

CA Final

Corporate & Economic Laws

(SELF PACED ONLINE MODULE - SET A - CORPORATE & ECONOMIC LAWS

&

Law Portion for PAPER 6: INTEGRATED BUSINESS SOLUTIONS)

Content Book For

Company Law

(Volume I – 12th Edition)

Applicable for May 2024 Exams & Onwards

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ACKNOWLEDGEMENT

I would like to thank My Family & Almighty for providing me an opportunity to share knowledge with the students; without them it wouldn't have been possible for me to work Effectively, Independently and provide Quality Education to you all.

This Book has been possible only because of My Students.

Thank - you for believing in me, giving me continuous support, motivation & lots of love.

I would also like to show my appreciation towards my Father Mr. Surendra Tulsyan, my friend CA Vinesh Savla & my entire team for helping me in successful completion of this book.

Valuable Suggestions & Constructive Feedback would be highly appreciated.

Please Feel Free to mail me on arpita.tulsyan@gmail.com

PREFACE TO THE 12TH EDITION

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Revision Tables given at the end of Chapter (For Super Quick Revision Only)

Relevant Case Laws covered

Language of Bare Act used at Some Places for Better & In-Depth Understanding

Colours used:

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Blue Colour – Provisions & its Content

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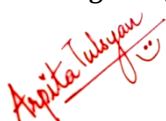
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Good Luck!! ☺

Best Regards,



**CA Arpita S. Tulsyan
(Author)**

HOW TO STUDY FROM THIS BOOK?

Hello Students.. I am here to discuss – How to Study Law from this Book!!

- 1st of all, start reading the Content (Provisions) Chapter-wise in the same sequence, as given in the Index.
- Once you are done with 1 chapter, again Revise the Content using Revision Tables!
- After you are done with this 2nd reading, go to the Question – Answers (Subjective) – Read the Question – Try to recollect the Answer – Read the Answer & understand the language used.
- Then lastly, go to the MCQ Section. Mark the Answers on your own with pencil & then check it with the solutions given.
- Repeat the same process for all the chapters

GENERAL POINTS:

- Make sure you do cumulative Revision occasionally, so as to retain the subject
- Take Self – Test from the Book (Choose a few questions, write down the Answers without looking in the Book & Check them)
- Don't leave anything.
- Everything is Important. All Chapters are equally Important!
- Try to recollect Section Numbers to the Extent Possible.
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ABBREVIATIONS:

AV – Audio Visual
B2B / B2C - Business to Business, Business to Consumer
BIFR – Board for Industrial and Financial Reconstruction
BOD – Board of Directors
BOA – Books of Accounts
CA, 1956 – Companies Act, 1956
CA, 2013 – Companies Act, 2013
CEO - Chief Executive Officer
CG - Central Government
CLB – Company Law Board
EGM - Extraordinary General Meeting
FR – Free Reserve
FS – Financial Statements
IBC - Insolvency and Bankruptcy Code, 2016
IFSC – International Financial Service Centre
KMP – Key Managerial Personnel
LLP - Limited Liability Partnership
MCA – Ministry of Corporate Affairs
MOA - Memorandum of Association
NBFC - Non - Banking Finance Companies
NP – Net Profit
NRC – Nomination and Remuneration Committee
OR – Ordinary Resolution
PFI - Public Financial Institution
PUSC - Paid up Share Capital
RO – Registered Office
ROBH – Reasonable Opportunity of Being Heard
ROC – Registrar of Companies
SEBI – Securities Exchange Board of India
SEZ - Special Economic Zone
SG - State Government
SHS – Shareholders
SP – Securities Premium
SR – Special Resolution
TAT – Tribunal and Appellate Tribunal
T/o – Turnover
OG – Official Gazette

SYLLABUS BIFURCATION AS PER ICAI **FOR SELF PACED ONLINE MODULE (SET A):**

Corporate Laws (Company Law & SEBI) - 70 Marks
Economic Laws – 30 Marks

INDEX

Sr. No.	Particulars	Page No.
--	Initial Pages	1 - 7
1	National Company Law Tribunal & Appellate Tribunal (NCLT & NCLAT)	8 - 14
2	Compounding of Offences, Adjudication & Special Courts	15 - 27
3	Prevention Of Oppression And Mismanagement	28 - 40
4	Inspection, Inquiry And Investigation	41 - 65
5	Miscellaneous Provisions	66 - 98
6	Compromises, Arrangements And Amalgamations	99 - 121
7	Winding Up	122 - 154
8	Appointment & Remuneration Of Managerial Personnel	155 - 184
9	Appointment & Qualifications Of Directors	185 - 230
10	Meetings of Board And Its Powers	231 - 281
11	e-Filing	282 - 357
12	Important Definitions	358 - 364

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The same will be available for download from www.arpitatulsyan.com

APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL

(Section 196 – 205)

IMPORTANT DEFINITIONS:

1. MANAGING DIRECTOR (Section 2(54)):

In simple words:

- A person can be appointed as MD, only if he is a director in the company. Therefore all provisions applicable to a director, shall also apply to a MD and if he ceases to be a director, he also ceases to be a MD.
- He shall be a MD only if he is entrusted with substantial powers of management (not exercisable by a director)

Note: Power to do administrative acts of routine nature, affixing common seal to any document, to draw or endorse any cheque or negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share etc shall not be deemed to be included within substantial powers of management.

- Powers of management may be entrusted to MD by:
AOA or Agreement or Resolution passed in GM or Resolution passed by BOD.
- Company may have 2 or more than 2 MDs
- MD can be a rotational or non-rotational director.
- A person can be appointed as Additional Director and MD in the same Board Meeting i.e. no requirement of Separate Board Meeting.

