[CA] CA-Final

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CHAPTER

# DIVIDEND

## 1. MEANING OF DIVIDEND

- The word "dividend" has origin from the Latin word "dividendum". It means a thing to be divided.
- **Section 2(35)** of Companies Act, 2013 states "dividend includes any interim dividend".
- Definition of dividend is **inclusive** and it does not clarify what is dividend.
- Ordinary meaning of dividend is a share of profits, whether at a fixed rate or otherwise, allocated to holders of shares in a company, - **Chelsea Waterworks v. Metropolitan Water Board.**
- Dividend is a return on investment made in the risk capital of a company, as distinct from interest of deposits, loans and debentures. **Capitalisation of profits in the form of bonus shares is not dividend.**

## 2. SOURCES FOR PAYMENT OF DIVIDEND – SECTION 123 OF COMPANIES ACT, 2013

- A dividend on **equity as well as preference shares** can be paid only out of profits. Dividend cannot be paid out of capital.
- Dividend can be paid out of :
  - **Profits of current year** after providing for depreciation as per Schedule II.
  - **Accumulated profits** of previous years after providing for depreciation for previous years.
  - Profit of current year and un-distributed profit of past year.
  - Moneys provided by **State or Central Government**, if any in pursuant of guarantee given by Government.

> **Important Note:**
> If a company fails to comply with the provisions of sections 73 and 74 with regard to acceptance of deposits from public, it shall not declare any dividend on its equity shares till such non-compliance exists.

## 3. DIVIDEND OUT OF PROFIT OR HOW TO CALCULATE PROFIT

- Profit to company should be calculated according to commercially acceptable principles and practices. All known losses must be provided for. For the purpose of declaration of dividend, profit is arrived **after deducting** following:

- **Depreciation** should be provided for entire year.
- **Transfer such percentage of current year profit** as prescribed by Board of directors to the reserve of company.
- **Depreciation for the past year** which is not provided is also to be deducted.
- **Carried over previous years losses** if any, shall be also deducted.

## 4. DIVIDEND OUT OF ACCUMULATED PROFITS OR RESERVES – SECTION 123 OF COMPANIES ACT, 2013

➢ The credit balance in Profit & Loss account may either be kept as it is, or may be transferred to reserves. If in a particular year, profits are not adequate to declare a dividend, dividend can be declared out of reserves, as per **Rule 3** of Companies (Declaration and Payment of Dividend) Rules, 2014. The conditions prescribed are as follows :

- Rate of dividend cannot be more than average of rates at which dividend were announced in previous **3 years.** However, this rule is not applicable to company, which has not declared any divided in each of the 3 preceding years.
- Total amount drawn from reserves shall not exceed an amount equal to **1/10th** of the sum of its paid up capital and free reserves as per last audited financial statement.
- The amount drawn from reserves shall be **first utilized to set off losses** incurred in the current financial year and then, surplus, if any, can be utilized towards declaration of dividend.
- Balance after withdrawal in reserve account shall not fall below **15%** of paid up capital of the company as per last audited financial statement.

> **Important Note:**
>
> Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014 is not applicable to 100% Government Company. 100% Government Company means company in which entire paid up share capital is held by the Central Government or State Government or by the Central Government and one or more State Governments.

➢ Dividend can be declared out of reserve means out of **'free reserves'**. Credit balance in Profit & Loss account is also 'free' and can be used, provided all arrears of depreciation has been provided for.

> **Important Note:**
>
> Section 2(*43*) of the Companies Act, 2013 defines "free reserve" as reserve which, as per the latest audited balance sheet of company, are available for distribution of dividend. The following are not regarded as free reserve and shall not be available for distribution of dividend:
>
> 1. Unrealized gains, whether shown as reserve or otherwise.
> 2. Notional gains, whether shown as reserve or otherwise.
> 3. Amount representing revaluation of assets, whether shown as reserve or otherwise.
> 4. Any change in carrying amount of an asset or liability recognized in equity, including surplus in profit and loss account on measurement of assets or liability at fair value.

