



Appointment and Remuneration of Managerial Personnel: Companies Act 2013

Managing Director is Key Managerial Personal of utmost importance. He is face of a company and its decision-making mechanism. A person gain significant advantages as Managing Director which may not be there, in case of his appointment as Manager or Chief Executive Officer. While Chief Executive Officer has no special advantage except his clubbing as Key Managerial Personnel with Manager and Managing Director, Manager has some. Their definitions speak themselves. Appointment of Managing Director, Whole – Time Director and Manager is governed by provision of Section 196 of the Act. They all are a different class of Key Managerial Personnel and has specific provision of appointment in addition of Section 203, will discuss in another post.

Note:

- . This Section is Applicable on Both Public and Private Company.
- . A company can appoint Either Managing Director or Manager not both.

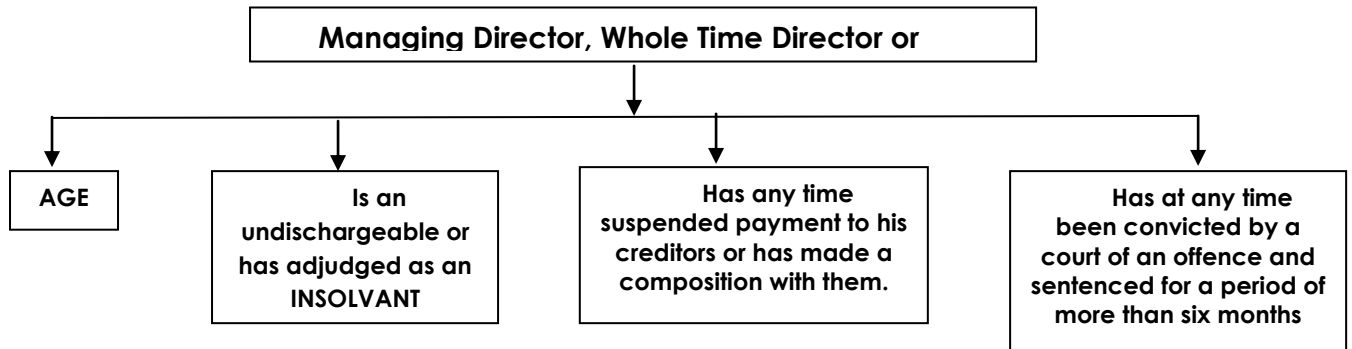
Tenure:

- . Appointment of Managing Director, Whole - Time Director or Manager shall not for a term exceeding five years at a time

Re-appointment:

- . The company may re-appointment them for next term before expiry of their present term but not earlier than one year before expiry of the current term. This means, company may re-appoint them for next term in last one year of current term.

DISQUALIFICATION FOR APPOINTMENT OF MD, WTD OR MANAGER: No Company shall appoint or continue the employment of any person as



Explanation:

. Words used in this Section are "shall appoint or continue the employment of". A company may appoint a person on these positions, who has attained the age of 70 years. By passing a special resolution. The explanatory statement annexed to the notice of such appointment shall justify such appointment.

CONDITIONS FOR APPOINTMENT OF MD, MANAGER OR WTD:

- i. By passing of Resolution in Board Meeting (BOD decide Terms and Condition of such appointment) and
- ii. Approval of Shareholders by passing Resolution in Next General Meeting and
- iii. Appointment should accordance with the Section- 197 and Schedule- V.
- iv. If appointment is not accordance with the Schedule - V, Central Government permission require.

Explanation: The NOTICE convening Board or General Meeting for such appointment shall include terms and conditions of such appointment, remuneration payable and other matter including interests of directors in such appointment.

