

MEANING OF KEY MANAGERIAL PERSON UNDER THE PROVISIONS OF THE COMPANIES ACT, 2013:

1. The “key management personnel” as defined under the Companies Act, 2013 is a newly introduced term which was not present under the Companies Act, 1956. It is the first point of contact between the company and its stakeholders. Although the Board of Directors are entrusted with the oversight of the Company, it is the key managerial personnel who are made responsible for strategising and implementation of the Companies policies.
2. The term Key Managerial Persons (“KMP”) is defined under Section 2(51) of the 2013 Act as:

“key managerial personnel”, in relation to a company, means:

- i. the Chief Executive Officer or the managing director or the manager;*
- ii. the company secretary;*
- iii. the whole-time director;*
- iv. the Chief Financial Officer; and*
- v. such other officer as may be prescribed;*

2.1 Chief Executive Officer & Chief Financial Officer

Section 2(18) and Section 2(19) of the 2013 Act defines “Chief Executive Officer” and “Chief Financial Officer” as an officer of a company, who has been designated as such by it.

2.2 Managing Director

Section 2(54) of the 2013 Act defines managing director as:

a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.

The explanation to the Section excludes any administrative act done in pursuance of the power authorised by the Board such as the power to affix the common seal of the company, draw and endorse any cheque on the account of the company, draw and endorse any negotiable instrument, sign any certificate of share etc.

2.3 Company Secretary

Section 2(24) of the 2013 Act defines “company secretary” or “secretary”:

as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act

2.4 Whole Time Director

Section 2(94) of the 2013 Act defines a “whole-time director” as *a director in the whole-time employment of the company*

2.5 Manager

Section 2(53) of the 2013 Act defines a “manager” as:

an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

3. The legal and procedural aspects of appointment of KMP including Managing Director, Whole-time Director or Manager, managerial remuneration, secretarial audit etc. are dealt with under Chapter XIII of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (hereinafter referred to as the “**Companies (ARMP) Rules**”).
4. Rule 8 of the Companies (ARMP) Rules require the following classes of Companies to appoint whole-time KMP's. These are:
 - Every listed Company having a paid up share capital of Rs. 10 crore or more.
 - Every other public Company having a paid up share capital of Rs. 10 crore or more.
5. Further, in order to appoint any such KMP a board resolution must be passed which contain the terms and conditions of the appointment including the remuneration.
6. Section 196(1) of the 2013 Act also prohibits appointment of a managing director and a manager at the same time.
7. Thus the Key Managerial Personnel can be understood to be a term used to identify a certain group of employees of the Companies who are often involved in a complex set of activities, without which the Company might not be able to function as effectively. It covers within its ambit the traditional roles of Managing Director and the whole time directors along with certain other functional heads, being that of the CFO and CEO. It also gives due importance to the Company Secretaries who are often involved in essential activities of the company thus making them a part of the top management of the Company. An essential feature here is the fact that the entire concept is not independent of each other and is bestowed upon a team of individuals collectively referred to under Section 2 (51) of the 2013 Act.

IDENTIFICATION OF KEY MANAGERIAL PERSONS:

1. An analysis into the definition of KMP lists out the persons to be designated as Key Managerial Persons. There was no such requirement for appointment of a KMP under the 1956 Act. The 1956 Act only prescribed for certain persons to be appointed in the Company compulsorily. The 2013 Act has, however, gone ahead to clothe such mandatory appointments with the term of 'Key Managerial Persons' and has also specified the companies which need to follow these requirements mandatorily.

2. Further looking into the definitions of such persons such as **Manager** under Section 2(53) of 2013 Act it can be seen that

"a person who has the management of the whole, or substantially the whole, of the affairs of a company.....by whatever name called, whether under a contract of service or not"

Similarly a Managing Director under Section 2(54) of 2013 Act is a director:

".....entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called"

Also a CEO and a CFO under Section 2(18) and 2(19) of the 2013 Act are:

an officer of a company, who has been designated as such by it.

3. Thus in such cases there are no specified criteria or qualification for a person to be designated as a Manager, a Managing Director, a CEO or a CFO, the only criterion here being that of substantiality in conducting affairs or exercising powers. There can hence be often ambiguities in identifying personnel within a company as to whether they are a Key Managerial Person within the company or not.
4. An important issue connected with the above is regarding identification of KMP in a Company where there is no specified person designated for the same. This is important keeping in view the fact that not all Companies may be in a financially sound position or for any other reason be in a position to appoint the number of persons individually for each designation as provided for under Section 2(76) of the 2013 Act.
5. This is a contentious issue which needs to be addressed keeping in mind that often in situations, though there may not be any clear demarcation of responsibilities yet these functions would often be exercised by someone or the other. In such situations there is a necessity to broadly delineate certain characteristic functions which could help identify the kind of transactions undertaken by such personnel within the company.
6. Further with no requirement of professional qualification laid down for a person aspiring to be among such designated personnel, it may often pose difficulties in identification of such persons within the Company due to both multiplicity and mutuality of roles. It is an accepted fact that roles such as MD, CEO, and CFO etc. do not require any specific knowledge or degree but more of domain knowledge and experience; however some broad demarcation could be made out so as to distinctively identify such personnel within the company.

7. The reason behind such identification measures is to prevent any kind of burden on Companies who may although exceed the threshold and have to appoint KMP, yet may not be in a position to do so. This would help prevent ill effects of the legislation, such that no company would be adversely affected by necessary compliances under the 2013 Act.