## 5. PAYMENT OF DIVIDEND OUT OF CAPITAL PROFIT

- Capital profits, *i.e.* profits gained by sale of capital assets can be utilized for distribution of dividend, only on following conditions :
  - Capital profit should be actually **realized**.
  - **Articles** of company should permit such distribution.
  - The **surplus should remain after valuation** of whole of the assets and liabilities.
- Thus, dividend cannot be paid by revaluation of assets, as the surplus has not been actually realised.
- Capital profit may arise from the **following sources**:
  - Profit on sale of fixed assets.
  - Profit on revaluation of fixed assets.
  - Profit on reissue of forfeited shares.
  - Premium on issue of shares or debenture.

## 6. DEPRECIATION

- If company has not provided depreciation for previous years, all arrears of depreciation should be provided before declaring dividend for current year.
- Depreciation is required to be provided on all the depreciable assets.
- Depreciation can be provided as per **Schedule II of Companies Act, 2013. Depreciation includes amortisation.**

## 7. TRANSFER OF PROFITS TO RESERVE – SECTION 123 OF COMPANIES ACT, 2013

- A company may transfer such percentage of profits as it may consider from current year's profit to reserves, before declaring a dividend. It means, company has liberty to transfer amount of profit to reserve.
- The transfer is required only in respect of profits of current year after providing for, depreciation.

## 8. DECLARATION OF DIVIDEND

- Final dividend is declared in the **general meeting**. Board of Directors have to recommend a dividend. As per **Regulation 80 of 'Table F'**, the recommended dividend can be reduced in the Annual General Meeting, but it **can't be increased.**
- However, Board of Directors can declare interim dividend. As per **section 2(35) of Companies Act, 2013**, dividend includes interim dividend.
- Declaration of dividend subject to condition of approval of financial institution or banks is not permissible.
- After declaration of dividend, the amount must be deposited in a separate bank account within 5 days of its declaration – Section 123(4). However, this provision is not applicable to 100 % Government Company.
- Dividend on equity shares can be distributed only after dividend on preference shares is declared. If preference shares are cumulative, all arrears should also be paid first, before declaring any dividend to equity shareholders.

- Once a dividend is declared in AGM, it cannot be increased in subsequent EOGM. **Biswanath Prasad Khaitan vs. New Central Jute Mills.**
- However, if no dividend was declared in Annual General Meeting, it can be declared in subsequent Extraordinary General Meeting.

## 9. CANCELLATION OF DIVIDEND

- Dividend declared in the general meeting is a debt payable by the company to its registered shareholders - **Hanuman Prasad Gupta vs. Hiralal.** Thus, once a dividend is declared, it cannot be revoked by Board of Directors in ordinary circumstances. However, it may be revoked in the general meeting for just and proper reasons.
- Since as per **section 2(35)**, dividend includes interim dividend, the provision applies to interim dividend also.
- If a dividend declared in the general meeting is against provision of act, it can be revoked.

