

Unit-3

Company Administration

Contents: Meaning- Key Managerial Personnel – Managing Director, Whole time Directors, the Companies Secretary, and Auditors – Appointment – Powers - Duties & Responsibilities. Managing Director – Appointment – Powers – Duties & Responsibilities. Company Secretary - Meaning, Types, Qualification, Appointment, Position, Rights, Duties, Liabilities Removal or dismissal.

Meaning of Key Managerial Personnel (KMP)

Key Managerial Personnel (KMP) refers to the top executives and officials within a company who are responsible for making important managerial decisions and running the day-to-day operations of the organization. These individuals typically hold senior positions and play a crucial role in the strategic direction and management of the company.

KMP positions can vary from one company to another, but they often include roles such as:

1. **Chief Executive Officer (CEO):** The highest-ranking executive in the company, responsible for overall strategic planning, decision-making, and management.
2. **Chief Financial Officer (CFO):** In charge of financial planning, reporting, and management, including budgeting, accounting, and financial analysis.
3. **Chief Operating Officer (COO):** Oversees the company's operations and ensures that processes and systems are optimized for efficient performance.
4. **Company Secretary (CS):** Responsible for ensuring that the company complies with legal and regulatory requirements, maintains proper corporate governance, and manages corporate records.
5. **Chief Information Officer (CIO) / Chief Technology Officer (CTO):** Heads the technology-related functions, including IT strategy, infrastructure, and innovation.
6. **Chief Marketing Officer (CMO):** Leads the marketing efforts of the company, including branding, advertising, and customer engagement.
7. **Chief Human Resources Officer (CHRO):** Manages the company's human resources, including recruitment, employee relations, training, and development.

8. **Chief Legal Officer (CLO) / General Counsel:** Handles legal affairs, provides legal counsel, and ensures the company's compliance with laws and regulations.
9. **Chief Strategy Officer (CSO):** Focuses on developing and implementing strategic plans to achieve the company's long-term goals.
10. **Chief Risk Officer (CRO):** Identifies and manages various risks that the company may face, including financial, operational, and regulatory risks.

It's important to note that the specific roles and titles of KMP can vary depending on the company's industry, size, and structure. In many jurisdictions, regulations and reporting requirements may also define which positions qualify as key managerial personnel. These individuals often have a significant impact on the company's performance, growth, and overall success.

Managing director

According to the Companies Act of 2013 in India, the term "Managing Director" refers to an individual who holds the position of a director and also has substantial powers of management over the company's affairs. The role and responsibilities of a Managing Director are defined within the legal framework of the Companies Act. Here are some key points regarding the meaning of Managing Director under the Companies Act 2013:

1. **Definition:** Section 2(54) of the Companies Act 2013 defines a Managing Director as a director who, by virtue of an agreement with the company or its shareholders, or by the company's Articles of Association, is entrusted with substantial powers of management, which would not otherwise be exercisable by the board of directors.
2. **Powers of Management:** A Managing Director typically has a higher degree of decision-making authority compared to other directors. They may be authorized to make significant operational and strategic decisions without requiring the approval of the full board.
3. **Board of Directors' Oversight:** While a Managing Director holds substantial powers, they still operate within the oversight of the board of directors. The board collectively supervises the actions and decisions of the Managing Director.
4. **Appointment and Tenure:** The appointment, reappointment, and removal of a Managing Director are subject to the provisions of the Companies Act, the company's Articles of Association, and the shareholders' agreement, if any.
5. **Limitations and Compliance:** The Companies Act imposes certain restrictions on the powers of a Managing Director, particularly in matters that require shareholders' approval.

or relate to related party transactions. Additionally, a Managing Director must comply with corporate governance norms and other legal requirements.

6. **Disclosure and Reporting:** The Companies Act mandates that certain information related to the appointment, remuneration, qualifications, experience, and other details of the Managing Director be disclosed in the company's annual financial statements and other relevant documents.

Whole-time director

According to the Companies Act of 2013 in India, the term "Whole-time Director" refers to a director who is in the full-time employment of the company and has significant responsibilities for the management and operations of the company. Here are the key points regarding the meaning of a Whole-time Director under the Companies Act 2013:

1. **Definition:** Section 2(94) of the Companies Act 2013 defines a Whole-time Director as a director who is in the whole-time employment of the company and is also entitled to receive remuneration for their services.
2. **Full-time Employment:** A Whole-time Director is someone who devotes their entire working time to the company's affairs. This distinguishes them from other directors who might hold non-executive or part-time positions.
3. **Role and Responsibilities:** Whole-time Directors are typically involved in the day-to-day management, operations, and decision-making of the company. They hold executive positions and are actively engaged in running the company's business.
4. **Remuneration:** Whole-time Directors receive remuneration for their services, which may include a combination of salary, allowances, perks, bonuses, and other benefits. The remuneration is usually determined by the board of directors and, in some cases, subject to shareholders' approval.
5. **Board of Directors' Oversight:** While Whole-time Directors have significant management responsibilities, they are still subject to the oversight and direction of the board of directors. The board collectively supervises the actions and decisions of Whole-time Directors.
6. **Appointment and Tenure:** The appointment, reappointment, and removal of Whole-time Directors are subject to the provisions of the Companies Act, the company's Articles of Association, and shareholders' agreement, if any.
7. **Disclosure and Reporting:** The Companies Act requires certain information related to the appointment, remuneration, qualifications, experience, and other details of Whole-time

Directors to be disclosed in the company's annual financial statements and other relevant documents.

8. Whole-time Directors play a vital role in the management and functioning of the company, contributing to its strategic direction, operational excellence, and overall success. The Companies Act ensures transparency, accountability, and proper governance in the appointment and functioning of Whole-time Directors in Indian companies.