2. MANAGER (Section 2(53)):

In simple words:

- He shall not necessarily be a director in the company.
- He is subject to superintendence, control and direction of BOD.
- He has the management of whole or substantially the whole of affairs of company.
- Company cannot have 2 or more than 2 managers.

3. WHOLE TIME DIRECTOR (Section 2(94)):

In simple words:

- He is a director who is entrusted with day to day management of the company.
- He can be a rotational or non-rotational director.
- Additional director may also be appointed as WTD.
- WTD includes a director in **whole time employment of company**.
- A whole time employee, when appointed as a director of company, is in the position of WTD.
- Similarly a Whole time employee, employed as an Alternate Director = WTD
- If a director is appointed, who is not an employee of company, he is treated as an ordinary director and not WTD.
- **A person cannot act as a WTD in more than 1 company.**
- **A company may employ 2 or more WTD.**

APPOINTMENT OF MD, WTD OR MANAGER (Section 196):

Section 196(1):

No company shall appoint or employ a MD and Manager at the same time.

Section 196(2):

No company shall appoint or re-appoint any person as its MD/ WTD/ Manager **for term of > 5 years at a time**. However re-appointment can be done only in the last 1 year before expiry **(not earlier than 1 year)**.

Section 196(3): Disqualification for appointment:

No company shall appoint or continue the employment if:

- he is below the age of 21 years or has attained 70 years of age.

However, appointment of person, who has attained 70 years of age, may be made, if SR has been passed and explanatory statement for such appointment has been annexed to the notice, indicating the justification.

If no SR is passed, but votes casted in favour exceeds the votes casted against, and if CG is satisfied on application made by BOD, that such appointment is beneficial for the company, then it can be made.

- he is an undischarged insolvent or adjudged as an insolvent
- at any time, he has suspended payment to creditors or made a composition with them or
- has at any time, been convicted by a court (Indian/ Foreign) of an offence and sentenced for > than 6 months

Section 196(4):

A MD/ WTD/ Manager, shall be appointed and the terms and conditions of such appointment and remuneration, be:

- Approved by BOD
- Shall be subject to Approval by Resolution at next GM, and
- Approval by CG (in case conditions specified in Part I of Schedule V** are not fulfilled)

Note: Notice convening the BM/ GM shall contain all details about such appointment, remuneration etc.

- Return of Appointment is to be filed with ROC within 60 days of appointment in Form MR – 1.
- For taking Approval from CG, Application has to be done in Form MR – 2 within 90 days of such appointment.

Section 196(5):

If appointment is not approved by company in GM, then any act done by him before such approval, shall not be deemed as invalid (i.e. deemed as valid)

Exceptions:

Section 196(2), Section 196(4) and 196(5)	N.A to Government Company
Section 196(4) and 196(5)	N.A to Private Company
Section 196(4)	N.A. to Specified IFSC Public Company

** Part I of Schedule V:

Conditions to be fulfilled for Appointment without CG Approval:

(a) He has not been sentenced to imprisonment for any period or fine > Rs.1000 for conviction under some specific acts (Eg: Central Excise, Companies Act 2013 or previous Company Law, SCRA, Income Tax, Wealth Tax, Customs Act, Competition, FEMA, SEBI, PMLA, IBC 2016, GST Act, Fugitive Economic Offenders Act, 2018 etc)

(b) He has not been detained under Conservation of Forex and Prevention of Smuggling Activities Act, for any period.

(However, if any person is detained under (a) or (b), but CG has given the approval, it shall be deemed as if the person was not detained.)

(c) He has completed the age of 21 years and not attained the age of 70 years (However for ≥ 70 years, if SR is passed, then no approval of CG required)

(d) He is a resident of India *

(Person staying in India for a continuous period of \geq 12 Months, immediately preceding his appointment. Also includes, person who has come to stay in India-

- for taking up employment in India or for
- carrying on business/vocation in India)

* Not Applicable to companies in SEZ.

However, a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form - profile of the company, the principal employer, and terms and conditions of such person's appointment.

OVERALL MAXIMUM MANAGERIAL REMUNERATION AND
MANAGERIAL REMUNERATION IN CASE OF ABSENCE
OR INADEQUACY OF PROFITS (Section 197):

(A)

(i) Section 197(1): (Section I of Part II of Schedule V)

Total managerial remuneration payable by a public company, to its directors including MD/ WTD/ Manager for any FY shall not exceed 11% of NET PROFITS OF THAT COMPANY for that FY (as computed u/s 198 – except remuneration shall not be deducted from Gross profits)

This limit of 11% can be exceeded if authorized by the company in General Meeting, subject to Schedule V provisions. (1st Proviso)

Except with the approval of company in general meeting, by a Special Resolution:
(2nd Proviso)

(i) The remuneration payable to WTD/ MD/ Manager, shall not exceed:

If there is any 1 of them - 5% of Net Profits

If there is more than - 10% of Net Profits

1 MD, WTD or Manager,
(taken together)

(ii) The Remuneration payable to Other Directors, who are neither MD nor WTD, shall not exceed:

If there is a MD/ WTD/ manager - 1% of Net Profits

In any Other Case - 3% of Net Profits

3rd Proviso – If company has defaulted in payment of dues to any bank or PFI or non-convertible debenture holders or any other secured creditor, then prior approval of such Bank or PFI or Debenture holder or Secured creditor, shall be obtained by company before approval in GM.

(ii) Section 197(2): All remuneration paid above shall exclude the sitting fees.

(iii) Section 197(3): If in a FY, a company has No profit/ Inadequate profit, the company shall not pay to its directors including MD/ WTD/ Manager or any other non-executive director, including an independent director, any remuneration except sitting fees, except in accordance with provisions of Schedule V.