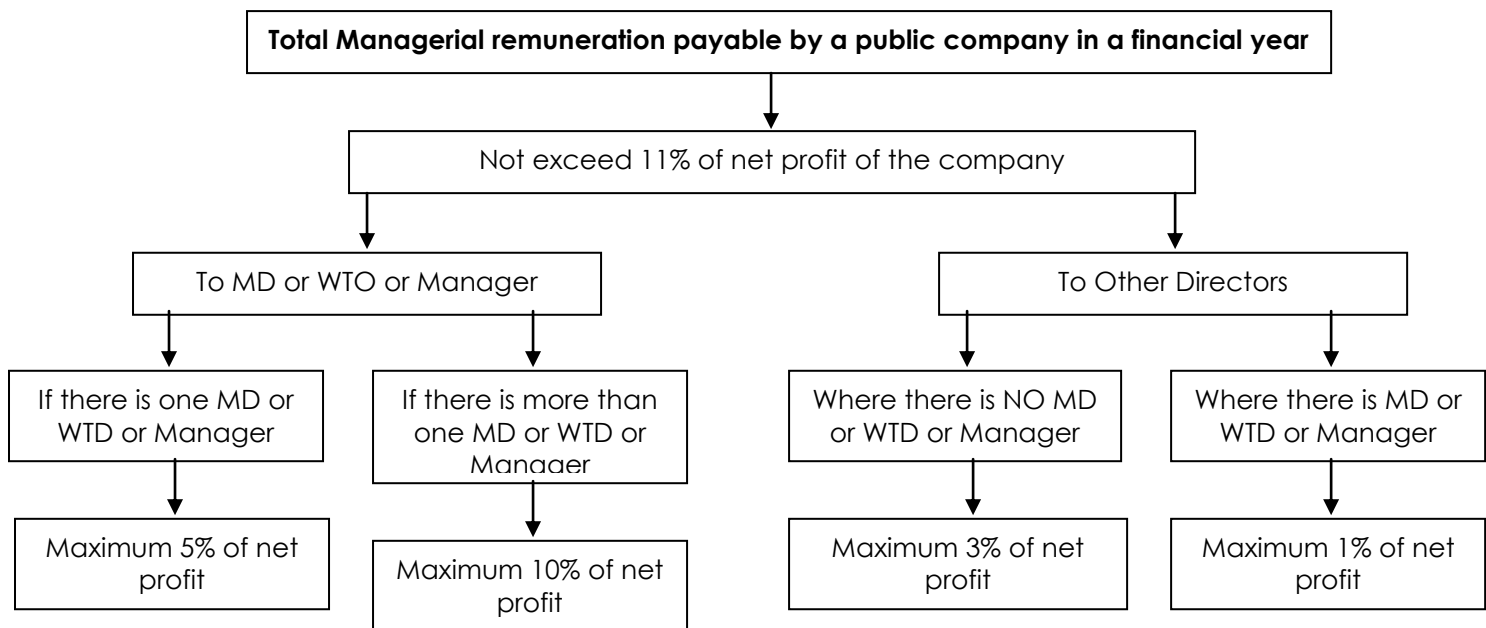
*Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

MANAGERIAL REMUNERATION:

Managerial remuneration is one of major corporate governance issue in India. Promoters and controlling shareholders consider themselves owner of company and get maximum remuneration. Difference between corporate tax rate and income tax rate also priority to withdraw much money from "owned" company. Indian concept of "owned company and corporate governance has co - existence in last two decades.

Note:

- . There is No Restriction relating to managerial remuneration for a **Private Company**



Explanation:

- If company wants to pay remuneration exceeding 11%, can pay by approval of Share holders in General Meeting with the Central Government Approval. (here only schedule- V require to follow or we have to take approval of CG)
- The Percentage aforesaid shall be exclusive of SITTING FEES paid under sub Section- 5.
- Net profit for this section shall be computed as per method given in Section 198.
- *In case of no profit or inadequate profit, the company shall pay remuneration to directors, Managing Directors, Whole Time Directors and Managers in accordance with **Schedule V OR with previous approval of Central Government.**
- The remuneration payable to any director shall be determined either by articles of the company or by resolution or by special resolution passed by the company where its articles required for special resolution.
- The remuneration payable to directors shall be inclusive of all remuneration payable to him for services rendered by him in any other capacity EXCEPT.
- Services rendered are of Professional In Nature and in opinion of Nomination and Remuneration Committee or of Board of Directors as the case may be, director has requisite qualification for practice of profession.



Sitting Fees to Directors:

- . Director may receive remuneration by way of fee for attending meetings of the Board or committee thereof. The amount of such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees
- . Provided that sitting fees to Independent Directors and Women Directors shall not be less than the sitting fee payable to other directors.
- . **Manner of Payment of Remuneration:** Remuneration of Director or Manager may be paid below mention ways-
 - a) Monthly Payment
 - b) Specified Percentage Of Profit
 - c) Partly By One And Partly By Specified Percentage Of Profit
- . If any director receives directly or indirectly by way of remuneration any sum in excess of prescribed limit, he shall refund such sum. Until refund, he will keep this sum in trust for the company. Without Central Government permission, the company shall not waive recovery of any such sum.
- . Every listed company shall disclose Ratio of Remuneration of each Director to the median employees' remuneration and such other details as prescribed.
- . Where any insurance is taken by company for "Key Managerial Personnel Liability Insurance" Premium of such insurance shall not be included to the remuneration of any key managerial personnel. However, if such person found guilty, such premium shall be treated as part of their remuneration.
- . Any director, receiving commission from the company and Managing Director or Whole Time Director may receive any remuneration or commission from holding company or subsidiary company. This information shall be disclosed by company in the Board's Report.

