

**Sandeep Khosla**  
Director General

dg@bombaychamber.com  
9821075224 / 61200201

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Shri K. V. R. Murty  
Joint Secretary  
Ministry of Corporate Affairs  
Government of India  
A Wing, Shastri Bhawan  
Rajendra Prasad Road  
New Delhi 110001

**Subject: Request for suitable amendment to Schedule V of the Companies Act, 2013**

*In light of the profound difficulties faced by certain business sectors in FY 2020-21, we humbly request the MCA to suitably amend Schedule V of the Companies Act, 2013 – to dispense with the requirement of obtaining shareholder approval by a special resolution for payment of remuneration to the MD, WTDs and managers, that is in excess of the limits prescribed under Schedule V of the Companies Act, 2013. We humbly request that Schedule V may be suitably amended, to dispense with this requirement for a period of one year.*

Our reasons for the same are elucidated below, for the kind consideration of the Ministry:

**1. BACKGROUND:**

- 1.1** The onset of the Covid-19 pandemic has profoundly impacted companies in certain business sectors – such as hospitality, tourism, aviation, theatres, multiplex, retail, restaurants, and automobiles. As the revenue streams of these sectors have been significantly affected by the Covid-19 pandemic, many companies which operate in these sectors are suffering losses for Financial Year (“FY”) 2020-21.
- 1.2** For instance, over the course of the last one year, the Indian hospitality sector has witnessed a stagnation in demand and occupancies across the country. This sector was in an upswing in 2019, with demand growth outpacing that of supply, and with a consistent increase in rates, occupancies and *Revenue per Available Room* (“RevPAR”) levels across the country. However, the Covid-19 pandemic brought the industry to a standstill, with record-low single digit occupancies in April 2020.
- 1.3** To tackle the falling demand and occupancies, hotels across India were forced to reduce their tariffs significantly to attract business, thus, pulling down the RevPAR to around INR 1,500 - 1,800 in 2020, reflecting a decline of 53-57%. HVS Anarock has estimated that the Indian hospitality sector (including organized, unorganized, and semi-organized segments) has incurred a total revenue loss of approximately ₹90,000 crores in 2020 - on account of the Covid-19 pandemic.

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**1.4** Other sectors such as automobile, aviation and retail have also suffered severe difficulties, with the automobile sector suffering a loss of approximately INR 2300 crore per day during FY 2020-21. Further, sectors such as theatres, multiplex and retail have effectively lost their major sources of revenue for the entirety of FY 2020-21.

**1.5** In light of the unprecedented circumstances faced by certain sectors, the Bombay Chamber of Commerce and Industry presents the following representation for the kind consideration of the Ministry of Corporate Affairs (“MCA”).

**2. REPRESENTATION FOR CONSIDERATION OF THE MCA**

**2.1** Section 197 of the Companies Act, 2013 (“the Act”) prescribes the limits for the managerial remuneration payable by a company. For companies that are currently profitable, the limits prescribed are based on the net profit of the company, which is calculated in accordance with the method prescribed under Section 198 of the Act. As many companies which operate in the affected sectors may not have a net profit (as calculated under Section 198 of the Act), their ability to pay remuneration to their Managing Director (“MD”), whole-time directors (“WTDs”) and managers shall be severely impacted.

**2.2** In the event of loss or inadequate profits, a company has to pay managerial remuneration in accordance with the limits prescribed under Section 197(3) read with Schedule V of the Act. Section 197(3) of the Act states as follows:

*Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or wholetime director or manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.*

**2.3** Under category (A) of Section II, in Part II of Schedule V of the Act, the following limits for managerial remuneration have been prescribed, in case of loss, or inadequate profits:

Where the effective capital is (in INR):	Limits for yearly remuneration payable to a managerial person (in INR)	Limits for yearly remuneration payable to NEDs and IDs (in INR).
Negative or less than 5 crore.	60 Lakh.	12 Lakh.
5 crore and above but less than 100 crore.	84 Lakh.	17 Lakh.
100 crore and above but less than 250 crore.	120 Lakh.	24 Lakh.
250 crore and above.	120 Lakh plus 0.01% of the effective capital in excess of 250 crore.	24 Lakh plus 0.01% of the effective capital in excess of 250 crore.

