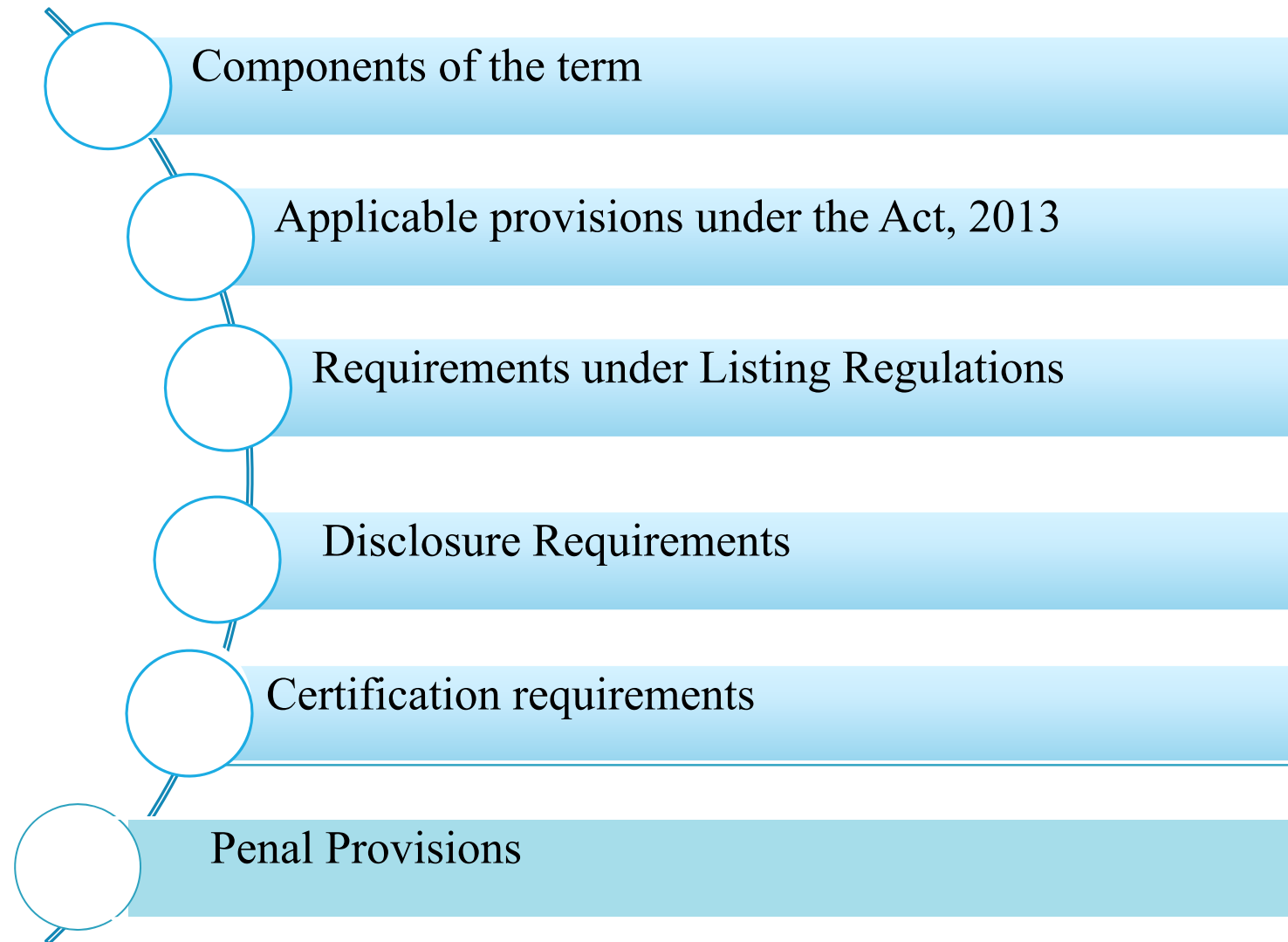


Managerial Remuneration

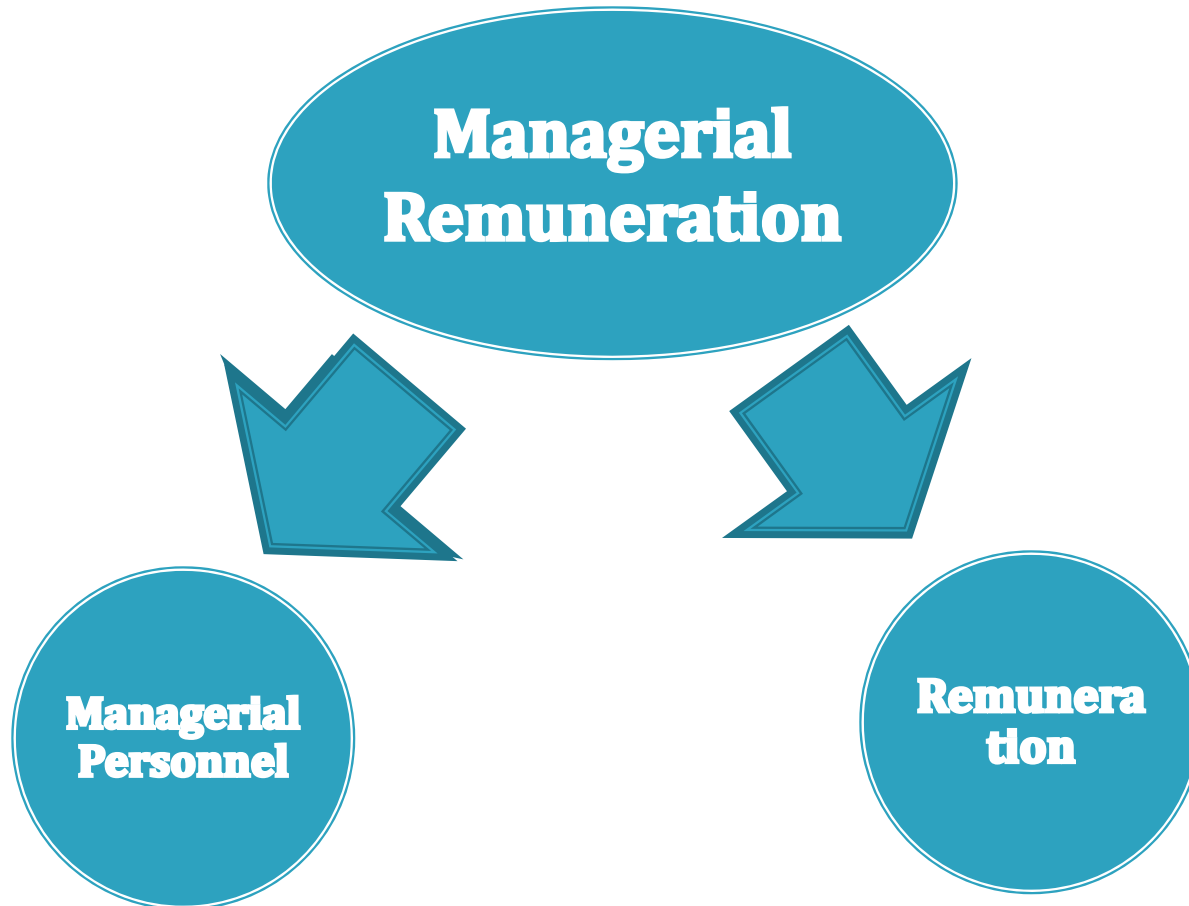
Ambika Mehrotra
Vinod Kothari & Co. | Delhi



Overview



Components of the term



Managerial Personnel

Managing Director

S. 2 (54)

- ➔ Managing director means a director who,
- by virtue of the articles of a company or
 - an agreement with the company or
 - a resolution passed in its general meeting, or
 - by its BoD, is entrusted **with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called**