(iv) Section 197(4): Remuneration payable to directors of company including MD/ WTD/ manager, shall be determined:

- by Articles of company or
- by an Ordinary Resolution or
- by a Special Resolution, if AOA requires

This remuneration shall include remuneration payable in any other capacity also (i.e. for services rendered)

However, remuneration for services rendered in other capacity shall not be included if:

- Services are of Professional Nature and
- In the opinion of NRC/ BOD (as the case may be), the director possesses the requisite qualification for the practice of the profession.

(v) Section 197(5): Director may receive 'sitting fees' for attending Board Meetings/ Committee Meetings.

- This amount shall be decided by BOD of company.
- Amount shall not exceed Rs. 1,00,000/ meeting
- Amount payable to Independent Directors and Women Director, shall not be less than sitting fees payable to other directors.

(vi) Section 197(6): Remuneration can be paid, either by way of:

- Monthly payment or
- At a specified % of NP of company or
- Partly by one way and partly by other

(vii) Section 197(7) – DELETED

(viii) Section 197(8): NP for this section shall be as computed u/s 198

(ix) Section 197(9): If any director, draws or receives, directly or indirectly, by way of remuneration, any such sums, in excess of limit prescribed by this section or without approval as required in this section, he shall refund such sums to company, within 2 years or such lesser period as allowed by company and until such sum is refunded, hold it in trust for the company.

(x) Section 197(10):

Company shall not waive the recovery of money, refundable to it u/s 197(9), unless approved by company by SR within 2 years from the date the sum becomes refundable.

Provided if company has defaulted in payment of dues to Bank, PFI, or Non-Convertible Debenture Holders or any other Secured Creditor, then their approval shall be obtained before obtaining approval of such waiver.

(xi) Section 197(11):

In case of no profit or inadequate profit, if Schedule V is applicable, then no provision shall have the effect of increasing the remuneration, except if it is as per Schedule V.

(xii) Disclosures by listed companies (Section 197(12)): It shall disclose in its Board's report, Ratio of Remuneration of each director to the median employee's remuneration and such other details as prescribed:

- the ratio of the remuneration of each director to the median remuneration of the employees of the company for the financial year;
- the percentage increase in remuneration of each director, Chief Financial Officer, Chief Executive Officer, Company Secretary or Manager, if any, in the financial year;
- the percentage increase in the median remuneration of employees in the financial year;
- the number of permanent employees on the rolls of company;
- Average percentile increase already made in the salaries of employees other than the managerial personnel in the last financial year and its comparison with the percentile increase in the managerial remuneration and justification thereof and point out if there are any exceptional circumstances for increase in the managerial remuneration;
- Affirmation that the remuneration is as per the remuneration policy of the company.

Statement showing the names of top 10 employees in terms of remuneration drawn and name of every employee who:

- a) if employed throughout the FY – was in receipt of aggregate remuneration of > Rs. 1,02,00,000

b) if employed for a part of FY—was in receipt of such rate of > Rs.8,50,000 p.m.

(c) if employed throughout or for part of a FY, was in receipt of remuneration in aggregate or at such rate, as the case may be, in excess of that drawn by MD/ WTD/ Manager and holds > 2% of equity shares of company (together with spouse and dependent children)

Above Statement shall also include:

- (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 point (c) 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 or manager:

(xiii) **Section 197(13):** If any insurance is taken by company on behalf of its MD/ WTD/ Manager/ CEO/ CFO/ CS for indemnifying against any liability in respect of negligence, default etc. for which they may be guilty, **premium paid on such insurance is not treated as part of remuneration.**

However, if such person is proved guilty, then it shall be treated as part of remuneration.

(xiv) Commission: Any MD/ WTD shall not be disqualified from receiving any remuneration/ commission from any holding/ subsidiary company of such company (provided, it is disclosed by the company in BOD's report) (Section 197(14)).

(xv) Penalty: If any person contravenes any provisions of this section, he shall be punishable with fine of Rs. 1 lakh and if default is made by company; then company shall be liable for Rs. 5 lakhs. (Section 197(15))

(xvi) Section 197(16): Auditor of the company shall in his report u/s 143, make a statement, whether the remuneration paid by company to its directors is in accordance with provisions of this section, whether remuneration paid to any director is in excess of limit laid down under this section and give other prescribed details.

(xvii) Section 197(17): On and from Commencement of Companies (Amendment) Act, 2017, any application made to CG under provisions of this section (as stood before commencement), which is pending with CG, shall abate and company shall within 1 year of such commencement, obtain the approval as per amended provisions (Effective from 12/09/2018)

Exceptions :

In Case of Nidhi Co.	<p><u>Second proviso</u> to Sec. 197(1) shall apply with the modification that: the remuneration of a director who is neither MD nor WTD or Manager for performing special services to the Nidhis specified in the AOA may be paid by way of monthly payment subject to the approval of the company in GM and also to the provisions of section 197 :</p> <p>Provided that no approval of the company in GM shall be required where,—</p> <p>(a) a Nidhi does not have a MD or a WTD or a manager;</p> <p>(b) The remuneration payable during a financial year to all the directors of the Nidhi does not exceed 10% of the net profits of such Nidhi or Rs.15,00,000 whichever is less; and</p> <p>(c) a remuneration payable under clause (b) is approved by a SR passed in this behalf by the Nidhi.</p>
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Govt. Co	Section 197 not applicable
Specified IFSC Public Co.	Section 197 not applicable

(B) Section II of Part II of Schedule V:REMUNERATION PAYABLE BY COMPANIES HAVING NO PROFIT OR INADEQUATE PROFIT:

If in any FY, during tenure of managerial person or other director, a company has no profits or inadequate profits, it may pay remuneration to the managerial person or other director not exceeding the limits under (a) and (b) below:

(a) Remuneration based on Effective Capital:

Effective Capital	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
(i) Negative or < Rs. 5 crore	Rs.60 lakhs	Rs. 12 lakhs
(ii) 5 crores and above but < than Rs. 100 crore	Rs. 84 lakhs	Rs. 17 lakhs
(iii) 100 crores and above but < than Rs.250 crore	Rs.120 lakhs	Rs. 24 lakhs
(iv) Rs.250 crore and above	Rs.120 lakhs (+) 0.01% of effective capital in excess of Rs.250 crores.	Rs. 24 lakhs (+) 0.01% of effective capital in excess of Rs.250 crores.