## 10. INTERIM DIVIDEND

- As per **section 2(35) of Companies Act, 2013,** dividend includes interim dividend.
- Interim dividend is usually paid in the middle of the year. It can also be said that interim dividend is paid between two AGMs.
- Payment of interim dividend is **optional**. If Board of Directors find that profitability of the company is good and is likely to be maintained for balance part of the year.
- Interim dividend can be **paid out of current year's profit only** and not out of past years' profit or reserves.
- When the company has **incurred any loss during the current financial year** up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the **immediately preceding three financial years.**
- After declaration of interim dividend, the amount must be deposited in a separate bank account within **5 days** of the declaration. However, this provision is not applicable to 100% Government Company.
- **As per Regulation 81, Table 'F' Board shall declare interim dividend.** Even if article of company do not contain provision of declaring interim dividend, board can declare interim dividend as it is authorised by Companies Act, 2013.
- Interim dividend stands on same footing as that of final dividend. Therefore, all the provisions which are applicable to dividend are equally applicable to interim dividend.
- Interim dividend and final dividend when declared **become debt.**
- Provisions regarding depositing amount in separate bank account, payment **within 30 days,** transfer of unpaid dividend to special account, interest for late payment, transfer to Investor Protection Fund after seven years, penalty for non-payment etc. are equally apply to interim dividend also.
- In case of listed companies, **30 days advance notice** is required to be given to stock exchange for fixing **'record date'**.
- Profit & Loss account is prepared for period as near to date of declaration of dividend, to ensure that requirements of declaration of dividend are satisfied, though these need not be audited.
- If interim dividend is 'declared' by Board, its approval or confirmation in the general meeting is not required.

## 11. PAYMENT OF DIVIDEND

- Interim dividend can be declared by Board while final dividend will be declared in general meeting. In either case, the dividend must be paid or dividend warrants must be posted **within 30 days** from declaration of dividend.
- Dividend must be paid by any of **following mode :**
  - Cash
  - Cheque
  - Dividend warrant
  - Credit in bank account of shareholder
  - Electronic mode (ECS)
- In case of joint shareholders, dividend can be paid to person whose name is registered first. Payment of dividend is made to another person, if directed by shareholder or joint shareholders in writing.
- **Section 123 of Companies Act, 2013** states that dividend shall be paid only to the **registered shareholder or to his order or to his bankers**.
- Dividend can be paid to transferee if the registered holder of shares authorizes company in writing to pay the dividend to transferee.
- In case of **share warrant, dividend can be paid to bearer** of the share warrant or his bankers.
- In the case if the shares are held in demat, dividend is paid to the **beneficiary** whose names are provided by CDSL or NSDL to the company.
- Dividend to be rounded off to **nearest rupees.**
- Dividend can be paid on pro rata basis, *i.e.* (*a*) dividend is payable only on paid up portion of shares (*b*) In case of new shares issued during the year, offer document may provide that dividend is payable on pro rata basis from the date of allotment. Thus, old shares will be entitled for dividend for full year, while new shares will be entitled to dividend only from date of allotment on pro rata basis - **Section 51 of Companies Act, 2013.**
- As soon as dividend is declared, the amount of dividend (Final dividend or Interim dividend as the case may be) shall be deposited in a **separate bank account within 5 days** from date of declaration of dividend. The amount deposited will be used for payment of dividend.

**Important Note:**
In the case of Nidhi Company, any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.

## 12. PENALTY FOR FAILURE TO PAY DIVIDEND WITHIN 30 DAYS – SECTION 127 OF COMPANIES ACT, 2013

- If dividend is not paid **within 30 days** or dividend warrant is not posted **within 30 days,** the company is liable to pay simple interest **@ 18% p.a.** during the period default continues.
- Every director is liable for **imprisonment upto 2 years.** He is liable if he has committed it knowingly. In addition, he is liable to pay fine of **₹ 1,000 per day** till time default continue.
- In the following cases, non-payment of dividend will be permitted, *i.e.* it will not be treated as offence :
  - Where dividend could not be paid by **operation of any law.**
  - Where directions given by shareholder for payment of dividend cannot be complied with and **same has communicated to him**.
  - Where there is **dispute** regarding right to receive dividend.

- Where the dividend has been **lawfully adjusted** by the company against any sum due to the company from the shareholder.
- Where failure to pay the dividend or post dividend warrant was **not due to any default on part of the company**.

➢ In **SOL Pharmaceutical vs. ROC,** company had declared dividend but could not distribute in view of directions issued by Financial Institutions not to declare dividend unless over-dues of Financial Institutions. It was held that no action can be taken against company for failure to pay dividend within 30 day.