Whole-time Director

S. 2 (94)

- ➔ whole-time director includes a director in the **whole-time employment** of the company

Manager

S. 2 (53)

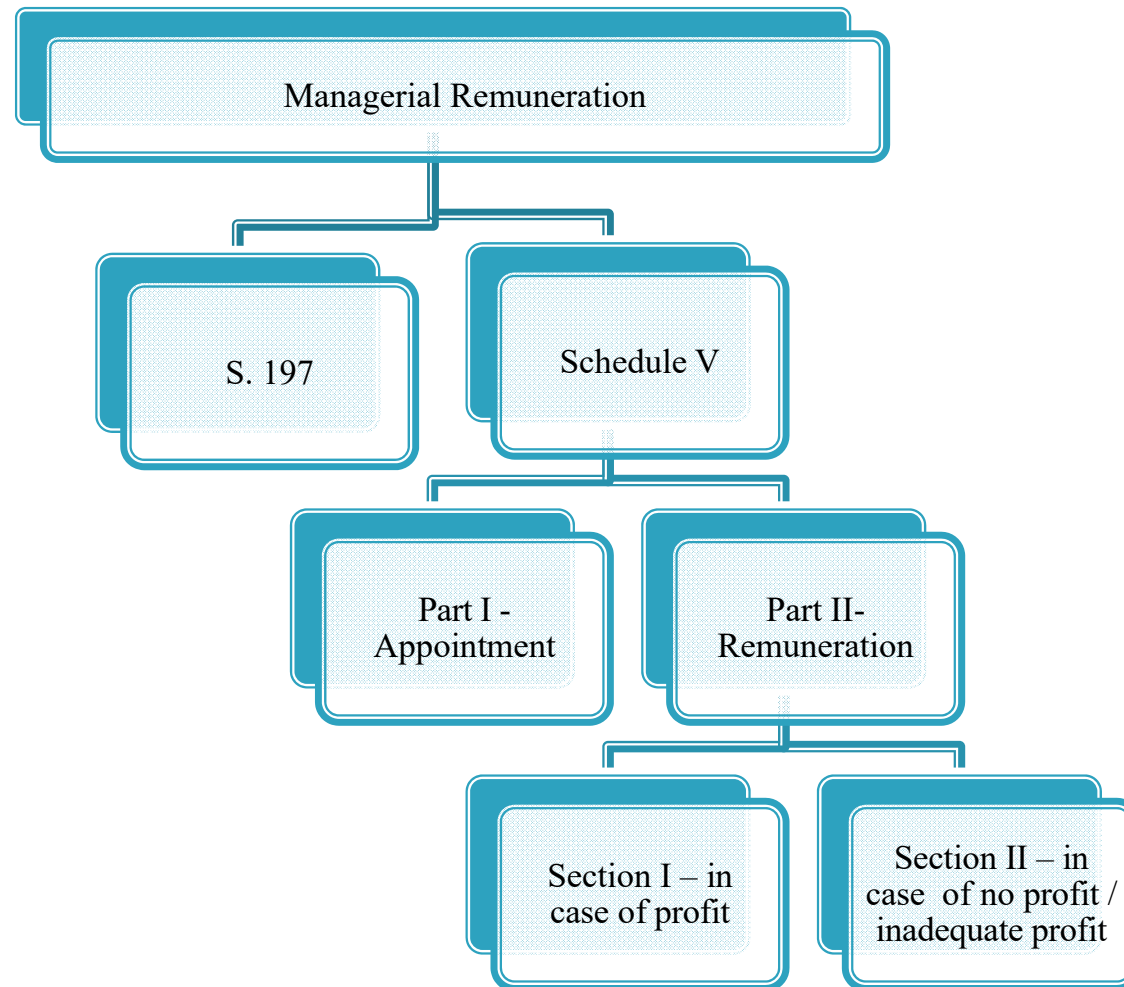
- ➔ Manager means an individual who-
- subject to the superintendence, control and direction of the Board of Directors,
 - has the management of the **whole, or substantially the whole**, of the affairs of a company, and
 - includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not

Remuneration

As per Sec. 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.