Provided that remuneration in excess of above limits may be paid if SR is passed by SHS.

Note: If period is for < 1 year, limits can be pro-rated.

(b) In case of managerial person or other director, who is functioning in a professional capacity, remuneration as per (a) may be paid, if such person is not having any interest in capital of company (holding \leq 0.5% of PUSC) or its holding/ subsidiary, directly or indirectly and not having any interest/ related to promoters of company or holding/ subsidiary company during last 2 years and possesses qualification with expertise and special knowledge in the company's field.

Provided further that, limits under (a) & (b) shall apply if:

- payment is approved by NRC/ BOD, as the case may be
- company has not committed any default in payment of dues, to any bank/ PFI etc (ie same as before) and in case of default, take their approval, before approval in GM (as studied before)

- OR or SR, as the case may be, has been passed for Payment of Remuneration as per item (a) or a SR has been passed as per (b), at GM for a period of maximum 3 years.

- A statement along with notice calling GM (as above) is given to SHS, containing some details about:

• General Information	Conclusion:
• Information about appointee	Remuneration in (a) → OR/ SR
• Other information	Remuneration in (b) → SR
• Required Disclosures.	

SECTION III OF PART II OF SCHEDULE V:

Remuneration payable by companies having no profit or inadequate profit in certain special circumstances:

In the following cases, a company, may pay remuneration to managerial person or other director in excess of amount provided in Section II above:

(a) Where remuneration in excess of limits specified in Section I or II is paid by any other company and that other company is either a foreign company or has got approval of its SHS in GM to make such payment and treats this amount as managerial remuneration u/s 197 and total managerial remuneration payable by such other company to its managerial persons or other director including such amount is within the permissible limit of Section 197.

(b) where the company:

- is a newly incorporated company, for a period of 7 years from date of its incorporation; or
- is a sick company, for whom a revival scheme has been ordered by BIFR, for a period of 5 years from date of sanction of scheme of revival; or
- is a company of which resolution plan has been approved by NCLT under IBC, 2016 for a period of 5 years from date of such approval,

it may PAY ANY REMUNERATION TO ITS MANAGERIAL PERSONS or other directors.

(c) Where remuneration exceeds limits of Sec II, but is fixed by BIFR or NCLT.

Note: Limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—

- Except as provided in para (a), the managerial person is not receiving remuneration from any other company.
- Auditor or CS, certifies that all secured creditors and term lenders have no-objection and certifies that there is no default on payment to any creditors and dues to deposit holders are being settled on time.

Explanation.— For the purposes of Section I, Section II and Section III, the term "or other director" shall mean a non-executive director or an independent director.

SECTION IV OF PART II OF SCHEDULE V:

A managerial person shall be eligible for following perquisites which shall not be included in calculation of ceiling on remuneration specified in Section II or III:

- Contribution to PF, Superannuation fund or annuity fund
- Gratuity payable (Max. ½ month salary for each completed year of service)
- Leave encashment

In addition to above, an expatriate managerial person (including NRI) shall be eligible for following perquisites (not to be included in ceiling on remuneration):

- Children education allowance (In case of children studying in or outside India, an allowance limited to a maximum of Rs. 12,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible up to a maximum of two children.)
- Holiday passage for children/ family staying abroad (Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India, with the managerial person.)
- Leave travel concession (Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.)

IMPORTANT EXPLANATIONS: (Refer Q26)

1) Effective Capital means: Aggregate of PUSC (excluding share application money or advances against shares), Share premium account, Reserves and Surplus (excluding revaluation reserve), long term loans and deposits repayable after 1 year (Therefore, excl. working capital loans, OD, Bank guarantee, short term borrowing etc) **as reduced by**:

Aggregate of Investments (except in case of investment by investment company), aggregate losses and preliminary expenses not written off.

2) • If appointment is made in the year of incorporation, Effective capital will be calculated as on the date of appointment

• In any other case, Effective capital will be calculated as on last day of financial year preceding the FY in which appointment is made.

3) For the purposes of this Schedule, "family" means the spouse, dependent children and dependent parents of the managerial person.

4) The NRC while approving the remuneration under Section II or Section III, shall—

(a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.;

(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

5) For the purposes of this Schedule, "negative effective capital" means the effective capital which is calculated in accordance with the provisions contained in Explanation 1 of this Part is less than zero.

6) For the purposes of this Schedule:—

"Remuneration" means remuneration as defined in Section 2(78) and includes reimbursement of any direct taxes to the managerial person.

(Ref.: Section 2(78) – Remuneration means any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income-tax Act, 1961)

SECTION V – Remuneration payable to Managerial person in 2 Companies:

A managerial person shall draw remuneration from one or both companies, provided that total remuneration drawn from companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.