Company secretary

According to the Companies Act of 2013 in India, the term "Company Secretary" refers to a professional who possesses the necessary qualifications and is appointed by a company to ensure compliance with legal and regulatory requirements, maintain proper corporate governance practices, and manage corporate records. Here are the key points regarding the meaning of a Company Secretary under the Companies Act 2013:

1. **Definition:** Section 2(24) of the Companies Act 2013 defines a Company Secretary as a person who is a member of the Institute of Company Secretaries of India (ICSI) and who has been appointed to perform the duties of a Company Secretary under the Act.
2. **Qualifications:** A Company Secretary is required to be a member of the Institute of Company Secretaries of India (ICSI). The ICSI is the professional body responsible for regulating and promoting the profession of Company Secretaries in India.
3. **Roles and Responsibilities:** The Company Secretary plays a crucial role in ensuring compliance with various legal and regulatory requirements related to the company's operations. They are responsible for maintaining records, filing necessary documents with regulatory authorities, and advising the board of directors on matters of corporate governance.
4. **Corporate Governance:** The Company Secretary assists the board of directors in adhering to good corporate governance practices, ensuring transparency, accountability, and ethical conduct within the company.
5. **Filing and Documentation:** A Company Secretary is responsible for ensuring timely and accurate filing of various documents with regulatory authorities, such as the Registrar of Companies (RoC) and the Securities and Exchange Board of India (SEBI).
6. **Meetings and Minutes:** The Company Secretary helps organize and manage meetings of the board of directors, as well as meetings of shareholders. They also ensure proper recording and maintenance of minutes of these meetings.

7. **Legal Compliance:** The Company Secretary keeps track of changes in relevant laws and regulations that affect the company's operations and ensures that the company's activities are in compliance with these laws.
8. **Disclosure and Reporting:** The Companies Act mandates certain disclosures related to the Company Secretary's appointment, qualifications, and remuneration to be included in the company's annual financial statements and other relevant documents.

The role of a Company Secretary is integral to maintaining legal and regulatory compliance, as well as upholding high standards of corporate governance within a company. They provide valuable guidance to the board of directors and senior management on matters related to compliance, corporate law, and governance practices.

Auditors-Appointment, Power, Duties and Responsibilities

COMPANY AUDITOR

Meaning of company auditor: A Company auditor is an individual professional who is appointed to conduct audit of the Company & he prepare an independent audit report of the Company & he is the person who is compulsorily to be appointed as per company's Act of 2013, to audit the books of accounts of the company.

Appointment of Company Auditor

I Appointment of first auditor in newly Started company

The power of appointing an auditor is vested in 3 authorities-

1. Board of directors [(Sec. 139 (6) of co. Act. 2013]

Within a month (30 days) after the firm's incorporation or registration, the Board of Directors appoints the first auditor of a newly established company.

2. Shareholders

Within 90 days of the company's incorporation or registration, the shareholders of the company must hold an extra-ordinary general meeting (EGM) to appoint the first auditor if the board of directors fails to do so.

3. Central Government [sec (139 (5)]

In the event that the EGM fails to nominate the auditor or if no auditors are appointed or reappointed, the central government may appoint someone to fill the position.

- a. **Tenure Till conclusion 1st AGM.**

- b. **Remuneration** The Board can decide the first auditor's remuneration in accordance with Section 142's provisions.

II. Appointment of Auditor at 1st AGM

According to section 139(1), the shareholders of each company must appoint an auditor to conduct the audit process at the first annual general meeting.

III. Appointment against a Casual Vacancy

Casual vacancy of auditor arises due to the following reasons:

1. Deaths of an auditor
2. Resignation of an auditor
3. Disqualification of the auditor.

As per section 139 (8) any casual Vacancy with Shall be filled by board within 30 days in case of death and Disqualification and by Shareholders in case of resignation within 3 months.

IV. Appointment of Subsequent auditor

- a. In case of casual vacancy, the company has to appoint a subsequent auditor.
- b. If the auditor is appointed to the company, he or she must notify the registrar of companies in writing that he or she has accepted or refused the appointment; if he or she refuses, the Subsequent auditor will be appointed.

V. Appointment of Government auditor

To Government companies: According to Section 617 of the Chartered Accountants Act of 1949, the central government shall appoint or re-appoint the auditor of a government company on the advice of The Comptroller and Auditor general of India.

➤ **Remuneration/Audit fees**

Sec 142, prescribed that Remuneration of the Auditor of a company will be fixed in its Annual general meeting.

- **Term of an Auditor** - Auditor of a company is appointed for a period of 5 Consecutive years either individual or firm.

Re-appointment of an Auditor

After completion of tenure of 5 years the auditor may be re-appointed by complying the provision Section 139 (9), which states that the retiring auditor may be re-appointed in the next AGM

Removal of an auditor

In the first annual general meeting, shareholders have the right to remove the first auditors, who are appointed by the board of directors, and to appoint new auditors in its 1st AGM.

The auditor can be removed from his office before the expiry of his term only by, obtaining the approval of Central Government. Sec 140 (1) of companies act of 2013, makes Special provision in this respect, A notice has to be given to Auditor about the intension of removal, not less than 14 days before the Next AGM.

RIGHTS OF AN AUDITOR

As per Section 146 of the Companies Act, an auditor has full rights to receive the notice and communications related to all the meetings during his/her term. The company should send notice to the auditor even when his audited accounts are not discussed in the meeting. As an auditor, he/she has full authority to attend the company's meeting. He/she can also speak at the meeting if any clarification is needed for any matter related to the company's concern.