Accordingly, Managerial Remuneration would mean 'remuneration' paid to MP (MD/WTD /Manager).

Applicable Provisions



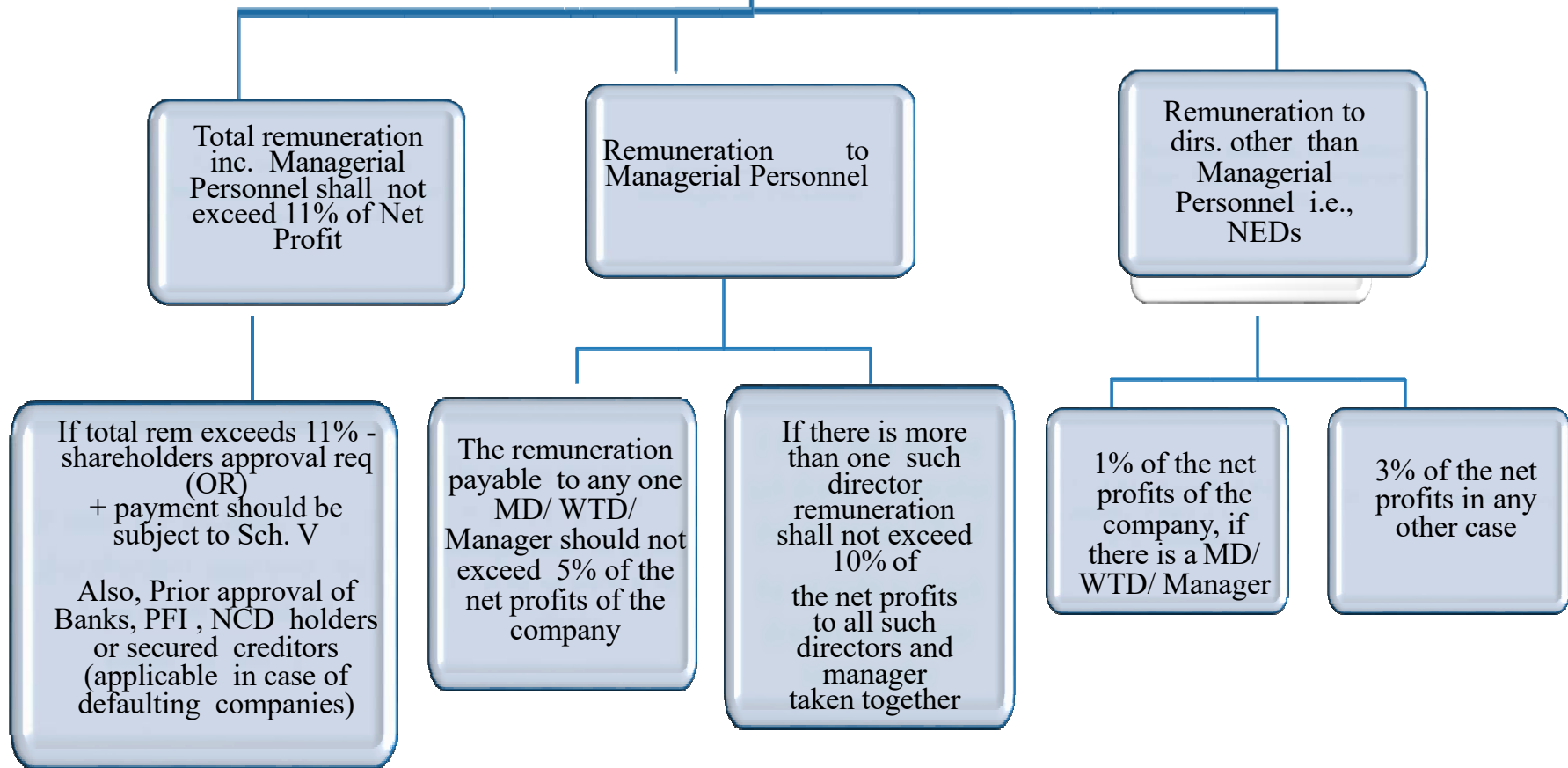
Constituents of Managerial Remuneration

- The net profits for the purposes of this section shall be computed in the manner referred to in S.198 except that the remuneration of the directors shall not be deducted from the gross profits.
- Remuneration paid to MP shall include the following:
 - Remuneration as defined u/s 2(78) of CA, 2013
 - Reimbursement of direct taxes[Explanation VI to section IV of Part II of Schedule V]
