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KEY MANAGERIAL PERSONNEL- Prayasi Khatai¹**Abstract:**

Key Managerial Personnel is a concept that is recognized globally in corporate sectors and hold a key place in a company. This paper starts with what is Key Managerial Personnel, who is eligible for that role, the appointment process of the person, their duties, the company law committee report as well as mentions if a private limited company appoints a KMP, the rules that apply to such a company. So they are the executives who can make or break an organization.

Key Words:

Personnel, Company, Manager, Appointment, Board

Introduction:

The Companies Act, 2013 replaced the Companies Act, 1956, which brought a lot of uniformity and provisions. The new act also brought provisions relating to the Key Managerial Personnel, whose presence is very much needed to run a company. The Government of India had an expert committee headed by Dr. Jamshed J. Irani in the year 2005. During that regime it brought changes in the companies act, 1956 as recommended by Dr. J. J. Irani report². In the new law that is Companies Act 2013, it included the concept of Key Managerial Personnel along with its definition and provision. This solved many issues that arose in the previous act.

Key Managerial Personnel also known as KMP is a concept that is brought up under the Companies Act, 2013. Key Managerial Personnel are responsible for the smooth running of the company. They are also known as the decision makers of the company as they are involved in planning, controlling, directing and managing different activities. The term “personnel” means a group of people working together. This term merged all company heads under one single head. Key Managerial Personnel’s appointment plays a very important, significant and essential role in day-to-day affairs and

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² Jamshed J. Irani Committee Report, 2005.

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operations of the company as mandated under the said act. It is a mandate in certain companies to appoint a KMP.

The definition for the Key Managerial Personnel is provided under section 2(51)³ of the Companies Act, 2013. As per the section it states that the Key managerial Personnel of a company means:

- Chief Executive Officer/ Manager/ Managing Director
- Company Secretary
- Chief Financial Officer
- Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment

Section 203 of the Companies Act, 2013 gives information about the whole time KMPs and their appointment. It states that requirement to appoint KMP in, “*every listed company and every other public company having a paid-up share capital of ten crores rupees or more*” to have a whole-time KMP.” We can say that, the Key Managerial Personnel is different from the Board of Directors as Board of Directors are not involved in the daily operations. They only supervise the objectives and goals but KMP micromanage the goals and the objectives of the company.

Different Personnel:

‘Personnel’ refers to “*people employed in an organization or engaged in an organized undertaking*”⁴. It is a group of people rather than an individual. As mentioned Personnel include Chief Executive Officer/ Manager/ Managing Director, Company Secretary, Chief Financial Officer, Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment and Such other officer as may be prescribed.

Chief Executive Officer, Manager and managing Director:

- The Chief Executive Officer, Manager and the Managing Director plays a important role in running the operations as it leads to the growth of the company. Managing Director is also known as the Chief Executive Officer in many countries.
- The “*Chief executive Officer*”⁵ under section 2(18), means an officer of a company, who has been designated as such by it.

³Companies Act, 2013, Section 2 (51), India.

⁴ Dictionary Oxford.

⁵Companies Act, 2013, Section 2(18), India.

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- The term “*Manager*”⁶ is mentioned in section 2 (53) of the Companies Act, 2013 where it states that a person who is subjected “*to the superintendence, control and direction of the Board of Directors*”. He or she earns a managerial position in a company.
- “*Managing Director*”⁷ is described in section 2(54) of the Companies Act of 2013, where it mentions that a Managing Director is a director who has “*power to do administrative act of routine nature when authorized by the board*” substantial powers in a company’s management and its affairs. The managing director is appointed through the AOA (Article of Association), or through an agreement, or by a resolution passed in a general meeting or even by the board of directors (BOD) of the company/ enterprise this is also mentioned in section 2(54) of the said act. Maximum remuneration payable would be 10% of the net profits.
- One company cannot appoint a Managing Director and a Manager at a same time in regards to the concept of KMP. This is mentioned in section 196 (1) of the Companies Act, 2013.
- If one looks at the Managerial hierarchy, the Managing Director has the highest power authority to enjoy

Company Secretary:

- The company secretary is a senior level employee who plays an important role as they look into efficient functioning and administration of the requirements and ensure the goals of the company are achieved within real time.
- A secretary is defined under the Company Secretaries Act of 1980, section 2 where it states that he or she is “*a person who is a member of the ICSP*” - Institute of Company Secretaries of India.
- They are also known as corporate secretary.
- Section 2, clause 24⁸ mentions the meaning of company secretary. And section 205 mentions the specific functions that shall be performed by the secretary.
- In a recent case of 2021, *Mayank Agarwal v. Technology Frontiers India Pvt. Ltd*⁹, the issue raised that whether the company secretary was empowered to act on behalf of the company when the company is alone responsible for applying for cases? To which the tribunal held that, the company secretary is one of the KMPs and is empowered to do the duties assigned to him. Section 205 also lays certain functions of the CS. Thus CS was acting within his

⁶Companies Act, 2013, Section 2(53), India

⁷Companies Act, 2013, Section 2(54), India

⁸Companies Act, 2013, Section 2(24), India.

⁹Mayank Agarwal v. Technology Frontiers India Pvt. Ltd, IA/2/2021 in CP/75/CHE/2021.

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scope of authority adhering due diligence while filing the suit and hence the application was dismissed.

Whole Time Director:

- A whole time director is employed for the whole time in a company and works through the working hours.
- It is mentioned in section 2, clause 94¹⁰ of the companies acts, 2013.
- They take part in daily operations and affairs.
- The Managing Director can be a Whole Time Director but Independent Director cannot be a Whole Time Director.
- A whole time director does not have any discretionary power to take decisions regarding policy matters.
- A person cannot have more than one whole time directorship.

Chief Financial Officer:

- Chief Financial Officer is a person who looks into and involves itself into the financial work and status of the company.
- Mentioned in section 2 (19)¹¹.
- For example, cash flow, input, output, tax, audit, etc.
- It has the decision making power like financial planning during any crisis or furtherance of business.

The only difference between KMP and Whole time KMP is the word “Whole time” which means a KMP shall contribute all his or her time towards the company and avoids the term “employment”. And the rest being such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment as well as such other officer as may be prescribed.

Thus these are the different kinds of personnel involved in KMP.

Other provisions of a KMP under Companies Act of 2013:

- Section 2(76) defines related party, which includes KMP and its relatives.

¹⁰Companies Act, 2013, Section 2(94), India.

¹¹Companies Act, 2013, Section 2(19), India.

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- A relative of KMP cannot be appointed as auditor as per section 141 and as an independent director as per section 149 of the act.
- Securities held by a KMP in holding, subsidiary, or associate company shall be recorded in a separate register as per section 170.
- Under section 177, KMP shall have right to be heard.
- Section 178 deals with the remuneration of the KMP that is formulated by the Nomination and Remuneration Committee.
- Section 179 deals with appointment and removal of KMP.
- KMP shall not enter into any insider trade practices as per section 195.
- In case of merging companies report shall be explained by each KMPs shall be circulated by the board by the company for meeting ordered by the tribunal, this is stated in section 232.

Applicability and Eligibility:

Persons who cannot be appointed as a Key Managerial Personnel, as mentioned in section 196 of the act are as follows:

- Person who so ever is below 21 years of age
- Person who is above 70 years of age- after that has to handover the role
- Person who has been convicted
- Person who is an insolvent
- Person who has record of holding payment of his/her creditors
- Person who is an uncharged insolvent
- Person who has suspended payment to the creditors at any time
- Person who has been convicted for an offence and also has been sentenced to more than six months period

Schedule V¹² also provides exclusions in the way of provisions that are as follows:

- Provisions relating to a person if convicted and imprisoned or levied fine ranging from 1000/- to 5000/- rupees are the following:
- Person who has been detained under the Conservation of Foreign Exchange and Prevention of Smuggling Activities of 1947.

¹² Companies Act, 2013, Schedule V, India.

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- A KMP holding two positions at the same time would be given remuneration as per the ceiling set down by the Companies Act, 2013.
- The person shall be a resident of India, who shall stay in India continuously for 12 months from the date of appointment.

Any one who does not come under the above category is eligible for the role of Key Managerial Personnel. Thus this puts a bar on a person becoming a KMP.

The tenure of appointment shall be for a term not exceeding 5 years.