1. **Right to access accounts:** According to Section 143(1) of the Companies Act, every auditor has full rights to access books related to accounts, vouchers, and other relevant company documents at all times during his/her term of office.
2. **Right to make suggestions:** The auditor has a right to suggest suitable modifications in methods of accounting, and if such suggestions are made, then the director should comply with them. If such compliance is not done, the auditor has full authority to report the same to the members. However, the auditor has no authority to alter the company's accounts in his own accords.
3. **Right to report:** The auditor has a right as well as a duty to make a report to the members on the account examined by him/her to state whether it is in his opinion and to the best of his knowledge and explanation stated by him. Auditors must explain whether the financial statement given is true and fair to the company's business.
4. **Right to receive Information and Explanation:** Every auditor has full rights to receive Information and Explanation related to any of the accounts, vouchers, and other relevant company documents at all times during his/her term of office.

5. **Right to sign the audit report:** As per Section 145 of the Companies Act, 2013, The person appointed as the company's auditor shall sign or certify the company's audit report or any other document presented in the audit report in accordance with Section 141(2) and the qualifications, opinions or comments relating to financial transactions which have any adverse effect on the functioning of the company.
6. **Branch visits:** As per Section 143(8) of the Companies Act, an auditor has full authority to visit the branches to check all the works related to the company's matter. He also has full rights to go for surprise visits to check the entries in the books of accounts. Overall, he/she can check all the documents which are related to the company's concern However, the auditor has no authority to visit foreign branches.
7. **Right to receive a notice and attend meetings:** As per Section 146 of the Companies Act, an auditor has full rights to receive the notice and communications related to all the meetings during his/her term. The company should send notice to the auditor even when his audited accounts are not discussed in the meeting. As an auditor, he/she has full authority to attend the company's meeting. He/she can also speak at the meeting if any clarification is needed for any matter related to the company's concern
8. **Right to be indemnified:** Under certain conditions, a company can take civil or criminal actions against the auditor. If any legal action is taken against him, he generally defends himself against the proceedings. However, if the judgment goes in his favors means in favors of the auditor, then the company has to pay compensations for all the losses incurred by him during the proceeding. These types of rights are general rights given in most cases.
9. **Right to receive remuneration:** The company determines the auditor's remuneration in the general meeting. However, when the Board of Directors appoints the company's first auditor, they can fix his remuneration. The remuneration is in addition to the fees paid to him. It includes all expenses incurred by the auditor as a result of the audit and all facilities granted to him. However, this remuneration does not include amounts paid to him for services other than auditing.
10. **Right to seek legal and technical advice:** Auditors are entitled to obtain expert advice on legal or technical issues at the Company's expense. But in his report, he should express his own opinion, not that of the concerned experts.

DUTIES OF AN AUDITOR

Auditor's duties to shareholders according to Companies Act are as follows:

1. **Duty to Make Report:** An auditor is appointed to keep a check on the directors and therefore he has to send his report to the member even though he might have been appointed by the directors. He is the agent of the shareholders to examine the accounts maintained and supervised by the directors and to report to them whether the directors have properly maintained the accounts.

Matters to be Stated in the Report

The auditor will report to the shareholders about the accounts which have been audited by him. The report shall contain the following

- Whether or not he has obtained all the information and explanation which to the best of his knowledge and belief were necessary for the purposes of his audit.
- Whether, in his opinion, the Profit and Loss Account referred to in his report exhibits a true and fair view of the profit or loss.
- Whether, in his opinion, the Balance Sheet referred to in his report is properly drawn up so as to exhibit a true and fair view of the state of affairs of the company according to the best of the information and explanation given to him as shown by the books of accounts.
- Whether in his opinion, proper books of account as required by law have been kept by the company.
- Whether or not the balance sheet and profit and loss account have been drawn up according to the requirements of the Companies Act.
- Whether in his opinion, the profit and loss account and balance sheet comply with the prescribed accounting standards.

2. Certification to be given for Statutory Report: According to section 165 of Companies Act, the company has to hold a statutory meeting within a period of not less than one month nor more than six months after registration of the company in which statutory report is to be presented the auditor has to give a certificate for the following matters in this statutory report:

- Number and types of shares issued by the company.
- Total amount of cash received by the company for allocated shares.
- Statement of receipts-payments of cash till that date.

3. When Special Auditor is Appointed: To verify company's accounts and management, Central Government appoints special auditor. At that time, it is auditor's duty to offer necessary and possible help to such auditor- inspector.

4. Duty to Assist Investigators: It is the duty of an auditor to assist the Inspectors in every possible way when the affairs of the company are being investigated. He can be asked to produce the working papers for the purpose.

5. Duty to Call for Information: It is the duty of the auditor to call for information on various points, such as:

- Whether loans have been properly secured.
- Whether the shares, debentures securities, etc., have been sold at less than the purchase value.
- Whether the personal expenses have been charged to revenue account.

Managing director-Appointment, powers, duties and responsibilities

According to the Companies Act of 2013 in India, the term "Managing Director" refers to an individual who holds the position of a director and also has substantial powers of management over the company's affairs. The role and responsibilities of a Managing Director are defined within the legal framework of the Companies Act. Here are some key points regarding the meaning of Managing Director under the Companies Act 2013:

1. **Definition:** Section 2(54) of the Companies Act 2013 defines a Managing Director as a director who, by virtue of an agreement with the company or its shareholders, or by the company's Articles of Association, is entrusted with substantial powers of management, which would not otherwise be exercisable by the board of directors.

The Companies Act, 2013 ('Act') defines a managing director as a director entrusted with substantial powers of managing the company affairs by virtue of either an agreement with the company, articles of association or a resolution passed in its general meeting or board of directors. However, the managing director must exercise their powers subject to the board's control, superintendence and direction.

- ▶ The Act also states that substantial powers of the managing director **do not include the power to do** administrative acts that are of a routine nature authorized by the board, such as the following:
 - Power to affix the company's common seal on any document.
 - Draw and endorse cheque on the company's account in any bank.
 - Draw and endorse a negotiable instrument.

- Sign any share certificate.
- Direct registration of transfer of a share.