SCHEDULE- V

Section 197 of the Companies Act, 2013 in its sub section (3) and (11) say that in case of no profit or inadequate profit, the company shall pay remuneration to directors, Managing Directors, Whole Time Directors and Managers in accordance with Schedule V OR with previous approval of Central Government.

Part- I of Schedule- V

- . A person should satisfy following conditions for appointment as managerial person:
 1. He had not been sentenced to imprisonment for any period or to a fine exceeding Rs. 1000 for the conviction of an offence under 26 Acts listed in schedule.



2. He had not been detained for any period under COFEPOSA, 1974.

*If he is a managerial person In More Than One Company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II.

Example: {If a person is Managerial person in only Company 'A' and according to 197 he can take 20 Lakh as Remuneration. And if he is Managerial person in Company 'B' as per section 197 he can take 30 lakh remuneration. But if same person is Managerial person in both Company A & B. Then maximum remuneration he can get all together is 30Lakh.}

He is resident of India

- a) for taking up employment in India; or
- b) for carrying on a business or vacation in India

RESIDENT IN INDIA: Resident in India include a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person .

A non-resident in India shall enter India only after obtaining a proper Employment Visa.

PART- II Section- II of SCHEDULE- V: Remuneration in case of inadequate or no profit

In case of inadequate or no profit, a company may pay to a managerial person without central government approval HIGHER OF THE FOLLOWING TWO OPTIONS (A or B):

A. As per following table with approval of company by Ordinary Resolution in General Meeting :

Where Effective Capital is	Limit of yearly remuneration payable shall not exceed (Rupees)
Negative or less than ₹ 5 Crore	30 lakhs
5 crores and above but less than 100 crores	42 lakhs
100 crores and above but less than 250 crores	60 lakhs
250 crores and above	60 lakhs plus 0.01% of the effective capital in excess of ₹250 crores:

***IF, SHAREHOLDERS PASSES SPECIAL RESOLUT ION T HIS LIMIT W ILL BE DOUBLE.**



B. The managerial person who was Not A:

- a) Security Holder holding Securities of the company of nominal value of rupees five lakh or more or
- b) An employee or
- c) A director of the company or
- d) Related to any director or promoter, at any time during the two years prior to his Appointment as a managerial person

2.5% OF THE CURRENT RELEVANT PROFIT

***IF, SHAREHOLDERS PASSES SPECIAL RESOLUTION THIS LIMIT WILL BE DOUBLE.**

CONDITIONS:

1. This remuneration should be approved by resolution of Board of director and also by Nomination and Remuneration committee (where it is)
2. The remuneration shall be approved by a resolution of shareholders in general meeting.
3. The company has not made any default in repayment of its debt or debenture or interest thereon for a continuous period of 30 days in preceding financial year
4. The approval of remuneration by special resolution should be for not more than three year. (SR is require only when we are giving remuneration double to limit mention.)
5. The statement along with the notice of this resolution should provide information mentioned in schedule.
6. The Auditor or Company Secretary of company or company secretary in practice certify that the requirement of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar.

PART- II Section- III of SCHEDULE- V: Remuneration in case of inadequate or no profit:

In these cases, the company may pay remuneration in excess of section ii:

a) Where Remuneration in excess of these limit is Paid By Any Other Company, Condition:

- . That other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment,



- . That other company treats this amount as managerial remuneration for the purpose of section 197.
 - . The total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.
- b) In these cases, the company may pay remuneration in excess of Section II: where-**
- (i)** The company is a newly incorporated company, for a period of Seven Years from the date of its incorporation, or
 - (ii)** The company Sick Company within five years from sanction of scheme of revival.
- c)** Where Remuneration exceeds the limit in section- II but Remuneration fixed by BIFR & NCLT.
- d)** An unlisted company in SEZ may pay up to ₹ 240 Lakh yearly if, company has not raised any money by-
- . Public issue of shares in India
 - . Public issue of Debentures in India
 - . Has not made any default in repayment of any of its debt or debenture or interest payable thereon for a continues period of 30 days

THE CONDITIONS FOR SECTION III ARE:

1. An auditor or Company Secretary of the company or company secretary in practice has certifies that:
2. All secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed
3. There is no default on payments to any creditors, and all dues to deposit holders are being settled on time.
4. For Para (b) and (c), the managerial person is not receiving remuneration from any other company.



