

# The profits computed in the manner laid down

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The act has fixed that the total remuneration payable to all directors in a company shall not exceed 11% of its net profits computed in the manner laid down in sections 349 and 350 of the act. These provisions do not apply to a private limited company. It has already been mentioned that the managerial remuneration payable to any one person (Managing director, Whole-time director, Manager) shall not exceed 5% of the net profit. Director Rendering Professional Services A director, who holds specialized qualification may be appointed in a professional capacity corresponding to his qualification, like technical director or financial director, etc. Such appointment shall be made: If the services rendered are of a professional nature in the opinion of the central government, the person possesses the requisite qualification for the practice of the profession. No form is prescribed for making the above application to the central government. But the bank draft/challan for fees prescribed under companies (Fees on Applications) Rules, 1999.

To be eligible to call oneself as a professional, the person must have professional qualification and he must use his professional knowledge and skill for rendering services. Membership of a professional body may be one aspect which will be considered. By way of illustration it may be stated that an engineer, medical doctor, editor of newspapers and magazines, journalists, solicitor and advocate, architect and similar such persons may be taken to be exercising a profession. Approval under section 314 also required Where a director is appointed in his professional capacity, such appointment shall also be approved by the members by special resolution at the general meeting held first after the appointment is made. Position of

secretary holding office as director. The department has clarified that the appointment of whole-time company secretary as a part-time director on the board did not require the approval of the central government under section 269(1) of the act.

Can a director be appointed as manager? As per the definition, a Manager includes a director occupying the position of manager. Accordingly a director of a company may also be appointed as manager under schedule without government approval. As such person will be a director with managerial powers, he should not have been disqualified as per section 385 within the preceding five years. Further the said appointment need not be approved by the general meeting by special resolution in terms of section 314, in view of the exemption. Designating employees as special directors with no membership on the board. The department's clarification vide circular No. 11/90 dated 29-5-1990 on this matter is quoted below: I am directed to refer to this department circular no.

1/1/82-CL. V dated 20-1-1983 addressed to all chambers of commerce and to say that many companies are still designating their executives, who are not members of the board of directors, as special directors etc. Such designations give an impression to public at large and those dealing with these companies and the executives that they are full-fledged directors entitled to act as such on behalf of the companies. If in fact these executives are not directors on the board of the companies, it will be patently wrong on the part of the companies to designate them as directors.