 - In case the company takes ‘Director & Officers ‘ Liability Insurance for its KMPs, the premium paid on such insurance shall not be treated as part of the remuneration. However, in case the person is proven to be guilty, the premium paid on such insurance shall then be treated as a part of remuneration. [S. 197(13)]

Sitting fees paid to directors for attending Board and Committee meeting(s) shall not form part of remuneration [197(2)]

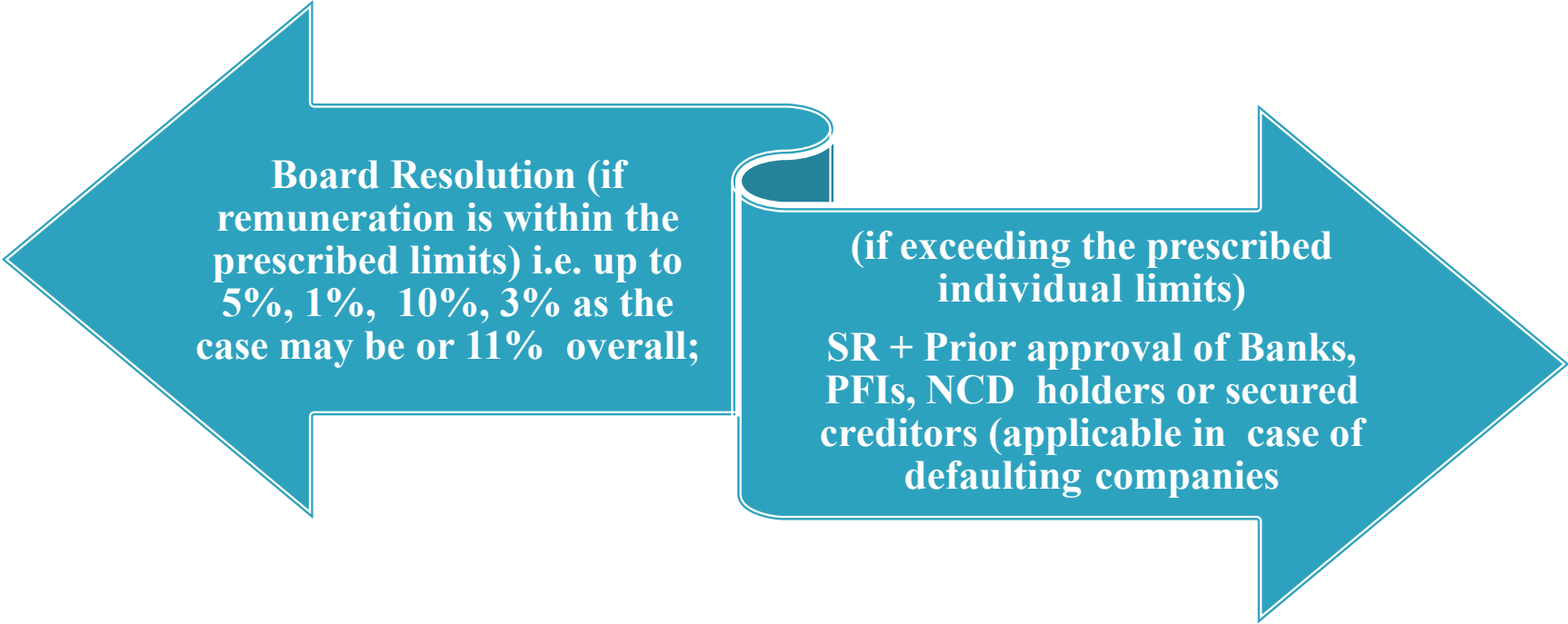
Limits on Managerial Remuneration

[S. 197(1)]