PART- II Section- IV of SCHEDULE- V: PERQUISITES NOT INCLUDED IN MANAGERIAL REMUNERATION

1. Managerial person shall be eligible for:

- a) Contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act.
- b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service
- c) Encashment of leave at the end of the tenure

2. A expatriate managerial person shall be eligible for:

- a) Children's education allowance
- b) Holiday package studying outside India or family staying outside India
- c) Leave travel concession

PART- II Section- V of SCHEDULE- V: REMUNERATION PAYABLE TO A MANAGERIAL PERSON IN TWO COMPANIES

A managerial person shall draw remuneration from one or both companies. The total remuneration drawn should not exceed the higher maximum limit admissible from any company of which he is a managerial person.



Warehousing

“Warehouse” means —

- a public warehouse appointed under section 57 of the Customs Act, or
- a private warehouse licensed under section 58 of the Customs Act.

Differences between Public Warehouse & Private Warehouse:

Public Warehouse: They are appointed by AC/ DC (Assistant Commissioner / Deputy Commissioner) u/s 57. All dutiable goods imported by any importer may be deposited.

Private Warehouse: It is licensed by AC/ DC u/s 58. License may be suspended/ cancelled. Only goods of licensee may be deposited. However, if public warehouse facility is not available, goods belonging to other importer may also be deposited.

Warehousing Bond:

As per section 59 of the Customs Act, the importer of any goods who wants to deposit the goods in a warehouse (who has presented bill of entry for warehousing) shall execute a bond binding himself in a sum equal to twice the amount of the duty assessed (u/s 17 or 18) on such goods—

- a) to observe all the provisions of this Act and the rules and regulations in respect of such goods;
- b) to pay on or before a date specified in a notice of demand, —
 - i. all duties, and interest, if any, payable u/s 61 (2).
 - ii. rent and charges claimable on account of such goods under this Act, together with interest @ 24% on the same from the date so specified.
- c) to discharge all penalties incurred for violation of the provisions of this Act and the rules and regulations in respect of such goods.

The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to enter into a general bond in such amount as may be approved by them in respect of the warehousing of goods to be imported by him within a specified period.

A bond executed by an importer in respect of any goods shall continue in force even if the goods have been transferred to another warehouse or the title of the goods has been transferred to another person.



However, where the whole of the goods or any part thereof are transferred to another person, the proper officer may accept a fresh bond from the transferee in a sum equal to twice the amount of duty assessed on the goods transferred and thereupon the bond executed by the transferor shall be enforceable only for a sum mentioned therein less the amount for which a fresh bond is accepted from the transferee.

Warehousing Period for which goods may be remain in Warehouse: Any warehoused goods may be left in the warehouse in which they are deposited or in any warehouse to which they may be removed, till the expiry of the following periods after the date on which the proper officer has made an order u/s 60 of the Customs Act permitting the deposit of the goods in a warehouse.

- **In the case of capital goods intended for use in any 100% EOU (Export Oriented Undertaking):** till the expiry of five years from the date of order. The period can be extended by the Principal Commissioner or Commissioner of Customs for such period as he deems fit. Interest @ 15% p.a. to be charged after the expiry of five years till the date of payment of duty.
- **In the case of goods other than capital goods intended for use in any 100% EOU:** till the expiry of three years from the date of order. The period can be extended by the Principal Commissioner or Commissioner of Customs for such period as he deems fit. Interest @ 15% p.a. to be charged after the expiry of three years till the date of payment of duty.
- **In the case of any other goods:** till the expiry of one year from the date of order. The period can be extended by the Principal Commissioner or Commissioner of Customs for 6 months and Principal Chief Commissioner or Chief Commissioner for such period as he deems fit. If the goods are likely to deteriorate, the Principal Commissioner or Commissioner of Customs may reduce the period as he deems fit. Interest @ 15% p.a. to be charged after the expiry of 90 days from the date of deposit of goods in warehouse till the date of payment of duty.