➢ Dividend should not be paid to original shareholder where public company does not transfer shares because transfer is against the provision of act or if there is stay from Court. In such case, the dividend should not be paid to original shareholder. The dividend should be transferred to 'Unpaid Dividend Account of ….. Company Ltd. or Pvt. Ltd.'

➢ As per **Section 58** of Companies Act, 2013, **a private company can decline** to register a transfer as per provision of Articles of the company. If some shares are lodged with the company for transfer, but the transfer is not registered by the company for any reason, the dividend in relation to such shares should be transferred to a special account *i.e.* 'Unpaid dividend Account of ……. Private Limited'. The dividend will be kept in abeyance till the transfer dispute is settled.

➢ A company may have 'lien' on dividend. If so, dividend payment can be adjusted against such lien. **Regulation 9** of Table F authorise company to exercise such lien on dividend.

➢ In **Hanuman Prasad Gupta vs. Hiralal,** it was held that once a dividend warrant is posted to the registered address of the shareholder, dividend is deemed to have been paid within meaning of **Section 123.**

➢ These provisions are equally applicable to interim dividend.

**Important Note:**

In the case of Nidhi Company, Section 127 is applicable subject to the modification that where the dividend payable to a member is ₹ 100 or less, it shall be sufficient compliance of this section, if the declaration of dividend is announced in the local language newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi for at least 3 months.

## 13. DISTINGUISH BETWEEN INTERIM DIVIDEND AND FINAL DIVIDEND

| Interim Dividend | Final Dividend |
|---|---|
| It is declared in between two annual general meetings. | It is declared at the annual general meeting. |
| No sanction of shareholders in the general meeting is required. | Sanction of shareholders at the general meeting is required. |
| Board must state in directors' report the amount of interim dividend paid during the year under review. | Board must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid. |

## 14. RIGHT TO DIVIDEND, RIGHTS AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES – SECTION 126 OF COMPANIES ACT, 2013

➢ As per Section 126, when instrument of transfer of shares has been delivered to company for registration and the transfer of such shares has not been registered by the company, it shall:

- transfer the dividend for shares specified under transfer deed to the **Unpaid Dividend Account** referred to in section 124 unless the company is authorised by the registered holder in writing to pay such dividend to the transferee; and
- keep in abeyance, any offer of rights shares and any bonus shares.

## 15. DISTINGUISH BETWEEN INTEREST AND DIVIDEND

| **Interest** | **Dividend** |
|---|---|
| Interest is paid on debenture and loan. | Dividend is paid on equity and preference shares. |
| Interest is debt. | Dividend becomes debt once it is declared and it is payable out of profit generally. |
| Interest is charged against profit. | Dividend is appropriated of profit. |
| Interest is paid whether company has profit or not. | Dividend is paid in event of profit generally. |

## 16. UNPAID DIVIDEND ACCOUNT – SECTION 124

- Dividend warrants are posted to last known addresses of shareholders.
- If dividend is not paid or not claimed within **30 days from date of declaration**, the company must transfer the unclaimed amount to a separate account titled 'Unpaid Dividend Account of ……….. Company Limited or Private Limited' **within 7 days from expiry of 30 days**.
- Company should prepare statement containing names of shareholders, their last known addresses and unpaid dividend amount within **90 days** from transfer of any amount to unpaid dividend account. Statement is uploaded on website of company and website specified by Central Government for this purpose. Company is required to file **Form No. IEPF-2.**
- It is clarified that 'dividend which remains unpaid' includes dividend warrants, which are dispatched but not encashed by the shareholders.
- The unclaimed dividend amount should be retained in the separate account for **7 years**. If dividend is claimed within seven years, the amount can be paid out of such separate account.
- If dividend is not claimed within 7 years from date when dividend became due, the unclaimed or unpaid amount should be paid to Government in **'Investor Education and Protection Fund' (IEPF)**.
- Interest at rate of **12% p.a.** is payable if unpaid amount of dividend is not transferred to the separate account within stipulated time.

