

**CONSEQUENCES AND PENALTIES FOR NON-COMPLIANCES OF DUTIES OF KEY MANAGERIAL PERSONS:**

1. Section 2(60) of the 2013 Act lays down the definition of an “officer in default”. It lays down that:

*officer who is in default”, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:*

- i. whole-time director;*
- ii. key managerial personnel*
- iii. where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified*
- iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;*
- v. any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity*
- vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance.*
- vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.*

Thus the Act makes liable any Key Managerial Person for any default of compliance of the provision of the 2013 Act. It imposes on the KMP a similar liability as any other director or officer in default of compliance of the provisions.

2. Section 102(4) of the 2013 Act mandates in case of any default in complying with the provision of disclosure or due to insufficient disclosure of any benefit accrued by a KMP, the shares held shall be held in trust on behalf of the Company and the Company has to be compensated to the extent of benefit received under of the 2013 Act.

3. Under Section 102(5) of the 2013 Act any default on account of non-disclosure or insufficient disclosure shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.
4. The Act penalizes any KMP who contravenes the provisions of Section 194 of the 2013 Act and engages in forward dealing of securities. It makes such persons punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.
5. In case of any KMP engaging in any activity relating to insider trading such persons are punished under Section 195(2) of the 2013 Act with imprisonment for a term which may extend to five years or with fine which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.
6. If any of the provision relating to appointment of Key Managerial Persons are violated under Section 203 of the 2013 Act, then in such cases the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.
7. A person is disqualified to be appointed as an independent director if he either himself or through his relative holds or has held the position of a key managerial personnel of the company or its holding, subsidiary or associate company in any of the 3 financial years immediately preceding the financial year in which he is proposed to be appointed.