Example:

Certain goods were imported on 29.05.14 and deposited into warehouse on 02.06.14 for 8 months. Before expiry of warehousing period, bill of entry was filed on 29.01.15 and assessed at duty of ₹ 50,000 on 29.01.15. The duty was paid on 10.02.15. The interest payable will be:

- Date of expiry of 90 days (from 02.06.14): 30.08.14
- No. of days for which interest is payable: 10.02.15 – 30.08.14 = 164 days
- Interest: ₹ 50,000 × 15% p.a. × 164 days ÷ 365 days = ₹ 3,370.



Clearance of warehoused goods for home consumption:

As per section 68, the importer of any warehoused goods may clear those goods for home consumption, if–

- (a) a bill of entry for home consumption in respect of such goods has been presented in the prescribed form;
- (b) the import duty leviable on such goods and all penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for home consumption has been made by the proper officer.

The owner of any warehoused goods may, at any time before an order for clearance of goods for home consumption has been made in respect of such goods, relinquish his title to the goods upon payment of rent, interest, other charges and penalties that may be payable in respect of the goods and upon such relinquishment, he shall not be liable to pay duty thereon.

The owner of any such warehoused goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law for the time being in force.

Clearance of warehoused goods for exportation:

As per section 69, any warehoused goods may be exported to a place outside India without payment of import duty if –

- (a) a shipping bill or a bill of export in the prescribed form or a label or declaration accompanying the goods as referred to in section 82 has been presented in respect of such goods;
- (b) the export duty, penalties, rent, interest and other charges payable in respect of such goods have been paid; and
- (c) an order for clearance of such goods for exportation has been made by the proper officer.

Allowance in case of volatile goods:

As per section 70, when any notified warehoused goods (viz. fuel, kerosene, diesel, wine, beer kept in casks, furnace oil, liquid helium gas, etc.) to which this section applies are at the time of delivery from a warehouse found to be deficient in quantity on account of natural loss, the Assistant Commissioner of Customs or Deputy Commissioner of Customs may remit the duty on such deficiency.

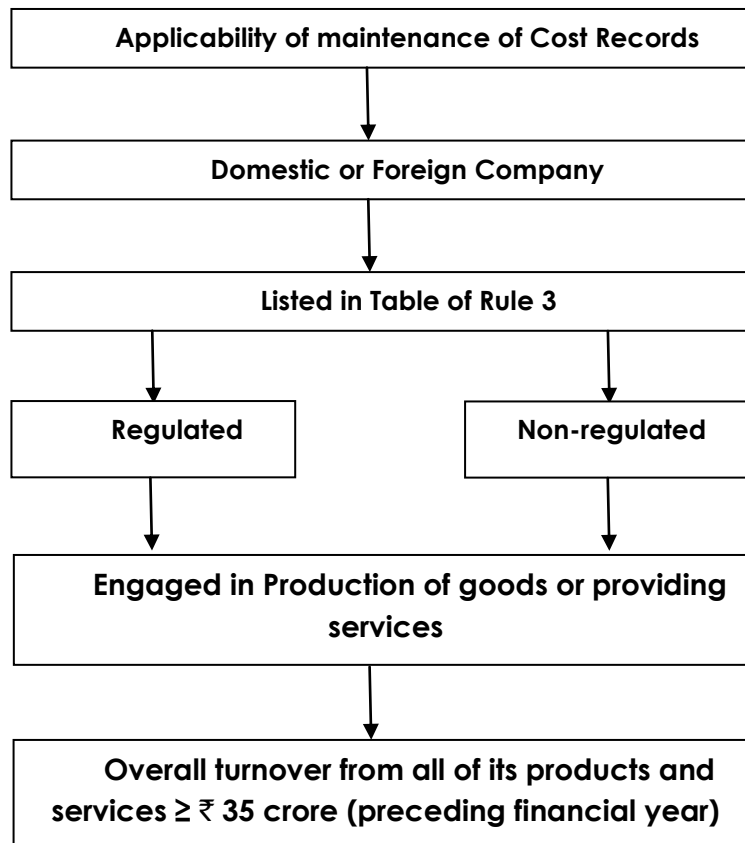
Example:

An importer having received 1,000 casks of beer from Scotland by a vessel, warehouses them in a bonded place. Each cask is reported to contain 1,000 litres. At the time of removal, it is found that 400 casks contained only 980 litres each. The duty payable on 20 litres per cask found deficient will be remitted u/s 70, as beer is notified goods u/s 70. The loss is found at the time at the time of delivery from warehouse and loss of mere 2% per cask appears to be a natural loss.