Appointment of a Managing Director

The process of appointment of a managing director by passing a resolution is as follows:

1. The company should **conduct a board meeting** after giving notice to all the company directors to transact the following business:
 - a. Decision on the person to be employed as a managing director **based on the recommendations of the Nomination and Remuneration Committee**, if applicable, and ensuring that the person is not disqualified for such appointment.
 - b. **Approve the draft agreement** to be executed and signed between the company and the proposed managing director.
 - c. Fix the date, time and venue for conducting a general meeting.
 - d. Approve the notice of the general meeting and the explanatory statement.
 - e. Authorize the company secretary to issue the general meeting notice on behalf of the board.
2. The company should **file the board resolution copy in Form MGT-14** with the Registrar of Companies (ROC) within 30 days of passing such a resolution.
3. In the **case of listed companies**, it should submit the **disclosure of such an appointment to the stock exchange** within **24 hours** from the board meeting date and post it on its website within two working days.
4. The company should **hold a general meeting at the time and date fixed** in the board meeting and obtain shareholders' approval for the appointment of the managing director through a resolution.
5. In the case of listed companies, it should **disclose the proceedings of the general meeting to the stock exchange within 24 hours** from the conclusion of the general meeting and post it on its website within two working days.
6. **When the appointment of a managing director is not according to the provisions of Schedule V of the Act, it must obtain approval of the Central Government** by filing an application as per Section 201 of the Act. (Schedule V lays down the disqualification and remuneration provisions for the appointment of managing directors)

7. After appointing the managing director by passing a resolution in the general meeting, the company must file the following forms with the ROC:
 - a. File the Form MGT-14 with the ROC within 30 days of passing the resolution in the general meeting.
 - b. File the Form DIR-12 relating to the particulars of the appointment of a managing director within 30 days of such appointment.
 - c. File Form MR-1, i.e., return of the appointment of a managing director within 60 days from the date of such appointment.
8. The company should make the necessary entries in the director and key managerial personnel register and the register of contracts in which the directors are interested in the Form MBP-4.

Procedure for Appointment of Managing Director

STEPS	PROCEDURE
Step :1 Approval of Board	Hold Board Meeting Get approval of board for appointment of Managing Director Approve the terms and conditions on which MD is proposed to be appointment. Fix the date, time and venue of General Meeting to get approval of shareholders by passing Resolution.
Step: 2 Filling of required forms	After passing Board Resolution following forms are required to be filed with ROC: DIR-12 within 30days of passing of board resolution. MGT-14 within 30days of passing of board resolution. MR-1 within 60days of passing of board resolution.
Step:3 Call General Meeting	Issue Notice for calling General Meeting, at least 21days before the General meeting

Step :4 Approval of Shareholders	Hold General Meeting Pass Special resolution for appointment of Managing Director.
Step :5 Filling of Form	The Special Resolution passed at General Meeting needs to be filed with ROC within 30days of passing of Resolution.

Appointment of managing director

A Managing director may be appointed:

1. By an agreement with the company, or
2. By a resolution of the company in a general meeting, or
3. By the board of directors, or
4. Under a memorandum, or
5. Under the articles of the company

Disqualification of a Managing Director

The following persons are disqualified and cannot be appointed as managing directors of a company:

1. When the person is an undischarged bankrupt or has been adjudged as an insolvent.
2. The person had been or is sentenced by a court and convicted for more than six months.
3. The person has suspended payments to his creditors or has made a composition with them at any time.

Conditions for Appointment of a Managing Director

1. **Maximum and Minimum Age Limit:** The minimum age limit for the appointment of a **managing director is above 21 years**, and the **maximum age is 70 years**. However, a person **above 70 years can be appointed** as a managing director **by passing a special resolution** in the general meeting after obtaining the shareholders' approval. In such a case, the explanatory statement annexed to the notice for passing such a resolution should state the justification for appointing such a person.
2. **Tenure:** The maximum tenure for the appointment of a managing director is **five years at a time**. The managing director must submit the identity proof and address proof to the company for such an appointment.

3. **Re-appointment:** Re-appointment of a managing director can be done for another term. However, such re-appointment cannot be done earlier than one year before the expiry of the current term. Thus, a company can re-appoint the managing director for another term in **the last year of his/her current term**. The managing director can be re-appointed for an additional term of five years.

Powers and rights of managing director

Under the Companies Act of 2013 in India, the rights and powers of a Managing Director (MD) of a company are outlined in various sections and provisions of the Act. These rights and powers can also be influenced by the company's articles of association and any specific terms of appointment. Here are some of the key rights and powers of a Managing Director as per the Act:

1. **Management Authority:** The MD has the authority **to manage the day-to-day operations** of the company, subject to the overall direction and supervision of the board of directors.
2. **Executive Powers:** The MD typically has executive powers to make **operational decisions, enter into contracts**, and manage the company's affairs in line with the company's objectives and policies.
3. **Decision-Making:** The MD plays a pivotal role **in strategic decision-making, business planning, and policy formulation, often collaborating** with other members of the senior management team.
4. **Financial Powers:** The MD may have financial powers **to approve budgets, expenditures, investments, and financial transactions** within the limits set by the board or the company's policies.
5. **Representation:** The MD is often authorized to **represent the company in legal, financial, and administrative matters**, including signing agreements and documents on behalf of the company.
6. **Board Participation:** The MD usually participates in **board meetings, providing insights, updates, and recommendations to the board**. However, the MD is not automatically a director unless specifically appointed as one.
7. **Delegated Authority:** The MD can delegate specific powers **to other executives or managers** within the company, provided it's consistent with the board's directions and policies.

8. **Appointment and Removal of Key Personnel:** The MD may have the authority to **hire, promote, and terminate key personnel** within the organization, subject to the company's HR policies and board oversight.
9. **Emergency Decision-Making:** In urgent situations, the MD may have the authority to take immediate **actions to address critical matters**, while subsequently informing the board.
10. **Contractual Authority:** The MD may have **the power to negotiate and execute contracts**, subject to any financial or legal limits set by the board.
11. **Operational Policies:** The MD can **formulate and implement operational policies and guidelines**, aligning them with the company's overall strategy and objectives.
12. **Compliance Oversight:** The MD has a responsibility to ensure the company's compliance with applicable **laws, regulations**, and industry standards.