Approvals Required

For remuneration to managerial personnel and other directors



Board Resolution (if remuneration is within the prescribed limits) i.e. up to 5%, 1%, 10%, 3% as the case may be or 11% overall;

**(if exceeding the prescribed individual limits)
SR + Prior approval of Banks, PFIs, NCD holders or secured creditors (applicable in case of defaulting companies)**

Points for consideration

- ▶ A director or manager may be paid remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other;
- ▶ An ID shall not be entitled to any stock option and may receive remuneration by way of:
 - sitting fees,
 - reimbursement of expenses for participation in the Board and other meetings;
 - profit related commission as may be approved by the members;
- ▶ Section 197 applies only to Public Companies and hence Private Companies are free to pay remuneration at any rate to such directors in case of adequacy or inadequacy of profits;

Conditions as per Schedule V

Part II

Section I

- Remuneration payable by companies having profits

Section II

- Remuneration payable by companies having no profit or inadequate profit

Section III

- Remuneration payable in certain circumstances in case of nil or inadequate profits

Section IV

- Perquisites not included in managerial remuneration

Section V

- Remuneration payable to a managerial person in two companies

In case of no profit or inadequate profits (Section II of Part II of Schedule V)

Remuneration to a Managerial Person shall not exceed limit under (A) and (B) given below:-

(A)

Where Effective capital is	Limit of yearly remuneration payable shall not exceed (Rs)
i) -ve or < 5 crores	60 lakhs
ii) \geq 5 crores but <100 crores	84 lakhs
iii) \geq 100 crores but <250 crores	120 lakhs
iv) \geq 250 crore	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores.

❖ **To pay more than the above mentioned limit, the co should obtain a SR by the shareholders.**

Managerial person functioning in professional capacity

(B)

- ▶ Remuneration as stated in the table above shall be paid, if such person:
 - is not having any interest in in the capital of the company or its holding company or any of its subsidiaries directly/ indirectly/ through any other statutory structures
 - not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last 2 years before or on or after the date of appointment during 2 years before appointment;
 - possess graduate level qualification and specialisation in the field in which Company operates.

**any employee of a co. holding shares of the co. not exceeding 0.5% of its paid up share capital under ESOP or by way of qualification shall be deemed to be a person not having any interest in the capital of the company*

Pre-requisites for payment under Section II

- ▶ Remuneration is approved by a BR and, also by the NRC (if the co. is covered u/s 178(1));
- ▶ No default in payment of dues to any bank/ PFI/ NCD holders/ any other secured creditor, and in case of default, prior approval of said lenders, as the case may be, to be obtained (before obtaining the approval in the general meeting);
- ▶ An OR or a SR, as the case may be, has been passed for payment of remuneration as per item (A) or a SR has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding 3 years;
- ▶ A statement along with a notice calling the general meeting referred above is given to the shareholders containing the detailed information as specified in the Schedule.

Waiver of remuneration paid in excess

If any director draws or receives remuneration in excess of the limit prescribed in S. 197 or without approval required, the dir shall repay the excess remuneration to the company within a maximum period to 2 years.

However, the company on passing of SR within 2 yrs from the date the amount becomes refundable may waive such recovery with prior approval of banks, financial institutions, non convertible debenture holders or secured creditors required, in case the company has defaulted in payment of their dues.

Further, duty is casted on auditors to report payment of remuneration in conformity with the provisions of the Act and disclose any excess remuneration.