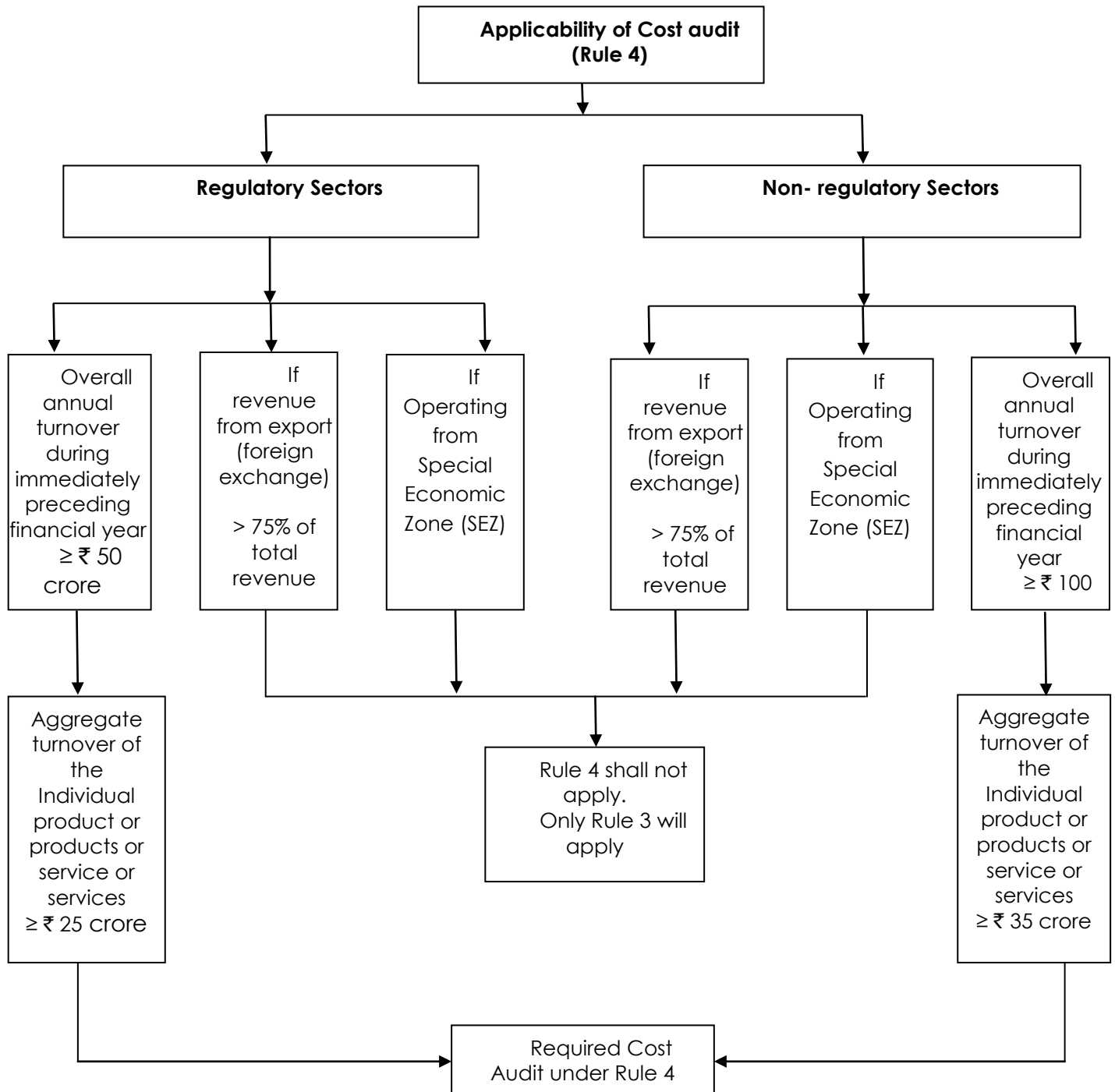
Companies (Cost Records and Audit) Rules, 2014 – Synopsis