It's important to remember that while the MD has substantial powers, these powers are not unlimited and are subject to the company's articles of association, board resolutions, and any legal or regulatory restrictions. Additionally, the Companies Act of 2013 places an emphasis on the collective authority of the board of directors, and the MD's powers should be exercised within the broader framework of corporate governance and accountability.

Duties and Responsibilities of a Managing Director

1. **Fiduciary Duty:** The MD has a fiduciary duty to **act in the best interests of the company and its shareholders**. This includes making decisions that are in line with the company's objectives and maximizing shareholder value.
2. **Business Strategy and Planning:** The MD is responsible for developing and implementing the company's business strategies and plans. This involves **setting long-term goals, formulating strategies to achieve them**, and overseeing their execution.
3. **Operational Management:** The MD is in **charge of day-to-day operations of the company**. This involves ensuring that the company's operations are efficient, effective, and aligned with its strategic goals.
4. **Financial Management:** The MD has a role in financial management, including **overseeing budgeting, financial reporting, and ensuring the company's financial health**.
5. **Corporate Governance:** The MD must ensure that the company operates in **compliance with legal and regulatory requirements**. This includes following corporate governance practices and maintaining transparency.

6. **Risk Management:** The MD is responsible for **identifying and managing risks** that could affect the company's operations, reputation, or financial stability.
7. **Stakeholder Management:** The MD must engage with various stakeholders, including shareholders, employees, customers, suppliers, and regulatory authorities. **Building and maintaining positive relationships with these stakeholders is essential.**
8. **Leadership and Team Management:** The MD leads the company's management team and is responsible for **hiring, developing, and retaining talented employees.** Providing effective leadership and direction to the team is crucial.
9. **Reporting to the Board:** The MD reports to the company's board of directors, providing regular updates on the **company's performance, financial status, and strategic initiatives.**
10. **Corporate Social Responsibility (CSR):** The MD is involved in formulating and implementing the company's CSR initiatives, **ensuring the company contributes positively to society and the environment.**
11. **Legal and Compliance Responsibilities:** The MD must **ensure that the company adheres to all applicable laws, regulations, and industry standards.** This includes overseeing compliance with tax laws, labor laws, environmental regulations, and more.
12. **Representation and Networking:** The MD often represents the company in public forums, industry associations, and business networks. **Building the company's reputation and fostering relationships in the industry are part of this role.**

Audit committee

Audit committee: CA 2013 requires the board of every listed company & certain other public company to constitute the audit committee consisting of a minimum of 3 directors, with the independent directors forming the majority. It prescribes that the majority of members including its chairman have to be persons with the ability to read & understand financial statements. The audit committee has been entrusted with the task of providing recommendations for appointment & remuneration of auditors, review of independent of directors, providing approval of related party transactions & scrutiny over other financial mechanisms of the company.

Audit Committee Under Section 177 of Companies Act, 2013 the Board of Directors of every listed company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee. The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority:

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement. Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be constituted in accordance with sub- section (2)

Functions of Audit Committee

- Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall inter alia, include-
- the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- review and monitor the auditor's independence and performance, and effectiveness of audit process;
- examination of the financial statement and the auditors' report thereon;
- approval or any subsequent modification of transactions of the company with related parties;
- scrutiny of inter-corporate loans and investments;
- valuation of undertakings or assets of the company, wherever it is necessary;
- evaluation of internal financial controls and risk management systems;
- monitoring the end use of funds raised through public offers and related matters.

The Audit Committee may call for the comments of the auditors about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the board. It may also discuss any related issues with the internal and statutory auditors and the management of the company.

The Audit Committee is empowered to obtain any external professional advice. Further, it will have access to any information relating to the company to the items specified in sub-section or referred to it by the Board and for this purpose shall have power to obtain professional advice from internal sources and have full access to information contained in the records of the company.

Corporate Social Responsibility Committee (CSR Committee)

Under Section 135 of Companies Act, 2013 every company having net worth of rupees five Hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of five crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. The board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

The Corporate Social Responsibility Committee shall-

- (a) formulate and recommend to the Board, a Corporate Social Responsibility policy which shall indicate the activities to be undertaken by the company as specified in schedule VII;
- (b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and
- (c) monitor the Corporate Social Responsibility Policy of the company from time to time.

The Board of every company referred to in sub-section (1) shall –

- (a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such policy in its report and also place it on the company's website, if any in such manner as may be prescribed; and
- (b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

The Board of every company referred to in Sec. 135(1) shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

Company secretary- meaning, types, qualification, appointment, position, rights, duties, liabilities and removal or dismissal

Company secretary

According to the Companies Act of 2013 in India, the term "Company Secretary" refers to a professional who possesses the necessary qualifications and is appointed by a company to ensure compliance with legal and regulatory requirements, maintain proper corporate governance practices, and manage corporate records.

Definition: Section 2(24) of the Companies Act 2013 defines a Company Secretary as a person who is a member of the Institute of Company Secretaries of India (ICSI) and who has been appointed to perform the duties of a Company Secretary under the Act.

Types of Secretaries

1. **Private secretary:** A private secretary is a person employed by another for his **personal work and correspondence**. He is the right-hand man of his employer. Persons holding top positions in business houses, public bodies and government; the professional people like doctors, lawyers, accountants etc. whose work requires close

attention and specialization cannot afford to spare time for routine activities. For such activities they employ secretaries.