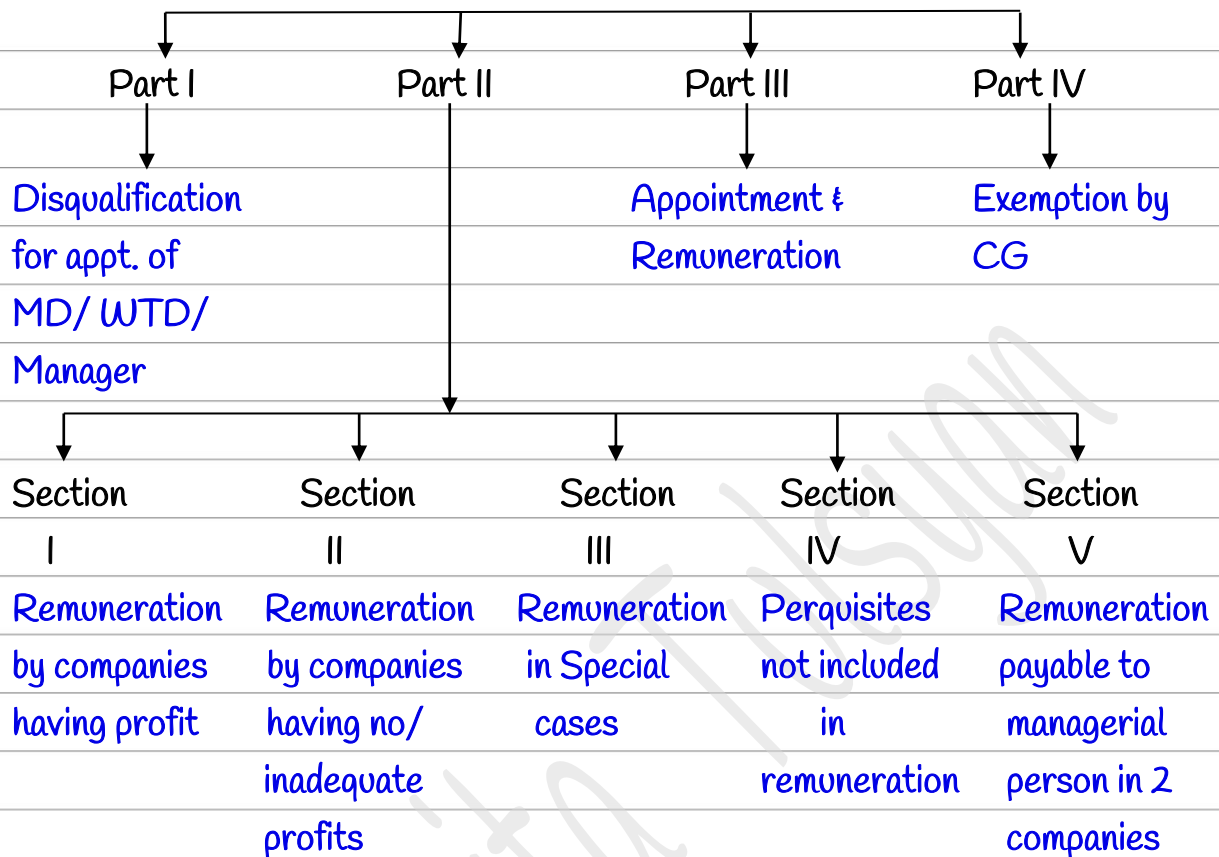
PART III OF SCHEDULE V:

Provisions applicable to Part I and II of this Schedule:

- Appointment and remuneration referred to in Part I and II shall be subject to approval by SHS resolution in GM
- Auditor/ CS shall certify that requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with ROC.

PART IV OF SCHEDULE V:

CG may, by notification, exempt any class/ classes of companies from any of the requirements contained in this Schedule.

SUMMARY OF SCHEDULE V:

CALCULATION OF PROFITS FOR THE PURPOSE OF SECTION 197 (Section 198):

(a) <u>Profits to be Included</u> Bounties and Subsidies received from any Government/ Public authority	(b) <u>Profits to be Excluded</u> <ul style="list-style-type: none"> • Securities Premium • Profit on sale of shares/ debentures (except for an investment company) • Profit on forfeiture of shares • Profit on sale of undertaking (capital nature) • Profit on sale of immovable property (unless it is engaged in buying and selling of such property) • Profit on sale of fixed assets (if amount of SP is > WDV, then maximum credit shall be given of Original Cost (-) WDV) • Change in carrying amount of an asset or of a liability recognised in equity reserves including surplus in profit and loss account on measurement of the asset or the liability at fair value. • Unrealised gains/ Notional Gains or revaluation of assets
(c) <u>Deductible Expenses</u> Usual expenses, director's remuneration, bonus/ commission, tax on excess/ abnormal profits, tax on business profits for special reasons, interest, revenue expenses, depreciation, contribution u/s 181, disallowed losses, damages paid due to legal liability, Insurance Premium, Bad debts.	(d) <u>Expenses not deductible</u> Income tax other than those covered in (c), compensation other than those covered in (c) i.e. voluntary, Capital losses, change in carrying value of asset/ liability due to recognition at fair value.

RECOVERY OF REMUNERATION IN CERTAIN CASES

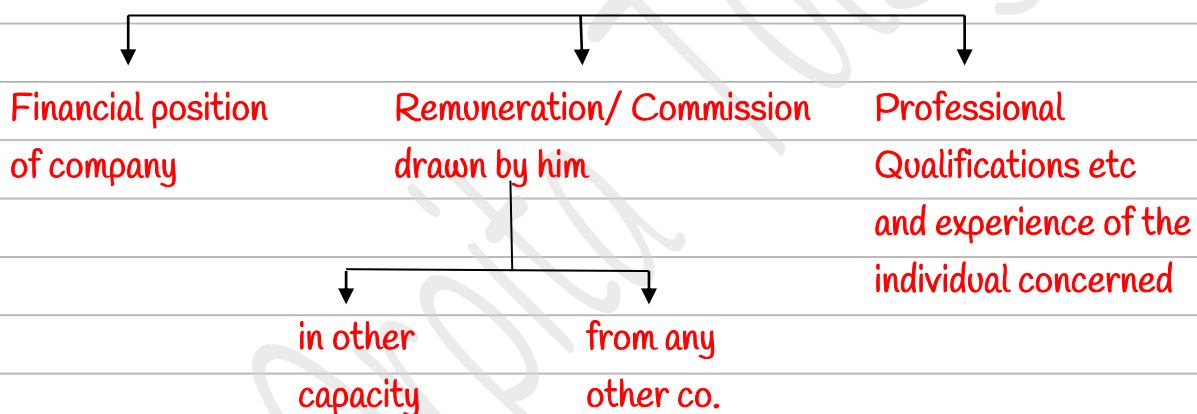
(Section 199):