Rules/Forms	Summary of Amendments Made
Rule 1: Short title and commencement	<p>(1) These rules may be called the Companies (Cost Records and Audit) Rules, 2014.</p> <p>(2) They shall come into force on the date of publication in the Official Gazette i.e. 30.06.2014.</p>
Rule 2: Definitions	<p>In these rules, defined various points -</p> <p>(a) Act; (aa) Central Excise Tariff Act Heading; (b) Cost Accountant in practice; (c) cost auditor (d) cost audit report; (e) cost records; (f) form; (g) institute; (h) all other words and expressions used in these rules but not defined, and defined in the Act or in the Companies (Specification of Definition Details) Rules, 2014 shall have the same meanings as assigned to them in the Act or in the said rules</p>
Rule-3: Application of Cost Records	<p>Two categories (regulated sectors and non-regulated sectors) have been retained and a general threshold of turnover of ₹ 35 crores or more has been prescribed for companies covered. Micro enterprise or a small enterprise as per MSMED Act, 2006 have been taken out of the purview.</p>



Rule-4: Applicability for Cost Audit

Even for regulated sectors like Telecommunication, Electricity, Petroleum and Gas, Drugs and Pharma, Fertilizers and Sugar, Cost audit requirement has been made subject to a turnover based threshold of ₹ 50 crores for all product and services and ₹ 25 crores for individual product or services. For Non-regulated sector the threshold is ₹ 100 crores and ₹ 35 crores respectively.

