

**REMUNERATION TO NON- EXECUTIVES DIRECTORS (NED'S) AND
INDEPENDENT DIRECTORS (IDS)**

Ministry of Corporate Affairs (MCA) has issued notification S.O. **1255(E)**ⁱ dated 18th March, 2021 to notify the provisions of Section 32 and Section 40 of the Companies (Amendment) Act, 2020 which shall come into force 18th March, 2021.

Section 32 of Companies (Amendment) Act, 2020 provides amendment in **Section 149(9)** of the Companies Act, 2013 and Section 40 of Companies (Amendment) Act, 2020 provides amendment in **Section 197(3)** of the Companies Act, 2013". These amendments allow minimum remuneration to be paid to Non- Executives Directors (NED's) including Independent Directors (IDs) in case a Company has no profit or inadequate profits subject to the provisions of Schedule V of the Companies Act, 2013.

MCA further issued notification S.O. 1256 (E)ⁱⁱ dated 18th March, 2021 for amendment in Schedule V of Companies Act, 2013.

**AMENDMENTS FROM NOTIFICATION OF SECTION 32 AND SECTION 40 OF THE
COMPANIES (AMENDMENT) ACT, 2020**

I. Section 32 of the Companies (Amendment) Act, 2020 – In Section 149(9) of the Companies Act, 2013 following shall be inserted :

“Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.”

II. Section 40 of the Companies (Amendment) Act, 2020 – In Section 197(3) of the Companies Act, 2013:

after the words "whole-time director or manager," the words "or any other non-executive director, including an independent director" shall be inserted.

Effect of amendment:

Earlier, the Non- Executives Directors (NED's) including Independent Directors (IDs) were only eligible for sitting fee and commission out of profits. In case of no profits or inadequacy of profits, the NEDs and IDs were getting only sitting fees. After these amendments, the Company are allowed to pay minimum remuneration exclusive of any sitting fees to NEDs and IDs in case a Company has no profit or inadequate profits subject to the provisions of Schedule V of the Companies Act, 2013.

AMENDMENTS IN PART II OF SCHEDULE V OF THE COMPANIES ACT, 2013

In Schedule V of the Companies Act, 2013, in PART II, under the heading —REMUNERATION—

(a) *in Section I, in the first para, after the words —managerial person or persons, the words “or other director or directors” shall be inserted;*

(b) *in Section II,—*

(i) *after the words “managerial person”, wherever occurred, the words “or other director” shall be inserted;*

(ii) *for Table (A):, the following shall be substituted, namely.—*

(A)

(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”

(c) *In Section III, —*

(i) *after the words —managerial person, wherever occurred, except in clause (i) of the proviso, the words “or other director” shall be inserted;*

(ii) *after the words —managerial persons, wherever occurred, the words “or other director” shall be inserted;*

(iii) *following explanation shall be inserted at the end, namely:—*

“Explanation.— For the purposes of Section I, Section II and Section III, the term —“or other director” shall mean a non-executive director or an independent director.”

Effect of amendment:

As Part II of Schedule V of the Companies Act, 2013 deals with the remuneration of “managerial person or persons”. Now, after amendment in Section I and II of Part II of Schedule-V, it is also applicable to the “other director or directors” as well.

Now, the maximum limit for remuneration to be paid to the managerial person or other director in case of no profit or inadequate profit shall be as per Table A of the Section II of Part II of Schedule V of the Companies Act, 2013. Further, the Company may pay remuneration in excess of limits as specified in Table A by passing special resolution.

As per amendment in Section III of Part II of Schedule V, which provides explanation to the term — “*or other directors*” which shall mean a non-executive director or an independent director.”

ⁱ http://www.mca.gov.in/Ministry/pdf/CommencementNotification_19032021.pdf

ⁱⁱ http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf

Suggestions may be sent to
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