Where excess amount of remuneration was paid and now the company is required to re-state its FS due to any fraud/ non-compliance, such excess remuneration paid (including stock option), must be recovered by the company from past/ present MD/ WTD/ Manager/ CEO (by whatever name called)

COMPANY TO FIX LIMIT W.R.T REMUNERATION

(Section 200):

In case of inadequate/ no profit, Company may fix the maximum amount of remuneration, after considering the following factors:



FORMS OF, AND PROCEDURE IN RELATION TO, CERTAIN APPLICATIONS (Section 201):

- Every application made to CG u/s 196 shall be in prescribed form.
- Procedure:
 - A general notice to members, stating the nature of application to be made, must be issued, before applying to CG u/s 196
 - Such notice shall be published atleast once in a newspaper in principal language of district where RO is situated and 1 English newspaper circulating in that district
 - Copies of Notices + Certificate by company as to due publication, shall be attached to application.

COMPENSATION FOR LOSS OF OFFICE OF MD/ WTD/ MANAGER (Section 202):

(1) This compensation can be paid to MD/ WTD/ Manager, but not to any other director, as compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement.

(2) However no compensation must be allowed, in following cases:

(a) if director resigns from his office due to reconstruction/ amalgamation and he is appointed as MD/ WTD/ Manager in reconstructed company

(b) if director resigns from office for any other reason

(c) if office of director is vacated u/s 167(1)

(d) if the company is wound up, provided winding up was due to negligence/ default of director

(e) if director has been guilty of fraud/ breach of trust in relation to conduct of affairs of company/ holding company/ subsidiary company.

(f) if director has taken part in bringing out termination of his office.

(3) Maximum Compensation:

Remuneration that he would have earned, if he would have been in office for REMAINING TERM or 3 years

whichever is shorter

Note: Salary/ Remuneration will be calculated on the basis of Average Remuneration drawn in last 3 years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period.

However this compensation, cannot be paid, if winding up has begun before or within 12 months, after he ceased to hold office and if the company has insufficient assets to repay.

(4) Section not applicable for payment made in any other capacity. Therefore, no prohibition for that.

Important Note: Mere allegations that a director was involved in certain questionable transactions will not disentitle the director from receiving compensation.

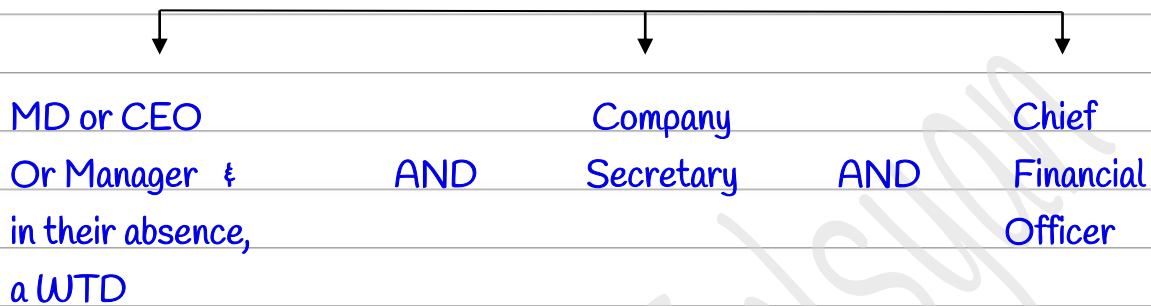
As per relevant rules:

No payment shall be made to the MD or WTD or Manager of the company by way of compensation for the loss of office or as consideration for retirement from office (other than notice pay and statutory payments in accordance with the terms of appointment of such director or manager, as applicable) or in connection with such loss or retirement if Company is in Default -

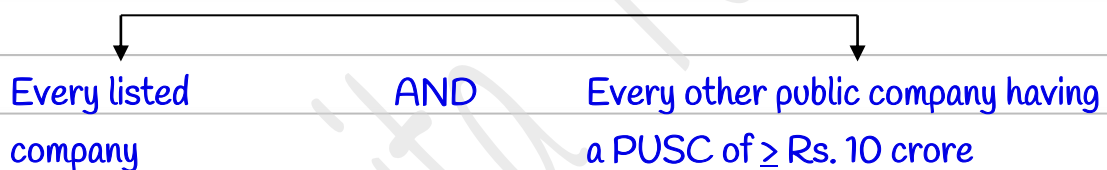
- (a) in repayment of public deposits or payment of interest thereon;
- (b) in redemption of debentures or payment of interest thereon;
- (c) in repayment of any liability, secured or unsecured, payable to any bank, public financial institution or any other financial institution;
- (d) payment of any statutory dues towards income tax, VAT, excise duty, service tax;
- (e) there are outstanding statutory dues to the employees or workmen of the company which have not been paid by the company; and
- (f) in payment of dividend on preference shares or not redeemed preference shares on due date.

APPOINTMENT OF KMP (Section 203):

(1) Every prescribed class of companies*, shall have the following Whole-time KMP:



*Prescribed classes of companies for whole-time KMP:



Mandatory appointment of Whole time CS:

Every Private Company which has a paid up share capital of Rs. 10 crore or more shall have a whole -time CS

1st Proviso - An individual cannot be appointed or re-appointed as Chairperson of company, as well as MD or CEO of company, at the same time.

Exception: AOA provides otherwise or Company does not carry on multiple business.