2. **Secretary of an association or club:** An association or a club is formed to serve some common cause of its members, **such as promoting art, science, music, sports etc.** These associations, unions or clubs require the services of a whole-time secretary. They usually appoint paid secretary to conduct the day-to-day activities of the association and act as the agent and adviser of the managing committee.
3. **Secretary of a government department:** Secretary of executive appointed head who manages a particular department of the government. government Usually an department I.A.S. officer is appointed as the secretary of a particular department, such as Secretary Ministry of Home Affairs; Secretary, Ministry of Foreign Affairs. The secretary of a government department acts under the direct control of the minister in charge of that department. **He is not only the executive or administrative head of the department but also the chief adviser to the Minister.** The ultimate policy decisions are taken by the minister himself, but he has to remain SO much busy with political and parliamentary matters that he finds very little time to keep in touch with day-to-day development relating to the functioning of his ministry Consequently, he has to depend heavily on the aid and advise of his secretary.
4. **Secretary of a co-operative society:** A co-operative society is a body corporate with a common seal and with powers to own property, to enter into contracts and to do all that is necessary to achieve the objectives for which it is formed. The secretary of a co-operative society, like that of a company is an officer of the society. He may be appointed either as a **paid secretary or elected from among the members of the managing committee.** A secretary may be appointed on part time or full-time basis depending on the size or volume of work of the society. The main function of the secretary of a co-operative society is to manage the affairs of the society under the control and direction of the managing committee. He is required to maintain proper records and registers in accordance with the rules framed by the government and submit periodical statements and returns to the Registrar of co-operative societies.
5. **Secretary of local Body: Local self-governing bodies such and municipal committees, improvement trusts, zila parishads etc.** usually provide for the appointment of a whole-time secretary to look after their **day-to-day affairs.** The secretarial duties include office management, assisting in the conduct of meeting, recording proceedings at the meetings of the body concerned, ensuring that the other legal requirements are duly complied with and doing scores of other functions.

6. **Company secretary:** The largest and most important group of secretaries in the business sector comprise those **appointed by joint stock companies**. In recent times there has been an increasing appreciation of the role of company secretaries in the administration of companies. It is with this class of secretaries that we are concerned with in this book.

Qualifications of Company secretary

Qualification prescribed for appointment of Company Secretary

- The whole-time company secretary as KMP shall be **member of the institute of Company Secretaries of India**.
- **A listed company** or any **other public company** having paid up **₹10 crores** or more shall appoint any individual who possesses the qualification membership of the Institute Company Secretaries of India constituted under the Company Secretaries Act, 1980 as a whole-time secretary to perform the duties of a Key Managerial Person and Secretary under the Companies Act, 2013.
- **Appointment of director as Secretary:** Where the Board of directors of a listed company or any other public company having paid up capital of **Rupees Ten Crores or more consisting of only two directors**, neither of them shall be appointed as secretary of the company.
- However, if a **public company has more than three directors on the Board, one of them can act as secretary subject to that such director is a member of the Institute of Company Secretaries of India** and subject to the compliance of the provisions of section 188 of the Companies Act, 2013
- **Secretary is not responsible under sections 138 and 141 of the Negotiable Instruments Act, 1881**

Other Qualifications

1. **Sound Education:** A strong educational foundation is essential, often including a bachelor's degree in commerce, law, or a related field, followed by professional certification. This provides the necessary knowledge base for corporate governance.
2. **Proficiency in Language:** Effective communication is crucial. Proficiency in languages, particularly the official language(s) of the company's operations, ensures clear and accurate correspondence, which is vital for legal and administrative purposes.
3. **Knowledge of Office Organization:** A Company Secretary should be well-versed in efficient office organization to handle documentation, maintain records, and manage administrative tasks effectively. This organizational skill ensures the smooth functioning of corporate affairs.

4. **Business Methods:** Understanding contemporary business practices, financial management, and industry-specific knowledge is vital. It enables the Company Secretary to provide strategic insights and support to the company's leadership, helping in informed decision-making.
5. **Knowledge of Accountancy and Taxation:** Proficiency in financial matters, including accounting principles and tax regulations, ensures accurate financial reporting and compliance with tax laws, contributing to the company's financial health.
6. **Knowledge of Mercantile Law:** Understanding commercial and mercantile laws is crucial for legal compliance and contract management, safeguarding the company from legal issues.
7. **Knowledge of Economics, Banking, and Finance:** Insights into economic trends, banking, and financial markets help in making informed financial decisions, managing investments, and optimizing the company's financial resources.
8. **Impressive Personality:** Strong interpersonal and communication skills, along with a professional demeanor, contribute to effective stakeholder relations. An impressive personality enhances the Company Secretary's ability to represent the company positively.

Appointment

COMPULSORY APPOINTMENT OF KMP (KEY MANAGERIAL PERSONNEL) UNDER SECTION 203 OF COMPANIES ACT, 2013 READ WITH RULE OF THE COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

Every listed company and every other public company having paid-up share capital of ten crore rupees or more shall have the following whole-time key managerial personnel:

- managing director, or Chief Executive Officer or manager and time director,
 - Company secretary and
 - Chief Financial Officer
- ✓ An individual shall not appoint or reappointed as the chairperson of the company, as well as the managing director of Chief Executive Officer of the company at the same time after the date of commencement of this Act.
 - ✓ Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of Board containing the terms and conditions the appointment including the remuneration.
 - ✓ whole-time Key managerial personnel shall not hold office in more than one company except in its subsidiary company same time.
 - ✓ Key managerial personnel shall not be disentitled from being a director of any company with the permission of the board.

- ✓ whole-time key managerial personnel holding office in more than one company at a same time on the date of such commencement of this act, shall within a period of six months from such commencement, choose one
- ✓ If the office of any whole-time key managerial personnel vacated the resulting shall be filled-up by the Board at a meeting of the Board within a period six months from the date of such vacancy.