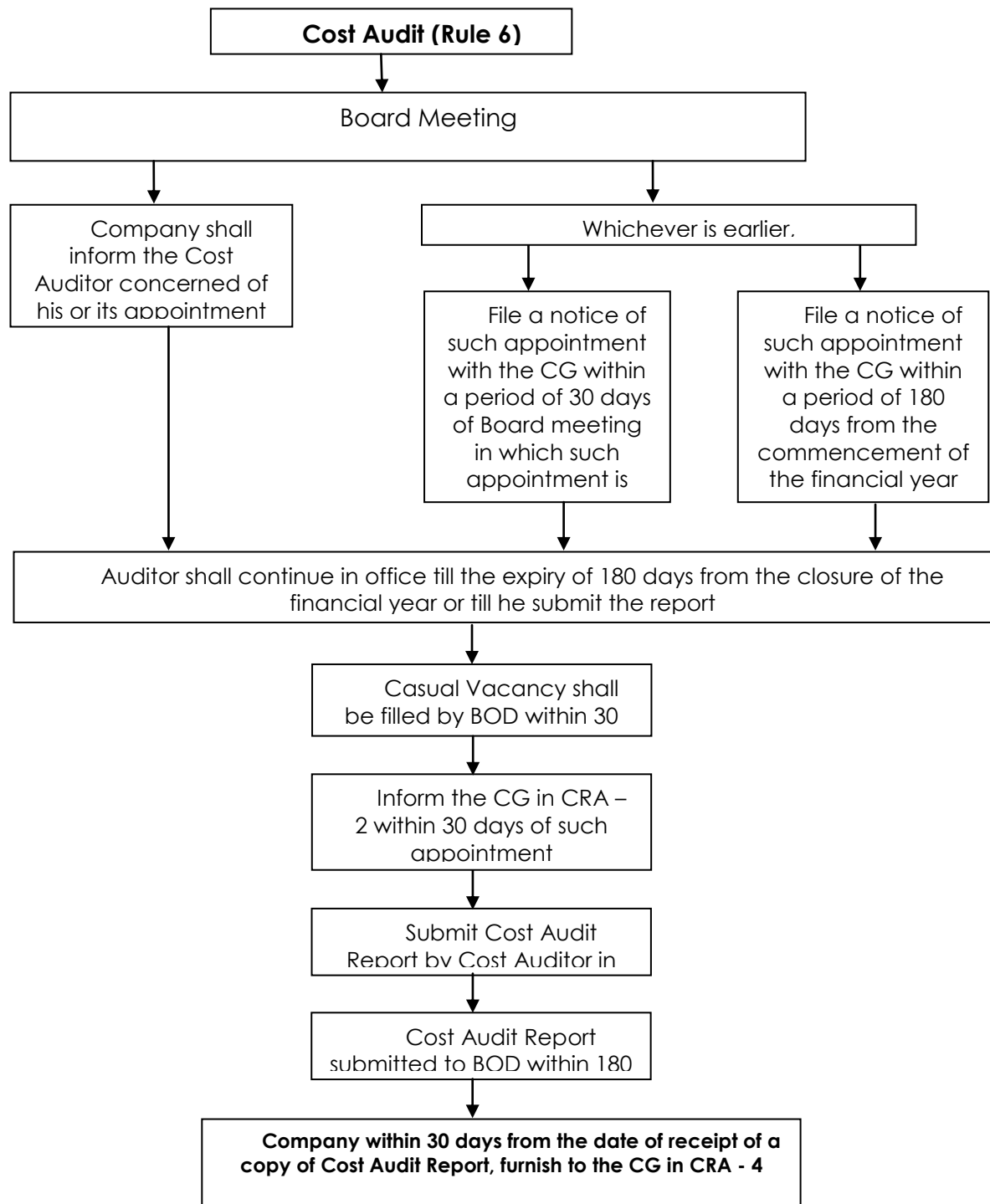




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Rule-5: Maintenance of Cost Records	The requirement to maintain cost records in Form CRA-1 have been postponed to Financial Year 2015-16 for the following companies in some non-regulated sectors, namely; Coffee and Tea, Milk Powder and Electricals and electronic machinery.
Rule-6: Cost Audit	Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal to be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in Form CRA-2 within thirty days of such appointment of cost auditor.





<p>CRA-1: Forms in which cost records shall be maintained</p> <p>[Pursuant to rule 5(1)]</p>	<p>The form CRA-1 prescribes the form in which cost records shall be maintained. The form categorises the requirement of maintaining proper details as per 30 headings. The headings are as follows: (1) Material Cost, (2) Employee Cost, (3) Utilities, (4) Direct Expenses, (5) Repair and Maintenance, (6) Fixed Assets and Depreciation, (7) Overheads, (8) Administrative Overheads, (9) Transportation Cost, (10) Royalty and Technical Know-how, (11) Research and Development expenses, (12) Quality Control Expenses, (13) Pollution Control Expenses, (14) Service Department Expenses, (15) Packing Expenses, (16) Interest and Financing Charges, (17) Any other item of Cost, (18) Capacity Determination, (19) Work-in-progress and finished stock, (20) Captive Consumption, (21) By-Products and Joint Products, (22) Adjustment of Cost Variances, (23) Reconciliation of Cost and Financial Accounts, (24) Related Party Transactions, (25) Expenses or Incentives on Exports, (26) Production records, (27) Sales records, (28) Cost Statements, (29) Statistical Records, (30) Records of Physical Verification.</p>
<p>CRA-2: Form of intimation of appointment of cost auditor by the company to Central Government</p> <p>[Pursuant to rule 6(2)]</p>	<p>(i) General Information</p> <p>(ii) Good/s or service/s to which cost audit relates</p> <p>(iii) Details of the cost auditor appointed</p> <p>(iv) Date of meeting of Board of Directors appointing the cost auditor</p> <p>(v) Attachments</p> <ul style="list-style-type: none"> - Copy of the Board resolution of the company - Optional attachment(s) - if any
<p>CRA-3: Form of Cost Audit Report</p> <p>[Pursuant to rule 6(4)]</p>	<p>Clause (vii) have been added to auditor's report as under: Detailed unit-wise and product/service-wise cost statements and schedules thereto In respect of the product/services under reference of the company duly audited and certified by me/us are/are not kept in the company.</p>



<p>Annexure to Cost Audit Report</p>	<p>Annexure has been reclassified into four parts as under:</p> <p>Part-A General Information, General Details of Cost Auditors, Cost Accounting Policy, Product/Service Details –for the company as a whole.</p> <p>Part-B For Manufacturing Sector Quantitative Information, Abridged Cost Statement, Details of Materials Consumed, Details of Utilities Consumed, Details of Industry Specific Operating Expenses.</p> <p>Part-C For Service Sector Quantitative Information, Abridged Cost Statement, Details of Materials Consumed, Details of Utilities Consumed, Details of Industry Specific Operating Expenses.</p> <p>Part-D Product and Service Profitability Statement, Profit Reconciliation, Value Addition and Distribution of Earnings, Financial Position and Ratio Analysis, Related Party Transactions, Reconciliation of Indirect taxes.</p>
<p>CRA – 4: Form for filing Cost Audit Report with the Central Government [Pursuant to rule 6(6)]</p>	<p>PART I – General Information PART – II – Attachment of Audit Report and optional attachment</p>