

Analytically Speaking



Key Managerial Personnel: Mismatch of Definitions

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Note

Introduction

Key Managerial Personnel (“KMP”) sounds like the most important person of the Company. And why not, they do have an important role to play in the success of any company. However, the meaning of KMPs under the Act has come for interesting debate, particularly the apparent mismatch between the definition in section 2 (51) of the Companies Act, 2013 (**the Act**), the requirements of section 203 of the Act, and AS 18 on Related Party Transactions.

Definitions

Definition in Section 2 (51) of the Act	Section 203 (1) of the Act	AS 18 - Related Party Transactions
<p>“Key managerial personnel”, in relation to a company, means:</p> <ul style="list-style-type: none"> (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed. 	<p>203. Appointment of Key Managerial Personnel</p> <p>(1) Every Company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:</p> <ul style="list-style-type: none"> (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer : <p>Provided that an individual shall not 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,</p> <ul style="list-style-type: none"> (a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses: <p>Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.</p>	<p>10.8 Key management personnel - those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise</p>



Note

Our Analysis on these baffled definitions:

Definition in **Section 2 (51) of the Act** defines the term, however there is no substantive provision laid by the definition section. Hence, the MD, CEO, every whole time director, CFO and CS are treated as KMPs.

Section 203(1) Act mandates only specified class of companies to have a whole time KMP.

As per draft rule 13.6 of Chapter XIII;

“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.”

Thus, a Company not covered under Section 203 (1) may not be required to appoint a CFO/CS, but it may still have a CFO/CS. It is clear that whether Section 203 applies or not, if the company has a CS, or CFO, or a whole time director, they are all KMPs.

Now the interesting conclusion from this is that every Manager, WTD, and the MD as well as the CEO (as per Section 203, the Company needs only one of these), will be treated as a KMP.

Hence, all the substantive requirements of law pertaining to KMPs apply to each WTD, and the MD. The mandatory provisions of Section 203(1) do not control the meaning of the term given in Section 2 (51).

There is no conflict between this and AS 18, as far as MD and WTDs are concerned. However, a CFO or CS is surely not KMPs as per AS 18. Hence, when it comes to disclosures of transactions with related parties in financial statements, the requirements of the AS will prevail.

Corollary due to these Mismatched Definitions

As said earlier, even if a Company is not required to have KMPs under Section 203, but if at all they appoint the MD, CEO, WTD, CFO and CS they automatically become KMPs. Thus, apart from the duties and responsibilities, these KMPs will attract the liability provisions of the Act as well.

Duties and Liabilities of KMP:

Section	Pertains to	Obligations of Key Managerial Personnel	Fine / Penalty in case of non compliance
102	Statement to be	The Statement concerning each	Fine which may extend

Note

Section	Pertains to	Obligations of Key Managerial Personnel	Fine / Penalty in case of non compliance
	annexed to the notice	item of special business to be transacted at a general meeting, annexed to the notice to include the nature of concern or interest, financial or otherwise, in respect of each items of KMP and their relatives. Any benefit accrued to the KMP or their relatives either directly or indirectly shall be held in trust for the company and be liable to compensate the Company.	to 50,000 or five times the amount of benefit accruing to such KMP or their relatives, whichever is more .
194	Prohibition on forward dealings in securities of company by director or key managerial personnel.	KMP shall not buy in the company, or in its holding, subsidiary or associate company— (a) a right to call for delivery or a right to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures; or (b) a right, as he may elect, to call for delivery or to make delivery at a specified price and within a specified time, of a specified number of relevant shares or a specified amount of relevant debentures.	Imprisonment for a term which may extend to two years or with fine which shall not be less than rupees 1,00,000 but which may extend to rupees 5,00,000 or with both
195	Prohibition on Insider trading of securities.	Key managerial personnel of a company shall not enter into insider trading	Imprisonment for a term which may extend to five years or with fine which shall not be less than rupees 5,00,000 but which may extend rupees 25,00,00,000 or three times the amount of profits made out of



Note

Section	Pertains to	Obligations of Key Managerial Personnel	Fine / Penalty in case of non compliance
			insider trading, whichever is higher, or with both.
203	Appointment of KMP	A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time	Fine which may extend to rupees 50,000 and where the contravention is continuing one with a further fine which may extend to rupees 1,000 for every day after the first during which the contravention continues
<ul style="list-style-type: none">• Definition of Officers and Officers in default include Key Managerial Personnel (KMP). Hence, all obligations of Officers and Officers shall be applicable to KMPs as well• Further those provisions of Non bailable offences applicable to every officers who is in default will also be applicable to KMPs			

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