RIGHTS AND POWERS OF A COMPANY SECRETARY

A company secretary enjoys certain rights. Some of them are conferred by the Companies Act, while some other rights arise out of agreement between him and his employer:

1. A Company Secretary has the right to supervise & control the secretarial department of a company.
2. He has the right to sign documents as a principal officer of the company within the meaning of the Companies Act.
3. Secretary has a right to issue share certificate of the company.
4. The secretary of a company is empowered to perform all acts which he is required to perform under enactments like the Companies Act, the MRTP Act, the Income Tax Act etc.
5. Sometimes the Board of Directors may delegate some of their powers to the company secretary. Accordingly, he can enter into agreement on behalf of the directors and do all acts which the board of directors specifically directs him to perform.
6. Sometime, the general meeting also authorizes him to perform an act. However, if the secretary performs an act without being so authorized the company may not ratify it and may not be bound by it.
7. He has a right to be indemnified by the company for any loss suffered by him while discharging his official duties.

Restrictions

There are some restrictions on the powers of Company Secretary

1. He cannot participate in the management of company's affairs.
2. He cannot enter into any contract on behalf of the company unless specifically authorized by the directors. However, he can enter into contracts necessary for carrying on the administration of the company's organization such as contracts for the employment of staff, the acquisition of official equipment or the hiring of transport for customers visiting company's factory.
3. He cannot borrow money in the Company's name.

4. He cannot call meetings of members; has no right to allot shares, has no right to register transfer of shares unless he is authorized by the directors.

Duties of Company secretary

The duties of a company secretary may be of two kinds:

1. Statutory duties and
2. General duties.

A. Statutory Duties

I. Under the Companies Act

- ✓ Secretary may sign any document or proceedings requiring authentication by the company. (Section 21)
- ✓ He has to deliver for registration return of allotment to the Registrar. (Section 39)
- ✓ He has to give notice of the increase in the share capital to the Registrar. (Section 64)
- ✓ He has to deliver the share certificate within 3 months of allotment or within 2 months of registration of transfer. (Section 56)
- ✓ He has to make available trust deed for inspection to every member or debenture holder and to forward a copy of it to the members or debenture holders at their request within 7 days of request on payment of prescribed fee. (Section 71)
- ✓ He has to deliver for registration particulars of mortgages and charges. (Section 77).
- ✓ He has to make statutory declaration for attaining the certificate of commencement of business. (Sec. 11)
- ✓ He has to sign the annual return. (Section 92).
- ✓ He has to allow inspection of and to furnish copies of register of members. (Section 94).
- ✓ He has to send notice of general meetings to every member of the company. (Section 101).
- ✓ He has to file certain resolutions and agreements requiring registration with the Registrar. (Section 117)
- ✓ He has to prepare minutes of every general meeting of every meeting of Board of directors or of every committee of the board within 30 days of the conclusion of every such meeting (Sec. 118)

- ✓ He has to make available for inspection the books of general meetings. (Sections 119).
- ✓ He has to give notice of every meeting of the Board of directors in writing to every director for the time being in India, and at his usual address in India to every other director. (Sec.173)
- ✓ He has to make available register of directors for inspection. (Sec. 171)
- ✓ He has to sign every balance sheet and every profit and loss account in the case of nonbanking companies. (Sec. 134)
- ✓ He has to maintain the following statutory books:
 - (a) Register of investments (Sec. 187)
 - (b) Register of charges. (Section 85).
 - (c) Register of members. (Section 88).
 - (d) Register of debenture holders. (Section 88).
 - (e) Books containing the minutes of Directors' and Shareholders meetings.
 - (f) Register of contracts, companies and firms in which directors are interested. (Sec. 189)
 - (g) Register of directors (Sec. 170)
 - (h) Register of director's shareholding etc. (Sec. 170).

II. Under Income Tax Act

The Income tax Act also considers the secretary as the principal officer of the company and imposes certain obligations upon him:

- ✓ He is required to see that proper income tax is deducted from the salaries of the employees.
- ✓ Similarly, he is required to see that proper income tax is deducted from dividend and interest payable to shareholders and debenture holders respectively.
- ✓ He is also to see that a certificate of income tax deducted at source is furnished to every shareholder or to every debenture holder.
- ✓ He is to see that tax so deducted has been deposited in Government treasury and the Income-tax Return as required by law is filed with the Income-tax Department.
- ✓ He is to file the Income-Tax Return of the company and deposit the tax payable on the basis of such return.

III. Under Stamp Act.

The secretary of a company is required to see that every document like share certificate, share warrant, debenture certificate and transfer forms, are properly stamped as per the requirements of the Indian Stamp Act.

IV. Under other Acts.

In addition, the secretary is also required to comply with the provisions of the various Acts e.g.

- The Factories Act, 1949,
- The Industrial Disputes Act, 1947.
- The Employees State Insurance Act, 1948,
- The Minimum Wages Act, 1948,
- The Payment of Wages Act, 1936,
- The Provident Fund Act, 1952,
- Foreign Exchange Management Act (FEMA) 1999,
- Monopolies and Restrictive Trade Practices (MRTP) Act, 1969.

B. General Duties**1. Duties to the directors.**

The duties of the company secretary in relation to the directors may be stated briefly as follows:

- ✓ To work in accordance with the instructions of the Directors.
- ✓ To deal with that correspondence in which directors are interested.
- ✓ To issue notice and prepare agenda for the Board of directors meetings, arrange for these meetings, and, at the meeting to attend the same and to prepare minutes of it later on.
- ✓ To maintain all important correspondence, files and records for the perusal of directors.
- ✓ To draft the director's report.

2. Duties to the shareholders and the public.

The important duties of the secretary in relation the shareholders and creditors, etc. are as follows:

- ✓ To do all the necessary things relating to shares and debentures; to issue a prospectus, to invite applications for the subscription of shares and debentures and arranging for their allotment, to issue share certificates and debentures, to handle transfer and transmission of

such shares and debentures, to arrange for the payment of dividend and interest there on respectively.

