



PAYMENT OF REMUNERATION TO NON-EXECUTIVE AND INDEPENDENT DIRECTORS OF A PUBLIC COMPANY IN ABSENCE OF PROFITS OR INADEQUATE PROFITS:

1. With the notification issued by the Ministry of Corporate Affairs dated 18th March 2021, has brought into effect the amendments to Section 149(9) and Section 197(3) of the Companies Act, 2013 [“the Act”], enabling the Non-Executive directors[“NED”] and Independent directors[“ID”] of a public company (hereinafter referred to as “the company”) to receive remuneration in case a company has inadequate profits or reports loss.
2. The IDs of a company, as stated in Section 149(9) of the Act, were entitled to receive remuneration only by way of fee provided under sub-section (5) of section 197[“Sitting Fees”], reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.
3. As per Section 197(5) of the Act, a director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board. Further, Section 197(6) enables the company to pay a director or manager a remuneration either by way of a monthly payment or at a specified percentage of the net profits of the company or partly by one way and partly by the other. Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 limits the maximum sitting fees payable to a director at rupees one lakh per meeting. Payment of sittings fees to directors will not form part of remuneration. Further, the aforesaid provision enables companies to pay fee “for any other purpose as decided by the Board”. Such payment of fee will also not form part of remuneration.



4. Prior to the amendment to Section 197(3) the Act, it was provided in case a company has no profit or its profits are not adequate to pay remuneration (as approved by the Board and the members), the company can pay remuneration only to managing directors, whole-time directors or managers in compliance with the provisions of Schedule V. Therefore, companies could not pay remuneration to their IDs and NEDs (other than sitting fees) in the event of inadequacy of profits or loss in a financial year.
5. **However, post the amendment to Section 197(3) and Schedule V of the Act, the IDs and NEDs are also now allowed to be paid remuneration even in case there is no profit or inadequate profits by complying with the provisions of Schedule V.** In other words, the amendment enables payment of remuneration to IDs and NEDs in addition to payment of sitting fees and profit related commission as may be approved by the members.
6. The amended Part II Section II of the Schedule V permits for payment of remuneration to managerial persons and other directors (IDs and NEDs) in case a company has no profits or inadequate profits to pay to remuneration. It provides that such company can pay remuneration to its managerial person(s) or other director(s), not exceeding the limits as given below

	(1)	(2)	(3)
Sl.No.	Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person*	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director*
(i)	Negative or less than 5 crores.	60 lakhs	12 lakhs
(ii)	5 crores and above but less than 100 crores.	84 lakhs	17 lakhs
(iii)	100 crores and above but less than 250 crores.	120 lakhs	24 lakhs
(iv)	250 crores and above.	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores:

* limits stated are per managerial personnel or ID or NED, as the case may be.

“effective capital” means the aggregate of the paid-up share capital (excluding share application money or advances against shares); amount, if any, for the time being standing to the credit of share premium account; reserves and surplus (excluding revaluation reserve); long-term loans and deposits repayable after one year (excluding working capital loans, over drafts, interest due on loans unless funded, bank guarantee,



etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in case of investment by an investment company whose principal business is acquisition of shares, stock, debentures or other securities), accumulated losses and preliminary expenses not written off.

Further, payment of remuneration as stated above also requires proper disclosure of information as mandated under the said Part II Section II of the Schedule V as part of statement of material facts to be provided in terms of Section 102(1) of the Act forming part of the notice to the shareholders calling for general meeting.

The company may pay remuneration to managerial personnel / IDs / NEDs in excess of above the limits if a **special resolution** is passed by the shareholders.

7. Thus, IDs and NEDs can be paid the following:

- (i) Sitting fees for attending each meeting of the Board and its Committee**
- (ii) Commission as a percentage of profit (with the approval of shareholders) and**
- (iii) Remuneration (with the approval of shareholders)**
- (iv) Fee for any other purpose as maybe decided by the Board**

8. Companies are advised to take note of the amendment and devise a proper remuneration plan for their directors and seek appropriate approvals.

XXXXXXXXXXXXXXXXXX

CENTRAL OFFICE	BRANCH OFFICE	BRANCH OFFICE
Indus Chamber No.101, Govt Arts College Road, Coimbatore – 641018. Tel No: - (0422)2302868, 4952868 Email: info@ksrandco.in Linked in: gene@ksrandco.in	Flat No.1, 26/27, Venkatesham Flat, Gopal Street, T-Nagar, Chennai – 600 017. Tel No: - (044)24337620, Email: chennai@ksrandco.in	S-311, 3 rd Floor, South Block, Manipal Centre, No.47, Dickenson Road. Bangalore – 560042, Tel No: - (080)25323232 Email: bangalore@ksrandco.in