2nd Proviso - Nothing contained in the first proviso shall apply to such class of companies** engaged in multiple businesses and which has appointed one or more CEO for each such business.

**Class of Companies - Public companies having PUSC of \geq Rs.100 crore and Annual Turnover of \geq Rs.1000 crore

(2) A whole-time KMP shall be appointed by Board's resolution and it shall specify:

- remuneration of KMP and
- other terms and conditions of appointment

(3) A whole time KMP shall not hold office in more than 1 company except in its subsidiary company at the same time.

However, a KMP may be a director of any company with Board's permission.

If any whole-time KMP was holding office in more than 1 company at the same time, when this Act was commenced, he shall within 6 months of such commencement, choose 1 company in which he wants to continue.

A company may appoint/ employ any person as MD provided:

- Such person is MD of/ manager of 1 and not more than 1 other company (Therefore, maximum 2 companies)
- It is approved by Board's resolution with consent of all directors (of 2nd company) present at the meeting. (Therefore Resolution by Circulation is not valid)
- Specific notice of such meeting and resolution (to be moved) has been given to all directors then, in India.

(4) If office of whole-time KMP is vacated, then this vacancy shall be filled up by Board at a Board meeting within 6 months from date of such vacancy.

(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or Chief Executive Officer or manager and in their absence, a whole-time director of the Government Company.

(5) If company contravenes any provision, then punishment:

On Company – Fine of Rs.5,00,000

Every director and KMP of Company (defaulting):

Fine of Rs. 50,000 and additional fine of Rs. 1000/day if failure continues, but Maximum Rs. 5 lakhs.

SECRETARIAL AUDIT FOR BIGGER COMPANIES (Section 204):

(1) Every listed company and prescribed companies* must annex a Secretarial Audit report given by a CS in practice, to the Board's report in prescribed format i.e. Form MR - 3

(2) It is the duty of company to give all assistance and facilities to the CS in practice for such audit.

(3) BOD shall comment/ give explanation for every qualification or observation made by CS in his report

(4) If company/ officer/ CS contravenes the provisions of this section, then the defaulting person shall be punishable with penalty of Rs. 2,00,000

*Prescribed Companies:

Every public company whose PUSC is \geq Rs. 50 crore

OR

Every public company whose Turnover is \geq Rs. 250 crore

OR

Every company having outstanding loans or borrowings from banks or public financial institutions of \geq 100 crore

Note: PUSC, Turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

FUNCTION OF COMPANY SECRETARY (Section 205):

(1) It shall include:

- Reporting to BOD about compliance with provisions of Act, rules etc.
- to ensure that company complies with secretarial standards* as applicable
- to discharge such other duties, as prescribed:
 - providing guidance to Directors w.r.t. their duties, responsibilities and powers
 - facilitate the convening of meetings, attend such meetings and maintaining the minutes
 - to obtain necessary approvals from BOD/ GM/ Government Authorities etc.
 - to represent before various regulators
 - to assist BOD in conduct of affairs of company
 - to assist and advice BOD in ensuring good corporate governance
 - to discharge such other duties as specified under Act/ Rules and as assigned by BOD

***Secretarial Standards** – standards issued by ICSI and approved by Central Government.

(2) The provisions contained in Section 204 & 205 shall not affect the duties and functions of the Board of Directors, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force.

IMPORTANT CASE LAW:

BELL vs LEVER BROS

A director is not legally bound to disclose any breach of his obligations, so as to give an opportunity to company to dismiss him. Also, if MD is initially removed by paying compensation u/s 202 and later on it is discovered that he is guilty, and he could have been removed without compensation, it is not possible for the company to recover the amount from defaulting person.

Summary of IMP Penalties:

Sec. No.	Contravention	Penalty
197	Contravention of Sec. 197	Such Person shall be punishable with fine of Rs. 1 lakh and if default is made by company; then company shall be liable for Rs. 5 lakhs.
203	Contravention of Sec. 203	If company contravenes any provision, then punishment: On Company – Fine of Rs.5,00,000 Every director and KMP of Company (defaulting): Fine of Rs. 50,000 and additional fine of Rs. 1000/day if failure continues, but maximum Rs. 5 lakhs.
204	Contravention of Sec. 204	If company/ officer/ CS contravenes the provisions of this section, then the defaulting person shall be punishable with penalty of Rs. 2,00,000

**Super – Quick Revision of IMP Provisions Of
Appointment & Remuneration of Managerial Personnel:**

<p><u>Appointment of MD, WTD or Manager:</u> -No company shall appoint or employ a MD and Manager at the same time. -No company shall appoint or re-appoint any person as its MD/ WTD/ Manager for term of > 5 years at a time. However re-appointment can be done only in the last 1 year before expiry (not earlier than 1 year).</p>	<p><u>Overall Maximum Managerial Remuneration & Managerial Remuneration In Case of Absence or Inadequacy of Profits:</u> Total managerial remuneration payable by a public company, to its directors including MD/ WTD/ Manager for any FY shall not exceed 11% of NET PROFITS OF THAT COMPANY for that FY. (Can be exceeded after OR) (i)The remuneration payable to WTD/ MD/ Manager, shall not exceed: If there is any 1 of them- 5% of Net Profits If there is more than 1 - 10% of Net Profits (ii) The Remuneration payable to <u>Other Directors</u>, who are neither MD nor WTD, shall not exceed: If there is a MD/ WTD/ manager-1% of Net Profits In any Other Case - 3% of Net Profits (Can be exceeded after SR)</p>	<p>Remuneration shall include remuneration payable in any other capacity also (i.e. for services rendered) However, remuneration for services rendered in other capacity shall not be included if: Services are of Professional Nature and In the opinion of NRC/ BOD (as the case may be), the director possesses the requisite qualification for the practice of the profession.</p>
<p><u>Disqualifications:</u> No company shall appoint or continue the employment if: • he is below the age of 21 years or has attained 70 years of age.(exception: if SR has been passed and explanatory statement for such appointment has been annexed to the notice, indicating the justification. OR If no SR is passed, but votes casted in favour > the votes casted against, and if CG). • undischarged insolvent or adjudged as an insolvent • suspended payment to creditors or made a composition with them or • has at any time, been convicted by a court (Indian/ Foreign) of an offence and sentenced for > 6 months.</p>	<p>Director may receive 'Sitting Fees'. Amount shall not exceed Rs. 1,00,000/ meeting (Amount payable to ID and Women Director, shall not be less than of other directors.</p>	<p><u>Excess Remuneration:</u> If any director, draws or receives, directly or indirectly, by way of remuneration, any such sums, in excess of limit prescribed by this section or without approval as required in this section, he shall refund such sums to company, within 2 years or such lesser period as allowed by company and until such sum is refunded, hold it in trust for the company.</p> <p><u>Waiver of Excess Remuneration:</u> Company shall not waive the recovery of money, refundable to it, unless approved by company by SR within 2 years from the date the sum becomes refundable.</p>