***Transfer of Shares***

- Now company is required to transfer the shares to IEPF Authority (fund) for which dividend has remained unpaid or unclaimed for **consecutive 7 years.**
- In case the beneficial owner has encashed any dividend warrant during the last 7 years, such shares shall not be required to be transferred to the fund even though some dividend warrants may not have been encashed.
- As per **Rule 6** of IEPF Rules, 2016, shares shall be transferred to an **IEPF DEMAT Account**. It should be transferred within period of **30 days** after expiry of 7 years. To transfer shares to IEPF DEMAT Account, Board of director shall authorise the Company Secretary or any other person to sign the necessary documents.
- Company should inform to the concerned shareholders whose shares are due for transfer to IEPF Authority **three months before due date of transfer of shares**. Notice to this effect shall be published in one English and regional daily newspaper. It is also uploaded on **website of company.**
- However, shares are not required to transfer as above, if Court of Authority has issued restraining order. Details of such shares are required to be given to authority in Form IEPF-3 within 30 days from the end of financial year.

- Company shall send statement in **Form No. IEPF-4** containing details of shares transferred to IEPF Authority.
- The company shall maintain the details of shareholding of each individual shareholders whose shares have been credited to the DEMAT account of the Authority.
- The **voting rights** on shares transferred to the fund shall **remain frozen until the rightful owner claims the shares.**
- **All benefits accruing** on such shares e.g., bonus shares, split, consolidation, fraction shares etc., except right issue shall also be credited to such DEMAT account.
- As per **Rule 7** of IEPF Rules, 2016, rightful claimant can claim the transfer of shares from IEPF Authority by making an application.

## 17. INVESTOR EDUCATION AND PROTECTION FUND – SECTION 125 OF COMPANIES ACT, 2013 & IEPF RULES, 2016

- Investor Education and Protection is established **by Central Government.** It will be utilized for **promotion of investor awareness and protection of investors.**
- The fund will get amounts from following **sources**:
  - Amount of **unpaid dividends.**
  - **Application moneys** received by company for allotment of any securities and due for refund.
  - Matured but **unpaid deposits** with companies.
  - Matured but **unpaid debentures** with companies.
  - Interest accrued but unpaid on aforesaid amounts.
  - **Grants and donations** from Central Government, State Government, companies or any other institutions.
  - Interest or other income received out of the investments from the fund.
  - The amount received under **disgorgement of securities**. [As per section 38(4)]
  - **Sale proceeds of fractional shares** arising out of issuance of bonus shares, merger and amalgamation for 7 years or more.
  - **Redemption amount of preference** shares remaining unpaid or unclaimed for 7 years or more.
  - **All shares** for which dividend has remained unpaid or unclaimed for consecutive 7 years.
  - Resultant benefits arising out of shares held by IEPF authority.
- The amounts due for payment by company on account of dividend or refund of application money or debentures repayment or deposits repayment will be kept by company for seven years.

## 18. ADMINISTRATION AND PROCEDURE OF IEPF

- The authority shall maintain proper **accounts and records** of fund.
- Accounts shall be audited by **CAG.** Report of CAG is forwarded to Central Government.
- The company shall furnish statement to authority in **Form No. IEPF-4** giving details of transfer to fund **within 30 days of transfer.**
- Any person whose share, unpaid dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares may apply for refund. Application for refund is made to authority online in **Form IEPF-5.**
- After making application, its physical copy is **signed** by application and forwarded to company.
- Company shall submit verification within **15 days** from receipt of application.
- Authority shall record it and order payment.

- ➢ Authority shall provide report to the **Central Government within 60 days** from end of financial year giving details of companies which have failed to transfer due amount to fund.