Appointment of Key Managerial Personnel:

This section was done on the recommendation of 'J. J. Irani Committee report'. Section 203 of the Companies Act of 2013 states the appointment of KMP. In clause 1 it states that, every company of that class shall have a whole time key managerial personnel, which shall include firstly Managing Director or Chief Executive Director or Manager, secondly Company Secretary or lastly Chief Financial Officer.

Section 196 as well as section 197 read with Schedule V provides conditions for appointment and remuneration of managing director, whole time director and manager. There shall be no appointment or reappointment of an individual as the chairperson of the company in respect to articles of the company. But there are two exceptions that are firstly when the article allows the same and secondly when company doesn't carry many businesses.

As per clause 2, it mentions that a KMP shall be appointed through a resolution and it shall include the remuneration. And clause 3 mentions that a KMP is not authorized to hold an office more than one except in case of a subsidiary company at the same time. If such person holds the two offices at the same time then he or she has to choose at least one office amongst the two within six months of such commencement to where that person wants to continue its office.

Vacancy:

In case of vacancy of the said post, the vacancy shall be filled up by the board at the meeting within the period of six months from the date of such vacancy as stated in clause 4. There shall be no circular resolution for filing the vacancy.

Penalty for non-appointment:

The penalty provision is mentioned in clause 5 where it states that, if the above provisions are violated by any company, then such company shall be liable of penalty of five lakh rupees. And the defaulting person either any director or any Key managerial Personnel they he or she shall liable of penalty fifty thousand rupees. And if the default still continues then the fine shall be levied every day being Rupees one thousand each day. But it shall not exceed five lakh rupees.

As per Rule 8¹³, it provides with the class of companies that must appoint the Full Time Key Managerial Personnel, this includes every listed company and a public company having a paid up share capital of Rupees 10 crore or even more. It also states that a private company shall have a paid up share capital of rupees 10 crore or more for the appointment of the same personnel.

Norms of Appointment:

The appointment of a Key Managerial Personnel shall include a board resolution that shall be passed in the general meeting that is to be done after obtaining the consent from the Board of Directors (BOD). It shall includes the terms and conditions on what basis the KMP has to act and also includes the details of the remuneration. And once the appointment is completed and done, the company needs to file a return with the registrar in a prescribed form within 60 days of timeline.

As per section 179, clause 3 of companies act, 2013 along with Companies (Meeting of Board and its power) Rules, 2014, it mentions the business related 'appointment and removal of a KMP', where it states that, if a company is not obliged to appoint a key managerial personnel under section 203 then the company can appoint in a board meeting by the way of board resolution.

Section 196 specially states the appointment of Managing Director, manager or whole time director by a public company other than government and private company. And that approval shall be next approved in the next general meeting.

Central Government Approval:

An application for the appointment of KMP must be done in 'E-Form MR 2' in the Portal.

The Central government should look into other details too like the financial position of the company, remuneration earned by the candidate, experience and professional qualifications. Securities that are held by the person shall be also looked into.

¹³Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Rule 8.

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There are other forms that are required to be filed too in regard to appointment of MD or WTD or Manager:

- E-form DIR-12
- E-form MGT-14

Private companies are exempted from filing MGT-14 as mentioned under section 117(3)(g) and 2015 notification.

So, there are 3 steps to be followed:

I. Step 1:

Board Meeting should be conducted by giving notice of at least 7 days.

II. Step 2:

Resolution needs to be passed at the Board Meeting for the appointment.

III. Step 3:

Filing 2 types of form mentioned above that are:

- E-form MGT-14

It mentions the filing of resolutions to the registrar. It shall be done within 30 days of passing of resolution, where two documents are required that are, certified copies of the resolution and the appointment agreement.

- E-form DIR-12

It mentions the particulars of appointment to the registrar. This shall also be done within 30 days of passing of the resolution by the board. It requires documents like appointment letter, and director's consent.

- E-form MR 1

This form mentions the return of appointment to the registrar. This shall be done within 60 days of passing the board resolution. And documents need for this form are certified copy of the resolution and consent letters by Company secretary, Chief executive office as well as Chief financial officer.

These forms are filed within the official online website of the Ministry of Company Affairs.

Recommendation by the committee: As per section 178¹⁴, each and every company has a committee named as Nomination and Remuneration Committee, who decide the appointment related matters. KMPs are also appointed only after prior recommendation by them.