<p><u>Remuneration Payable by Companies Having No Profit Or Inadequate Profit:</u></p> <p>(a) – Limits of Remuneration on the Basis of Effective Capital (Refer from the main provisions) Provided that remuneration in excess of above limits may be paid if SR is passed by SHS.</p> <p>(b) In case of managerial person or other director, who is functioning in a professional capacity, remuneration as per (a) may be paid, if such person is not having any interest in capital of company (holding < 0.5% of PUSC) or its holding/ subsidiary, directly or indirectly and not having any interest/ related to promoters of company or holding/ subsidiary company during last 2 years and possesses qualification with expertise and special knowledge in the company's field. <u>Provided: OR or SR, as the case may be, has been passed for Payment of Remuneration as per item (a) or a SR has been passed as per (b), at GM for a period of maximum 3 years.</u></p>	<p><u>Remuneration payable by companies having no profit or inadequate profit in certain special circumstances:</u></p> <p>where the company:</p> <ul style="list-style-type: none"> • is a newly incorporated company, for a period of 7 years from date of its incorporation; or • is a sick company, for whom a revival scheme has been ordered by BIFR, for a period of 5 years from date of sanction of scheme of revival; or • is a company of which resolution plan has been approved by NCLT under IBC, 2016 for a period of 5 years from date of such approval, <p>it may PAY ANY REMUNERATION TO ITS MANAGERIAL PERSONS or other directors.</p>	<p><u>Perquisites & Allowances:</u></p> <p>A managerial person shall be eligible for perquisites which shall not be included in calculation of ceiling on remuneration specified in Section II or III</p> <p><u>Remuneration payable to Managerial person in 2 Companies:</u></p> <p>A managerial person shall draw remuneration from one or both companies, provided that total remuneration drawn from companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.</p> <p><u>Recovery Of Remuneration In Certain Cases:</u></p> <p>Where excess amount of remuneration was paid and now the company is required to re-state its FS due to any fraud/ non-compliance, such excess remuneration paid (including stock option), must be recovered by the company from past/ present MD/ WTD/ Manager/ CEO (by whatever name called)</p>
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<p><u>Compensation For Loss Of Office Of MD/WTD/ Manager:</u></p> <p>(1) This compensation can be paid to MD/ WTD/ Manager, but not to any other director, as compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement.</p> <p>(2) However no compensation must be allowed in certain cases. (Refer from Main Content)</p> <p>(3) Maximum Compensation: Remuneration that he would have earned, if he would have been in office for REMAINING TERM or 3 years - whichever is shorter</p> <p>Note: Salary/ Remuneration will be calculated on the basis of Average Remuneration drawn in last 3 years.</p>	<p><u>Appointment of KMP:</u></p> <p>-Every Listed company & Every other public company having PUSC of atleast Rs. 10 Crore, shall have the following Whole-time KMP</p> <p>-Every Private Company which has a paid up share capital of Rs. 10 crore or more shall have a whole -time CS.</p> <p>-A whole time KMP shall not hold office in more than 1 company except in its subsidiary company at the same time.</p> <p>-However, a KMP may be a director of any company with Board's permission.</p> <p>-A company may appoint/ employ any person as MD provided:</p> <ul style="list-style-type: none"> • Such person is MD of/ manager of 1 and not more than 1 other company • It is approved by Board's resolution with consent of all directors present at the meeting. (Therefore Resolution by Circulation is not valid) • Specific notice of such meeting and resolution (to be moved) has been given to all directors then, in India. <p>-If office of whole-time KMP is vacated, then this vacancy shall be filled up by Board at a Board meeting within 6 months from date of such vacancy.</p>	<p><u>Secretarial Audit For Bigger Companies:</u></p> <p>(1) Every listed company and prescribed companies* (Every public company whose PUSC is \geq Rs. 50 crore OR Every public company whose Turnover is \geq Rs. 250 crore OR Every company having outstanding loans or borrowings from banks or public financial institutions of $>$ 100 crore) must annex a Secretarial Audit report given by a CS in practice, to the Board's report in prescribed format i.e. Form MR - 3</p> <p>(2) It is the duty of company to give all assistance and facilities to the CS in practice for such audit.</p> <p>(3) BOD shall comment/ give explanation for every qualification or observation made by CS in his report</p> <p><u>BELL vs LEVER BROS</u></p> <p>A director is not legally bound to disclose any breach of his obligations, so as to give an opportunity to company to dismiss him. Also, if MD is initially removed by paying compensation u/s 202 and later on it is discovered that he is guilty, and he could have been removed without compensation, it is not possible for the company to recover the amount from defaulting person.</p>
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