- 2.4** The first proviso to Section II of Part II of Schedule V states as follows – “*Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution*”. This implies that in the event of no profits or inadequate profits, remuneration in excess of the above limits can be paid by the company after obtaining shareholder approval by a special resolution.
- 2.5** Further, in accordance with the third proviso, two additional conditions must be satisfied for payment of remuneration that is in excess of the limits prescribed under Schedule V. The additional conditions are as follows:
- (i) The payment of remuneration should be approved by a resolution passed by the Board, and in case of a company covered under Section 178(1) of the Act, the payment of remuneration should also be approved by the Nomination and Remuneration Committee.
  - (ii) Further, the company can pay remuneration that exceeds the limits prescribed under Schedule V only if the company has not committed any default in payment of dues to any bank or public financial institution, or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned, or the non-convertible debenture holders or other secured creditor, as the case may be, should be obtained by the company before obtaining the approval of shareholders in the general meeting.
- 2.6** Considering the current market situation, as many companies in stressed sectors shall be incurring losses for FY 2020-21, they shall have to pay remuneration to their MD, WTDs and managers in accordance with the limits prescribed under Schedule V.
- 2.7** As the companies in stressed sectors are unlikely to have any net profits (as calculated under Section 198 of the Act) for FY 2020-21, they shall also not be in a position to pay any commission based on net profits -- to their MD, WTDs and managers. In this unprecedented situation, the requirement of obtaining shareholder approval by a special resolution (for payment of remuneration that exceeds the Schedule V limits) presents an additional challenge for companies.
- 2.8** Many companies that incur a loss in FY 2020-21 shall be forced to pay remuneration to their MDs, WTDs and managers, that is significantly lower than the terms of remuneration that were originally agreed upon in the contract of employment. If the terms of remuneration (and minimum remuneration) had been approved by an ordinary resolution, this ordinary resolution shall not be sufficient, if the remuneration paid in the event of loss/inadequate profits exceeds the limits prescribed under Schedule V of the Act.
- 2.9** In the current market circumstances, the requirement of obtaining shareholder approval by a special resolution for payment of remuneration in excess of the Schedule V limits (for MDs, WTDs and managers) places an onerous burden on the company.

**2.10** In light of the above, and considering the unprecedented circumstances faced by certain companies, we humbly request the MCA to invoke the power conferred under Section 467 of the Act, and suitably amend Schedule V to dispense with the requirement of obtaining shareholder approval by a special resolution for a period of one year. Sections 467(1) and 467(2) provides that –

*“(1) Subject to the provisions of this section, the Central Government may, by notification, alter any of the regulations, rules, Tables, forms and other provisions contained in any of the Schedules to this Act.*

*(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs”.*

**2.11** The Ministry can accordingly invoke the power conferred under Section 467(1) to suitably amend Schedule V of the Act *vide* an executive notification – to provide for a dispensation of the requirement of obtaining shareholder approval by a special resolution for a period of one year, for payment of remuneration (to the MD, WTDs and managers) that is in excess of the limits prescribed under Schedule V.

**2.12** The amendment may clarify that this requirement can be dispensed with, provided that the other conditions prescribed under Section 197(3) read with Schedule V are satisfied. This shall ensure that the company can dispense with the requirement of obtaining shareholder approval by a special resolution only if the following conditions are satisfied:

(i) The terms of remuneration payable were originally approved by an ordinary resolution. In this regard, if the Ministry deems fit, it may be clarified that if the original terms of remuneration (and minimum remuneration) have been approved by an ordinary resolution, then the requirement of obtaining shareholder approval by a special resolution shall not be necessary, if the remuneration paid exceeds the limits prescribed under Schedule V.

(ii) The Board, and in case of a company that is covered under Section 178(1), the Nomination and Remuneration Committee of the company, have approved the payment of remuneration that is in excess of the limits prescribed under Schedule V of the Act.

(iii) The company has not committed any default in payment of dues to any bank or public financial institution, or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned, or the non-convertible debenture holders or other secured creditor, as the case may be, has been obtained.

- 2.13** This amendment shall be commensurate with the time and effort put in by MDs, WTDs and Managers to ensure the financial health and performance of their companies, in an unprecedented year, and in challenging market conditions. The Amendment shall also ensure that MDs, WTDs and Managers are adequately remunerated for the services rendered to the company, in a situation where it is not possible to pay any commission based on net profits. Hence, in our humble view, the proposed amendment is necessary to ensure that MDs, WTDs and managers receive a remuneration that is in consonance with the services rendered by them in an unprecedented year.
- 2.14** Basis the reasons presented hereinabove, we humbly request the Ministry to invoke the power conferred under Section 467 of the Act - to make a suitable amendment to Schedule V, to dispense with the requirement of obtaining shareholder approval by a special resolution for a period of one year. The Chamber shall be ready and willing to provide all additional assistance required in this regard.

Yours sincerely,



Sandeep Khosla