Case:

¹⁴Companies Act, 2013, Section 178, India.

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In the case of, "*Halim Trust & Ors. Vs. LSF 10 Rose Investments & Ors*"¹⁵:

Facts of the Case:

- In a private company named Rattan India Finance Private limited, there were two companies first is the Hamlin Trust and second is the LSF 10 Rose Investment.
- Both the companies had 50% shareholders in Rattan Pvt. Ltd.
- The right was with Rose Investment to appoint a CFO, while the rest 50% shareholders has the right to reject two candidates but the third candidate shall be accepted as per the AOA.
- The candidates wouldn't available full time. So it was opposed, as it was contrary to section 203.

Issue:

- Whether section 203¹⁶ applies to private companies appointing KMP on a voluntary basis?

Held:

- AOA of Rattan Finance being a private company didn't stipulate any criteria thus can appoint anybody as the CFO even if not full time. But NCLAT set aside the order by contending that the company does not stipulate any pre-requisites for the appointment.
- The court held that, section 203 of the Companies Act of 2013 should apply to private companies in cases where it voluntarily chooses to appoint KMPs.
- The order also stated that if there is absence of eligibility criteria then recourse to be taken under section 203.

Thus, under section 203 it does not prohibits voluntarily the appointment of a KMP.

The provisions of AOA can't override the provisions of the Act. If any private company appoints a KMP, then that person has to comply with the provisions mentioned in the Act.

Responsibilities and duties undertaken by KMPs:

As discussed above, they are well known as the decision makers of the company as they take very crucial company decisions. When company fails to follow any rules or laws under the act then the KMP are the one who become responsible for the wrongs.

Some responsibilities of the KMPs are laid down below:

- Right to Opinion- The KMPs have the right to express their part of opinion freely during meetings that are conducted.
- The person shall be prohibited from insider trading practices dealing in securities
- They shall keep track on achieving goals on time and what targets have been already met.

¹⁵ Halim Trust& Ors Vs. LSF 10 rose Investments & Ors, Appeal No.: 77 of 2022.

¹⁶ Companies Act, 2013, Section 203, India.

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- Improve cost efficiency by improving business plans.
- The securities that are held by that person shall be recorded in the register and must be disclosed. This is mentioned in section 170 of the Companies Act.
- They manage all the employees of that company.
- They build strategies, provide resources and support needs for the success of the organization.
- As per Section 189(2), any interest in other companies by the KMPs shall be disclosed.
- KMP has to submit an annual report mentioning the financial statements.
- Being considered as “officers in default” as per the Companies Act in the event of any default in the company, the compliances of statute, its rules and regulations as applicable become the top most priority of any KMP.
- Disclosure in annual returns.
- They are responsible for contracts, cheques, agreements, etc. that are signed by the board on behalf of the company.

Company Law Committee Report:

The Ministry of Corporate Affairs released the Company Law Committee Report on February 1, 2016, where it mentions that a KMP can be appointed more in case of subsidiary company. This is the report of the standing committee on the companies Bill.

- The report uses terms like “*Singular includes plural doesn’t apply here*” means it shall take effect unless there is anything repugnant in the subject or context. Here subsidiary company means only one subsidiary company.
- Companies Bill, 2009 was taken aid of ascertaining the intention of the lawmakers in relation to the appointment of the KMP.
- Company Bill also affirm the position of KMP can be appointed in a single subsidiary company.
- As also mentioned J. J. Irani has also included in the report about the whole time employment of KMP at a single point of time.
- Includes the term “*officer in default*” also mentioned in section 2 (60), it means that the officer shall not be held responsible for non-compliances of more than one company. The term of officer has been clearly categorically by the Ministry of Corporate Affairs.

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The Ministry Report expert Committee has recommended the paid up capital that is five crores shall be revised to 10 crores. And also special exemptions may be given to the small companies for the appointment of KMPs.

Conclusion:

KMP plays a very crucial role and manages day-to-day operations of the company. They are highly diligent and are helpful in gaining faith of shareholders and stakeholders. The new act guarantees and make sure that there is proper role and responsibilities assigned to different heads of the company and specially the KMPs. It also mentions as to where such persons shall be accountable. But the new regime or act has failed to give more details on the Chief Executive Officer and Chief Financial Officer.