## 19. DIVIDEND ON PREFERENCE SHARES

- ➢ A preference share carries a preferential right as to dividend. Preferential right to dividend is subject to:
  - ❑ the **term of issue** and
  - ❑ the **articles of association.**
- ➢ Preference dividends can be paid if:
  - ❑ the company has **earned sufficient profits**.
  - ❑ it is declared as per provisions of Act and **article of association**.
  - ❑ it is declared.
- ➢ Dividend on preference shares can be paid either for **fixed amount or an amount calculated at a fixed rate**.
- ➢ Preference shares may be **cumulative or non-cumulative**.
- ➢ Preference shares can carry dividend of a fixed amount, before any dividend is paid on the equity shares.
- ➢ If there are two or more classes of preference shares, the shareholders of the class which has priority are similarly entitled to their preferential dividend before any dividend is paid in respect of the other class.
- ➢ Preference shareholders can't consider the preference dividend as a debt and sue for its payment unless it is declared.

### LANDMARK JUDGMENTS

1. **Evling vs. Israel & Oppenheimer Ltd. (1918)**
   If the article of association specifies that company's profit shall be applied by way of payment of the preference dividend, the preference shareholder can sue for it even though it has not been declared.
2. **Bharat Fire and General Insurance Ltd. vs. CIT (1964)**
   Amount standing to the credit of the securities premium account can't be distributed by way of dividend to the shareholders.
3. **Barjor Hoshangi Vakil vs. Mettur Chemical & Industrial Corporation Ltd. (1963)**
   Dividend is share of company's profit distributed among the members.
4. **Bond vs. Barrow Haematite Steel Co. (1902)**
   Court can't compel directors to declare dividend against their judgment.
5. **Kasturchand Jain vs. Gift Tax Officer (1961)**
   A dividend when proposed does not become a debt but only become debt when declared
6. **Raghunandan Neotia vs. Swadeshi Cloth Dealers Ltd. (1964)**
   Declaration of dividend should be made at the AGM.
7. **Hook vs. Great Western Rly. Co. (1867)**
   A director can be restrained from going ahead with the payment of an improper and illegal dividend by any individual shareholder.
8. **Bacha F. Gazdar (Mrs) vs. CIT (1955)**
   Once a dividend is declared a shareholder has right to claim dividend against the company.
9. **Re Jowiti, Jowitt vs. Keeling (1922)**
   An interim dividend is that dividend which is declared between two AGMs.
10. **Bishwa Nath Prasad vs. New Central Jute Mills Ltd. (1961)**
    Once a company has declared a dividend for a financial year at an AGM, a further dividend can't be declared in respect of the same year at subsequent GM.

**11. Burland vs. Earle (1902)**

How much of the profit shall be distributed to shareholders in the form of dividend is matter of internal management of company. The court will not interfere with their discussion.

**12. Oxford Benefit Building & Investment Society, In re (1886)**

Directors who knowingly paid dividends out of capital shall be held personally liable to make good the amount to the company.

## Past Examination Questions

**Question 1**

***A company declared dividend at an annual General Meeting for the financial year ended 31st March, 2014 without providing for depreciation on certain immovable properties on the ground that these assets were acquired investment for the purpose of earning supplementary income, though shown in the Balance Sheet under the head 'Fixed Assets' and not for the purpose of any business carried on by the Company. If the company had provided depreciation on the said immovable properties, the company would have suffered loss for the financial year ended 31st March, 2014.***

***Answer the following in the context of the above and with reference to the provisions of the Companies Act, 2013.***

(*i*) ***Is it in order for the company to declare dividend for the financial year ended 31st March, 2014 without providing for depreciation on certain immovable properties?***

(*ii*) ***Is it possible for the Board of Directors of the company to revoke the dividend which has been declared at the Annual General Meeting?***

(*iii*) ***Is it possible for the company to claim that depreciation has not been provided in the accounts as the company is not entitled to any depreciation under the Income-tax Act?***

**Answer**

(*i*) As per section 123 of Companies Act, 2013, a company cannot declare dividend out of profits without providing for depreciation as provided under Schedule II. It is immaterial whether the assets are used for the purpose of business of the company or as investment for earning supplementary income so long as these assets are not intended for resale, *i.e.*, stock-in-trade. In view of above, it is not in order to declare dividend for the financial year ended 31st March, 2014 without providing for depreciation on certain immovable properties.