- ✓ To deal with all correspondence between the company and the shareholders, creditors, public and look into their complaints.
- ✓ To intimate them about the date of a general meeting, about its agenda, about closure of transfer books, etc.
- ✓ To attend all the meetings of shareholders, creditors and debenture holders and record their proceedings.
- ✓ Not to disclose any confidential or secret information relating to the affairs of the company.
- ✓ Not to make secret profits by virtue of his position as secretary of the company.

Liabilities of a company secretary

A. Statutory Liabilities

If a company secretary fails to perform his statutory duties, he becomes liable to punishment or penalty prescribed under the Act.

He may be held liable for:

- ✓ default in filing return of allotment- fine up to 1,000 for every day which may extend to 1 lac if the default continues. (Sec. 39), {return of allotment means Return of Allotment is a statement submitted to the Registrar which contains the names and addresses of shareholders and the number of shares allotted to each shareholder. Return of allotment, signed by a director or secretary is filed with the Registrar of Companies within 30 days of allotment.}
- ✓ default in keeping ready for delivery share certificates, debenture certificates etc., within 3 months after allotment and within 2 months of the application for registration of a transfer- fine up to Rs. 5,000 which may extend to 5 lac for every day during which the default continues (Sec. 56),
- ✓ default in filing particulars of charges on properties acquired subject charge fine upto ₹5,000. (Sec. 79), {A charge on the property is where the immovable property is made security for the payment of money.}
- ✓ failure to comply with the requirements of section 12 of the Act regarding exhibiting the name of the company- fine upto ₹ 1,000 (it may extend to 1 lac if default continue),
- ✓ default in filing annual return- fine upto ₹ 50,000 and if default continues ₹ 5 lac (Sec. 92)

- ✓ default in holding the annual general meeting of the company-fine up to ₹1 lac plus fine up to ₹ 5,000 for every day after the first during which such default continues. (Sec. 99)
- ✓ default in the circulation of the member's resolution- fine upto ₹25,000 (Sec. 111), {Members Resolution means an undated written resolution of the Cooperative 's meeting of members as annexed to the Managing Board Resolution.}
- ✓ default in registering certain resolutions and agreements requiring registration- fine upto ₹1lac, which may extend to 5 lacs (Sec. 117),
- ✓ Failure to record the minutes of the board and general meetings- fine upto ₹ 5,000 (Sec.118),
- ✓ Refusal in allowing inspection of minutes of general meeting or failure to furnish a copy of such minutes on request by any member within 7 days of such request - fine upto ₹ 5,000 in respect of each offence. (Sec. 119),
- ✓ default in laying down Profit and Loss Account and Balance Sheet at the annual general meeting-fine upto ₹ 50,000 (which may extend to 5 lacs) or imprisonment upto 1 year or both, (Sec. 129),
- ✓ failure to give the due notice of board meeting fine upto ₹ 25,000 (Sec. 173),
- ✓ failure to maintain the following statutory books:
 - (a) Register of members - fine upto ₹ 50,000 upto 3 lacs, (Sec. 88),
 - (b) Index of register of members - fine upto 3 lacs, (Sec. 88),
 - (c) Register and index of debenture holders - fine upto ₹ 500, (Sec. 88),
 - (d) Register of directors - fine per day of default. (Sec. 170),
 - (e) Register of directors' shareholdings- fine (Sec. 170),

B. Contractual Liabilities

A company secretary has certain contractual liabilities arising out of his contract of service with the company:

- ✓ A company secretary is expected to perform his duties with reasonable care and skill. He is liable to the company for damages caused by his **willful misconduct or neglect of duties**. On this ground, he may be dismissed summarily and without notice.

- ✓ He should **not do anything beyond his authority**. If he acts beyond his authority he will be personally liable for any damage or loss suffered by the company any third party as or result of his action.
- ✓ He is under an **obligation not to disclose any confidential or secret information** relating to the affairs of the company. Otherwise, he may be restrained by injunction from disclosing trade secrets.
- ✓ He stands in a **fiduciary position** to the company and if he makes a secret profit on account as secretary of the company, he will be liable to account for it to the company.
- ✓ If, he **commits fraud or does any wrong** within course of his employment, **he is liable to indemnify the company** or any third party for the loss suffered on account of his action. But he is not liable for any fraud on the part of any of his assistants unless he is party to it.

Removal & Dismissal of company secretary

Removal Process of a Company Secretary

The process of removal of a CS is as follows:

- ✓ The **board of directors** can remove the CS by satisfying all the terms of appointment and recording the same.
- ✓ **Pass a board resolution** of removal of the CS in the board meeting after giving notice to all the directors of the company about the removal/resignation of the CS.
- ✓ File **form DIR-12** with the Registrar of Companies within thirty days, along with prescribed filing fees. {DIR-12 Form is for Filing for resignation of Director}
- ✓ **Inform the stock exchange** where the company shares are listed, in the case of a listed company.
- ✓ Make the required entries in the register maintained to record company secretaries' particulars.
- ✓ The company should fill the vacancy of the position of the CS within six months at the board meeting.

Assignment Questions**2Marks**

1. **Meaning of any Key Managerial Personnel can be asked.**
2. **Give the meaning of Whole Time Director.**
3. **Give the meaning of Managing Director.**
4. **Give the meaning of Company Secretary.**
5. **Who is an Auditor?**
6. **What is Audit Committee?**

6 Marks/12 Marks

1. **Briefly analyse the power and rights/responsibilities of auditors.**
2. **State the provisions in companies act relating to the appointment of Company Auditor.**
3. **Managing Director (Power/Duties and Responsibilities can be asked)**
4. **Company Secretary (Any concept can be asked individually for 6 marks and in detail for 12 marks also can be asked, Types, Qualifications, Appointment, Rights, Duties, Liabilities, and Removal)**