'Remuneration

'Remuneration' means any money or its equivalent given to any person for services rendered by him and includes the perquisites mentioned in the Income-tax Act, 1961.

Managerial remuneration in simple words is the remuneration paid to managerial personals. Here, managerial personals mean directors including managing director and whole-time director, and manager

2. What is the permissible managerial remuneration payable under the Companies Act 2013

Total managerial remuneration payable by a public company, to its directors, managing director and whole-time director and its manager in respect of any financial year:

Condition	Max Remuneration in any financial year
Company with one Managing director/whole time director/manager	5% of the net profits of the company
Company with more than one Managing director/whole time director/manager	10% of the net profits of the company
Overall Limit on Managerial Remuneration	11% of the net profits of the company
Remuneration payable to directors who are neither managing directors nor whole-time directors	
For directors who are neither managing director or whole-time directors	1% of the net profits of the company if there is a managing director/whole time director

If there is a director who is neither a Managing director/whole time director	3% of the net profits of the company if there is no managing director/whole time director
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The percentages displayed above shall be exclusive of any fees payable under section 197(5).

Until now, any managerial remuneration in excess of 11% required government approval. However, now a public company can pay its managerial personnel remuneration in excess of 11% without prior approval of the Central Government. A special resolution approved by the shareholders will be sufficient.

In case a company has defaulted in paying its dues or failed to pay its dues, permission from the lenders will be necessary.

- **When the company has inadequate profits/no profits:** In case a company has inadequate profits/no profits in any financial year, no amount shall be payable by way of remuneration except if these provisions are followed.

Where the effective capital is:	Limits of yearly remuneration
Negative or less than 5 Crores	60 Lakhs
5 crores and above but less than 100 Crores	84 Lakhs
100 Crores and above but less than 250 Crores	120 Lakhs
250 Crores and above	120 Lakhs plus 0.01% of the effective capital in excess of 250 Crores

Please Note:

These restrictions do not apply to the sitting fees of the directors (managing director, whole time director/manager).

- Remuneration in excess of the aforementioned limits may be paid only if a special resolution is passed by the shareholders.
- Remuneration as per the above limits may be paid if:
 - A managerial personnel is functioning in a professional capacity
 - The managerial person does not have an interest in the capital of the company/holding company/subsidiary company either directly, or indirectly, or through any statutory structures*
 - The managerial person does not have a direct/indirect interest or related to the directors /promoters of the company/holding company/subsidiary

company any time during the last 2 years either before/on/after the date of appointment

- He/she is in possession of a graduate level qualification along with expertise and specialized knowledge in the field in which the company mainly operates.

*If any employee holds less than 0.5% of the company's paid-up capital under any scheme (including ESOP) or by way of qualification, for this purpose he/she is considered to not have interest in the share capital of the company.

3. Important Pointers

1. **Determination of Remuneration:** The remuneration payable to the director shall be determined by:

- The articles of the company
- A resolution
- Special resolution if articles require it to be passed in the general meeting

1. The remuneration payable as per these rules shall also include the remuneration payable to the personals working in any other capacities. However, if the services are rendered in professional a capacity and if the nomination and remuneration committee/Board of directors believes that the director possesses the necessary qualification for the practice of the profession, exceptions are possible.

2. **Fees to directors:** The directors may receive fees for attending meetings and such fees cannot exceed the limits prescribed. Different fees for different classes of companies may be as prescribed.

3. The fees can be paid:

a. Monthly

b. As a Specified Percentage of the Net Profits yearly

c. Partly by method (a) and partly by method(b)

4. **Remuneration of independent directors:** An Independent director shall be entitled to a sitting fees, a reimbursement for participation in meetings and profit related commission as approved by Board. However, he shall not be entitled to ESOP.

5. **Excess Remuneration to be refunded:** If any director receives any remuneration in excess of the provisions of law, the same shall be refunded to the company or kept in trust for the company. Such recovery shall not be waived unless permitted by the Central Government.

6. **Disclosure by a listed company:** Every listed company shall disclose the ratio of the remuneration paid and the median employee's remuneration along with other prescribed details.

7. **Insurance:** When the company insures its personnel by providing protection against any act done by them due to negligence, default, misfeasance, breach of duty, breach of trust, such the premium paid for this insurance shall not be treated as part of remuneration except if the director is proved guilty.

8. Any managing director/whole time director receiving commission from the company may also receive a remuneration or commission from the holding or subsidiary of such a company provided the same is disclosed in the board's report

Penalty

Any person who contravenes these provisions shall be punishable with a minimum fine of Rs.1 Lakh and a maximum fine of Rs. 5 Lakhs.