

## Chief Executive Officer [Sec. 2(18)] and Chief Financial Officer [Sec. 2(19)]

### 1. Meaning of Chief Executive Officer

“Chief Executive Officer” means an officer of a company, who has been designated as such by it.

There was no corresponding section or definition under the Companies Act, 1956, it is introduced for the first time in the Act. However, section 581W provided for appointment of a full time Chief Executive, by whatever name called, in a Producer Company. Such person was to be appointed by the Board from amongst persons other than Members. Such Chief Executive shall be ex officio director of the Board, not liable to retire by rotation. The qualifications, experience and the terms and conditions of service of such Chief Executive are to be determined by the Board.

It is a borrowed concept from United States of America (USA). The chief executive officer (CEO) is a top level executive of a company, who is responsible for developing and implementing strategies, taking major corporate decisions, managing the overall operations and resources of a company.

The term CEO is defined for the first time in the Act. Any person appointed as a CEO of the company shall be one of the key managerial personnel (KMP) as per definition of clause (51) of section 2 of the Act when such person is designated /appointed under section 203 the Act. Such officer shall be one of the officers who is in default under clause (60) of section 2 of the Act in the event of violation of provisions of the Act.

Instances covered other than under section 203, the CEO is not required to be appointed by the Board of Directors by means resolution passed at its meeting.

As per sub-section (1) of section 134 of Act, if CEO is also a director in the company, CEO is required to sign financial statements whether he is KMP or not.

### 2. Position of Chief Executive Officer under other countries laws

#### Position of CEO in the United States:

American companies are generally led by a CEO. In some companies, the CEO also has the title of president. In other companies, the President is responsible for internal management of the company while the CEO is responsible for external relations.

#### Position of CEO in Britain and Commonwealth:

In British English, the title of managing director is generally synonymous with that of chief executive officer. Managing director does not have any particular authority

under the Companies Act in the UK, but does have implied authority based on the general understanding of what his position entails, as well as any authority expressly delegated by the board of directors.

### 3. Distinction between CEO, Manager and Managing Director

#### CEO

A CEO need not be a director of the company. He may be merely an employee of the Company. Any officer of the company may be appointed/ designated as CEO of the Company. Further, the CEO who is not a director may be appointed by the Board of Directors. He need not be appointed by the Shareholders of the Company nor his appointment is subject to shareholders' approval, unless he is a Director of the Company. A CEO can be a director, managing director (MD), chairman or an employee, but no person other than the director can become a MD.

#### Managing Director

Only a director can be appointed as MD of the Company. In case of a public limited company appointment and payment of remuneration to the MD are subject to confirmation of shareholders of the Company. In cases of such class of public companies, the appointment and payment of remuneration to managing director is also subject to approval of central government.

The position of MD has a statutory recognition both under the Companies Act, 1956 and Act. MD has to discharge statutory duties and responsibilities as given under the Act. On the other hand, a CEO is a person who is appointed by the management to run the operations of the company.

Both CEO and the MD are recognised as KMP under the Act. However the appointment of MD shall also be governed by the provisions of section 196 and 197 read with schedule V of the Act apart from the provisions of section 203 of the Act wherever applicable. Whereas the CEO, though holds the equal position of MD, his appointment and remuneration doesn't require the compliance of schedule V read with section 196 and 197 of the Act. However, in case of restatement of accounts due to fraud or noncompliance of any provisions the access remunerations paid to the both MD and CEO may be recovered.

The position of manager is similar to that of CEO. Both the manger and CEO need not be directors of the Company. However both will be treated as officers who are in default.

#### Whether appointment may be on contractual basis

The CEO or manager or a managing director may be appointed for a fixed period or contractual basis or otherwise. In case of managing director the appointment shall not exceed for more than period of 5 years at a time. Whereas the CEO may be appointed for either permanently or appointment is limited for specific period.

## 4. Departure from the definition

The definition of 'Chief Executive Officer' as discussed above is to be referred for all the purposes except where the context otherwise provides. In the following context, the definition given is not required to be referred.

Section 2	Definition/ Term	Term used in other sections of Companies Act, 2013	Relevant Text
(18)	Chief Executive Officer	125(5)	The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.
		125(6)	The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.  (This reference to Chief Executive Officer under Section 125 is to an officer appointed by Central Government)
		184(2)	(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate.  (This reference to CEO is for a body corporate. Hence, wider connotation.)

## 5. Meaning of Chief Financial Officer

“Chief Financial Officer” means a person appointed as the chief financial officer of a company. There was no corresponding section or definition under the Companies Act, 1956, it is introduced for the first time in the Act.

The CFO may be appointed either by the board of directors or by the managing director unless such person is designated as a key managerial person under section 203.

As per the provisions of section 203 every public Company having a paid up share capital of Rs. 10 Crores or more shall have a whole time key managerial personnel, which includes whole time Chief financial officer.

## 6. Position and Responsibility of Chief Financial Officer

The position of Chief Financial Officer (CFO) is recognized for the first time under the Act. He shall be a person who is occupying the position as CFO having involved in day to day financial affairs of the company. He has been also included as an officer in default due to his role and responsibility in the company.

The CFO need not be a director of the company. However he has been recognised as a KMP under Section 203 and his designation is equated with other managerial personnel such as the managing director, the manager or in their absence, the whole time director. The remuneration payable to CFO shall not be subject to regulation under Section 197 of the Act read with Schedule V in the Act, unless he is part of the Board or he is appointed as a manager in addition to his designation as CFO. The Act does not prescribe any qualification for the appointment of CFO.

Sub-section (1) of section 134 of the Act, requires the CFO to sign the financial statements whether he is KMP or not, as he is responsible for overseeing the financial activities of an entire company. His duties include financial planning and monitoring cash flow. In few companies, the finance director might be the CFO and vice versa. The CFO being an internal person in the organization has responsibility towards presenting the financial statements truly and fairly which are subsequently audited by the statutory auditors of the Company.

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*