

All about Managing Director's Appointment under Company Law

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The provisions relating to appointment of Managing Director ('MD'), Manager are of strategic importance for any company. With respect to the appointment and remuneration of MD, there is adequate compliance and disclosures under the Companies Act, 2013 ('Act'), Income Tax Act, Accounting Standards, etc. This article focuses on the appointment of MD under Section 196 of the Act.

Basic Concepts

Managing Director: The Act defines MD as a director who is entrusted with substantial powers of management of company affairs. The power to do administrative acts of a routine nature when so authorised by the Board of Directors shall not be deemed to be included within the substantial powers of management. Under the Act, the following powers shall not be deemed to be substantial

powers of management:

- (i) Power to affix company's common seal to any document,
- (ii) Power to draw and endorse any cheque on company's account in any bank,
- (iii) Power to draw and endorse any negotiable instrument,
- (iv) Power to sign share certificates,
- (v) Power to direct registration of share transfer.

MD may be appointed by virtue of the Articles of Association or an agreement with the company or a resolution passed in its general meeting or a resolution passed in the meeting of the Board of Directors.

Appointment of MD, fulltime Director & Manager

A company (private company or public company) shall not appoint or

employ at the same time MD and Manager. However, there is no restriction on the appointment of MD and fulltime Director ('WTD') at the same time or WTD and Manager at the same time.

Tenure for appointment of MD :

A company (private company or public company) shall appoint or re-appoint any person as its MD for a term of 5 years at a time. It is further clarified that the re-appointment shall not be made earlier than 1 year before the expiry of his term.

Age Limit :

The Act places restriction on the age of the MD of the company. A company cannot appoint or continue employment of MD who is below the age of 21 years or has attained the age of 70 years. However, a company may appoint of a person as MD who has attained the age



of 70 years by passing a special resolution. The company is also required to give justification in the Explanatory Statement for appointing such person as MD of the company. However, such exemption w.r.t. the age of MD is not applicable if the age is below 21 years.

Other disqualifications w.r.t. MD :

A company (private company or public company) shall not appoint or continue the employment of any person as MD if:

- (i) Such person is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (ii) Such person has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- (iii) Such person has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

Procedure for appointment of MD :

The MD shall be appointed and terms and conditions of their appointment shall be approved by the Board of Directors of the company. Such approval of the Board of Directors shall be at a meeting i.e. not by way of Circular Resolution. MD's appointment shall be subject to approval by a resolution at the next general meeting of the company. Such general meeting can be Annual General Meeting or Extra-Ordinary General Meeting of the company. The approval of the Central Government is required if there is any variance to the conditions specified in that Schedule V to the Act.

The notice convening the Board or general meeting for considering the appointment of MD shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any. The company is required to file a return within 60 days of such appointment with the Registrar of Companies. If the shareholders, in its general meeting, do not approve the appointment of the MD, then any act done by such MD shall be deemed to be valid during the said tenure.

The above discussion relates to the 'procedure for appointment of MD' which falls under the provisions of Section 196(4) and 196(5) of the Act. Such provisions are not applicable to private company and specified IFSC Public Companies.

Documentation for MD appointment :

As a good corporate secretarial practice, it is essential that either the company enters into an agreement with the MD or issues an appointment letter (in accordance with Human Resource Policy) or both. The crux lies in drafting the said documents. It is essential that powers, duties, roles, responsibilities, notice period on resignation, etc. are appropriately mentioned in the said documents. It is also essential that salary, commission / bonus, perquisites, leave allowances and other facilities are included in the said documents after discussion with the company's Human Resource Department. Since the said documents cover certain confidential and financial information (like salary, perquisites, etc.), which cannot be

circulated to contracting parties, certain companies prefer to execute a separate Power of Attorney. The Power of Attorney (for the purpose of MD) is an exclusive document w.r.t. powers and duties only, without any reference of salary, resignation, etc. Such power of attorney may be shared by the company with the contracting parties, banks, mutual funds companies, government authorities, etc. However, it is important to note that the power of attorney shall be amended whenever a resolution affecting or amending the MD's powers is passed in the board meeting or shareholders' meeting. Considering the type of company, powers and duties of MD, the company may prepare and execute the following documents:

- (i) Board Resolution,
- (ii) Shareholder's Resolution and Explanatory Statement,
- (iii) Appointment Letter,
- (iv) Agreement,
- (v) Power of Attorney.

Conclusion :

It is essential that the company maintains records and documents under the Company Law. Certain documents, though not mandatory under Company Law, are executed and maintained by the company as a corporate secretarial practice. The execution and maintenance of such documents are important from the perspective of compliance and record keeping, requirements under secretarial audit and statutory audit. In case of litigation, such documents that are executed and well – maintained, helps the company and the MD in providing evidence. It is necessary that the entrepreneurs and professionals are aware and thorough with the approval process disclosures to the board of directors, shareholders (in the explanatory statement and Director's Report).

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