(*ii*) Ordinarily a dividend once declared cannot be revoked except with permission of the shareholders because dividend declared becomes debt to the shareholders. But where a dividend has been declared illegally as in this case, the Board of Directors will be justified in revoking the declaration of dividend.

(*iii*) Company is required to calculate and deduct amount of depreciation at the rate specified in Schedule II as per the provisions of Companies Act, 2013. The provisions of depreciation under Income Tax are different than Companies Act. Therefore it is immaterial that whether depreciation in respect of any assets is admissible under Income-tax Act. Hence, the company's contention is not correct.

**Question 2**

***The agenda for the meeting of the Board of Directors of M/s Brilliant Enterprises Ltd. held on 20-5-2014 for adopting the financial statement for the year ended 31-3-2014 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-3-2014 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. (CA May 2011 Modified)***

***Or***

***A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during the year ended 31st March, 2014, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2013-14. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2013-14? (CA November 2009 Modified)***

**Answer**

Company can declare dividend out of profit of current year or profit of any previous year after providing for depreciation. In case of no profit or inadequacy of profit, company can withdraw amount from previous year's profit (*i.e.* reserve) and use it for payment of dividend.

As per section 123, if in a particular year, profits are not adequate to declare a dividend, dividend can be declared out of reserves, as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014. The conditions prescribed are as follows:

- Rate of dividend cannot be more than average of rates at which dividend were announced in previous 3 years. However, this rule is not applicable to company, which has not declared any divided in each of the 3 preceding years.
- Total amount drawn from reserves shall not exceed an amount equal to 1/10th of the sum of its paid up capital and free reserves as per last audited financial statement.
- The amount drawn from reserves shall be first utilized to set off losses incurred in the current financial year and then, surplus, if any, can be utilized towards declaration of dividend.
- Balance after withdrawal in reserve account shall not fall below 15% of paid up capital of the company as per last audited financial statement.

Here in the given case, company had in past paid 20% dividend. Assuming that other conditions as prescribed under Companies Act, 2013 are compiled by company. It can pay dividend at rate of 20%.

**Question 3**

***Board of Directors of M/s. RPP Ltd. in its meeting held on 29th May, 2014 declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting scheduled for 10th June, 2014, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so.***

***(CA June 2009 Modified)***

***Or***

***The Board of Directors of M/s RPP Ltd. in a meeting held on 30th April 2014 declared an interim dividend payable on the paid up equity share capital of the company. In the board meeting scheduled for 15th May 2014, the board wants to revoke the said declaration. State with reference to the provisions of the Companies Act, 2013 whether the board of directors can do so.***

***(CA May 2012 Modified)***

**Answer**

The Board of Directors is authorized to declare interim dividend. Amount of interim dividend shall be deposited in a separate bank account within 5 days from the date of declaration of such dividend. The amount deposited shall be used for payment of interim dividend. Board can revoke declared divided only in extraordinary circumstances or where declaration of dividend is void.

In view of the above legal position, the Board of Directors of RPP Ltd. must have deposited the amount of interim dividend declared on 29th May, 2014 into a separate bank account on or before 3rd June, 2014 *i.e.* within five days from 29th May, 2014 when the interim dividend was declared. As stated above, the amount once deposited into a separate bank account, can be used only for payment of interim dividend.

Accordingly, the Board of RPP Ltd. cannot revoke the interim dividend declared on 29th May, 2014 and do not have any power to use the interim dividend amount transferred to a separate bank account for any other purpose.