Requirements under Listing Regulations

Listed entities are required to comply with the following requirements u/r 17(6):-

- ▶ BOD to recommend all fees or compensation, if any, paid to NEDs, including IDs and shall require approval of shareholders in general meeting;
- ▶ The approval of shareholders shall not be required for payment of sitting fees to NEDs, if made within the limits prescribed under the Act, 2013 for payment of sitting fees without approval of the Central Government;
- ▶ Shareholders approval (above) shall specify the limits for the maximum number of stock options that may be granted to NEDs, in any financial year and in aggregate.
- ▶ IDs shall not be entitled to any stock option

Additional approvals under SEBI(LODR) (Amendment) Regulations, 2018 [1/2]

Regulation	Amendments	Applicability
<p>17(6)(ca) –</p> <p>Remuneration payable to a single NED</p>	<p>Requirement to obtain approval of shareholders by special resolution every year, in which the annual remuneration payable to a single NED exceeds 50% of the total annual remuneration payable to all NEDs, giving details of the remuneration thereof.</p>	<ul style="list-style-type: none"> • April 1, 2019; • All entities which have listed their specified securities

Additional approvals under SEBI(LODR) (Amendment) Regulations, 2018 [2/2]

Regulation	Amendments	Applicability
<p>17(6)(d) –</p> <p>Remuneration payable executive directors who are promoters or members of the promoter group</p>	<p>Requires the company to obtain the approval of the shareholders by SR in GM in case of fees or compensation payable to executive directors who are promoters or members of the promoter group, if-</p> <p>(i)the annual remuneration payable to such ED exceeds rupees 5 crore or 2.5 per cent of the net profits of the listed entity, whichever is higher;</p> <p>or</p> <p>(i)where there is more than one such director, the aggregate annual remuneration to such directors exceeds 5 per cent of the net profits of the listed entity.</p> <p>Also, the approval of the shareholders under this provision shall be valid only till the expiry of the term of such director.</p>	<ul style="list-style-type: none"> April 1, 2019; All entities which have listed their specified securities

Disclosure Requirements

- ▶ **Disclosure u/s 197(12), applicable to listed company**
 - Ratio of remuneration of each director to the median employee's remuneration for the financial year and
 - Details as per Rule 5 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Other Disclosures

- ❖ Any director who is in receipt of any commission from the company and who is also MD/WTD of the company shall not be disqualified from receiving any remuneration or commission from any holding/ subsidiary company, subject to its disclosure in the Board's report.[S. 197(14)]
- ❖ Auditor to make a statement (in his report under section 143), whether the remuneration paid by the company to its directors is in accordance with the provisions of S. 197, whether remuneration paid to any director is in excess of the limit laid down under this section.

Disclosure under Schedule V of CA, 2013

A company is required to disclose the following in its Board's Report under the heading "Corporate Governance", if any, attached to the financial statement: -

- ▶ All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors;
- ▶ Details of fixed component and performance linked incentives along with the performance criteria;
- ▶ Service contracts, notice period, severance fees
- ▶ Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable

Disclosure under Schedule V of LODR, 2015

The annual report of a listed entity shall contain also contain the following additional disclosures provided under Para 5 of Part C of Schedule V , apart from those mentioned above:-

- ▶ In case of listed company all pecuniary relationship or transactions of the non-executive directors visà- vis the listed entity shall be disclosed in the annual report;
- ▶ A listed entity shall disclose the criteria of making payments to non-executive directors.

[alternatively, this, may be disseminated on the listed entity's website and reference drawn thereto in the annual report;]

Certification Requirements

Part III of Schedule V of CA, 2013 requires the auditor or the Secretary of the company or in their absence, a Secretary in whole-time practice to certify that the requirements of Schedule V have been complied with and such certificate has to be incorporated un the return filed with the Registrar under sub-section 4 of section 196.

Penal Provisions u/s 197

Default by any person

- Penalty of Rs. 1 Lakh

Default by the Company

- Penalty of Rs. 5 Lakh

Thank You