

Key Managerial Personnel (KMP) under Section 203 of the Companies Act, 2013: Who They Are, Appointment, Vacancy and Penalty

Description

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Quick summary

- Key managerial personnel are the CEO or managing director or manager, the company secretary, the whole-time director and the Chief Financial Officer, plus any whole-time officer one level below the directors whom the Board designates, and any other officer the Rules prescribe.
- Companies of the prescribed classes must have a whole-time managing director (or CEO or manager, and in their absence a whole-time director), a company secretary and a CFO.
- They are appointed by a Board resolution that sets the terms, including the remuneration, and a vacancy must be filled by the Board within six months.
- Default carries a company penalty of Rs 5 lakh and Rs 50,000 on every director and KMP in default, plus Rs 1,000 a day for continuing default up to Rs 5 lakh.

The Companies Act, 2013 treats a small group of senior officers as “key managerial personnel”, because they are the people through whom a company acts, and they carry personal responsibility. The definition is in section 2(51), and the duty to appoint them is in section 203.

Who is KMP (section 2(51))

1. The **Chief Executive Officer** or the **managing director** or the **manager**;
2. the **company secretary**;
3. the **whole-time director**;
4. the **Chief Financial Officer**;
5. such other officer, **not more than one level below the directors**, who is in **whole-time employment** and is **designated as KMP by the Board**; and
6. such other officer as may be prescribed.

Which companies must appoint them (section 203(1))

Every company belonging to such class or classes as may be prescribed must have the following **whole-time** key managerial personnel:

- a **managing director**, or **Chief Executive Officer**, or **manager**, and in their absence, a **whole-time director**;
- a **company secretary**; and
- a **Chief Financial Officer**.

The classes of companies are set by the Rules, which were not reviewed for this post, so check the current Rules before concluding that a particular company is, or is not, covered.

Chairperson and MD or CEO

An individual cannot be appointed or reappointed as **chairperson** of the company (under the articles) and as **managing director or CEO** at the same time, unless (a) the articles provide otherwise, or (b) the company does not carry multiple businesses. The restriction does not apply to notified classes of companies engaged in multiple businesses that have appointed one or more CEOs for each business.

How KMP are appointed (section 203(2))

A whole-time KMP is appointed by a **resolution of the Board** that contains the terms and conditions of the appointment, including the **remuneration**.

One company only (section 203(3))

- A whole-time KMP **cannot hold office in more than one company at the same time**, except in its **subsidiary company**.
- A KMP can be a **director of any company** with the **permission of the Board**.
- A company may appoint as its **managing director** a person who is the managing director or manager of one, and not more than one, other company, if the appointment is made or approved by a resolution at a Board meeting **with the consent of all directors present**, and specific notice of the meeting and of the resolution has been given to all directors then in India.

Filling a vacancy (section 203(4))

If the office of any whole-time KMP is vacated, the Board must fill the vacancy at a Board meeting **within six months** of the date of the vacancy.

Penalty (section 203(5))

If a company defaults in complying with section 203:

Who	Penalty
The company	Rs 5 lakh

Who	Penalty
Every director and KMP of the company in default	Rs 50,000
Continuing default	A further Rs 1,000 for each day after the first, subject to a maximum of Rs 5 lakh

Practical points

- Make a list of the company's KMP, with the date of appointment and the Board resolution reference, and keep it with the statutory registers.
- Track the six month period from the day a KMP resigns or leaves, and diarise the Board meeting that will fill the vacancy.
- If the company designates another officer as KMP under clause (v), the Board resolution should say so, and the officer must be in whole-time employment and not more than one level below the directors.
- Before appointing a CFO or company secretary, check whether the person already holds a KMP post elsewhere.

Points to check

- This post follows the Companies Act as published on India Code, including amendments up to the footnotes in that edition. The thresholds that decide which companies must have KMP, the qualifications of the company secretary, and the filing of forms on appointment or resignation are in the Rules and are not reproduced here.
- A listed company is also subject to the SEBI listing regulations on senior management and compliance officers.

Frequently asked questions

Who are key managerial personnel?

The Chief Executive Officer or managing director or manager; the company secretary; the whole-time director; the Chief Financial Officer; such other officer, not more than one level below the directors, who is in whole-time employment and is designated as KMP by the Board; and such other officer as may be prescribed.

Which companies must appoint whole-time KMP?

Every company belonging to the classes prescribed by the Rules must have a managing director or CEO or manager (and in their absence a whole-time director), a company secretary and a Chief Financial Officer. Check the current Rules for the thresholds.

How is a KMP appointed?

By a resolution of the Board containing the terms and conditions of the appointment, including the remuneration.

Can a KMP hold office in more than one company?

A whole-time KMP cannot hold office in more than one company at the same time, except in its subsidiary. A KMP may be a director of any company with the Board's permission. A company can appoint as managing director a person who is managing director or manager of not more than one other company, with a Board resolution passed with the consent of all directors present.

How long can a KMP post stay vacant?

The Board must fill a vacancy in the office of a whole-time KMP at a Board meeting within six months from the date of the vacancy.

Can the chairperson also be the MD or CEO?

Not at the same time, unless the articles provide otherwise or the company does not carry multiple businesses. A class of companies with multiple businesses that has appointed one or more CEOs for each business, as notified, is outside the restriction.

What is the penalty for default?

The company is liable to a penalty of Rs 5 lakh. Every director and KMP in default is liable to Rs 50,000, and for a continuing default a further Rs 1,000 for each day after the first, up to Rs 5 lakh.

Official sources

- India Code: The Companies Act, 2013 (sections 2(51), 203)
- Ministry of Corporate Affairs

Related reading

- Related Party Transactions and Disclosure of Director's Interest: Sections 184, 188 and 189 of the Companies Act, 2013
- AGM and EGM under the Companies Act, 2013: Time Limits, Notice, Place, Requisition and Penalty for Default
- Appointment of Auditor under Section 139 of the Companies Act, 2013: Term, Rotation, First Auditor, Casual Vacancy and Removal

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