If the Board had not transferred the interim dividend amount to a separate bank account and not paid interim dividend within the required time as per provisions of Companies Act, 2013, the company and its directors are liable to the applicable penal provisions of the Companies Act.

**Question 4**

***SKD an employee of M/s Moreh Ltd. met with an accident and died. The accident occurred when SKD was on Company's duty. He held one hundred shares partly paid. Normally the Company has a first and paramount lien on the shares. The Board of Directors, however, relaxed the said provision with regard to the hundred shares held by SKD as a goodwill gesture on the part of the Company. Is the action of the Company valid? State the reasons. Also state whether the Company's lien can be extended to dividend payable on such shares.*** ***(CA November 2009)***

**Answer**

Lien on shares is permissible only if article of company authorise. As per Regulation 9 of Table F of the Companies Act, 2013, the Company has lien on share for unpaid call or for any other amount due from shareholder. When the right of lien is exercised by company, shares are not transferred.

The Board of Directors may, however, at any time declare any share to be wholly or in part exempt from the said provision. Hence the decision of the Board of Directors of M/s Moreh Ltd. to relax the provisions of lien in respect of shares held by SKD is in order and valid. Further the Company's lien is extended to all dividends payable on such shares.

**Question 5**

***Under Section 123 of Companies Act, 2013, depreciation will have to be provided for working out distributable profit. Though, the present value of land of a company, dealing with land, is much less than the book value, the difference between the book value and market value was not amortized before declaring dividend. Can company declare dividend in this situation? (CS December 2008 Modified)***

**Answer**

In the given case, present value of land of company is very less than book value. It means if the said land is sold, company is likely to incur capital loss. Capital loss is required to be adjusted before paying dividend out of current profits. Hence company can't declare dividend unless loss on capital is adjusted first and company has profit available from that year.

**Question 6**

***A resolution was passed by the shareholders in an annual general meeting approving final dividend @ 20% for the financial year 2013-14 and one month later the Board of directors decided to pay further dividend @ 5% for the financial year 2013-14. Comment. (CS December 2008 Modified)***

**Answer**

Circular No. 22/1975 of MCA suggest that company which could not declare dividend at an Annual General Meeting may declare it at subsequent General Meeting. But if company has already declared a dividend at annual general meeting, it can't declare further dividend for same year. In view of the above circular, company can't pay further dividend of 5% for financial year 2013-14 as it had already paid dividend at annual general meeting.

**Question 7**

***The Board of Directors of Nimbahera Chemicals Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 2013 and the rules thereunder. (CA November 2012 Modified)***

**Answer**

Board of directors may transfer such percentage of its profit for that financial year as it may consider appropriate to the reserve of company. Companies Act, 2013 has not imposed any fixed percentage of amount which is compulsorily required to be transferred to reserve before declaration of dividend. In view of this provision, company may transfer more than 10% of its profit to reserve.

**Question 8**

***M/s. USA Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, 1956 but so far no amounts have been deposited into the said account. Explain with reference to the abovesaid enactment, the amounts payable to the credit of the said account and the period within which the amounts shall be paid. (CA November 2011)***

**Answer**

Company can't establish investor education and protection fund. IEPF is established only by Central Government. The Company shall transfer following amounts to the Investor Education and protection Fund, if it remains unclaimed or unpaid for period of seven years from transfer of fund to special account:

- amount in the unpaid dividend accounts of companies.
- the application moneys received by companies for allotment of any securities and due for refund.
- matured deposits and debenture with companies.
- interest accrued on the above amounts.
- grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund.
- interest or other income received out of the investments made from the Fund.

**Question 9**

***X & Co. Ltd. made a loss of ₹20 lakhs after providing for depreciation for the year ended 31st March, 2014 and as a result the company was not in a position to declare any dividend for the said year out of profits. However, the Board of Directors of the company announced the declaration of dividend of 15% on the equity shares payable out of free reserves. The paid up share capital of the company and***