Chapter - 7
Dividend
Sec 123 to 127

Sec 123:- Declaration of Dividend

No dividend → shall be declared or paid → by a company → For any financial year → except

- current year profit
- or previous year profit

→ after providing depreciation → as per (schedule II).

- or out of money provided by C.G. / S.G. → For payment of dividend → in pursuance of guarantee.

a company, need to transfer such % of its profits → to reserves of the company → F.Y.

In case of inadequacy or absence of profits in any financial year. → Company wants to declare out of previous years profits & transfer to reserve, subject to following conditions: → Companies(Declaration & payment of dividend) Rules 2014.

(a) Rate of dividend → shall not exceed → average rate of dividend → immediately 3 preceding F.Y. → above rule → Not Applicable → to a company which has not declared any dividend in each Previous Financial Year

(b) amt. drawn from previous year profit <= 10% of (paid up share capital + Free Reserve) → latest audited financial statement

(c) first be utilised to set off losess in F.Y. (current) → before declaring dividend.

(d) Reserve after drawal not fall below 15% of its paid up share capital.

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Second proviso to section 123 (1) & also Sub sec (4) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; vide Notification, dated 5th June 2015. [CAA, 2015]

Sec 123 (2nd chart)

Interim dividend

BOD → may declare interim dividend
↓
during any F.Y.
↓
out of profits of the F.Y.

Previous year losses & depreciation → not provided
↓
in F.Y.
↓
are set off against profit of co. C.Y.

In case
↓
Company has incurred loss during the current F.Y.
↓
upto the end of quarter immediately preceeding
↓
the date of declaration of interim dividend
↓
such Interim dividend
↓
shall not be declared
↓
at a rate higher than the average dividend rate immediately 3 Previous financial year.

amount of Dividend (including Interim.Dividend.)
↓
shall be deposited in a scheduled bank
↓
in a separate account
↓
within 5 days
↓
from the date of declaration of such dividend.

Sub sec (5)

→ Dividend shall be paid to registered shareholder or his banker

→ Co. can utilise profits or reserve of a company
↓
for the purpose of issuing fully paid up bonus

A company → fails to comply with the provision of section 73 & 74
↓
shall not declare any dividend on its equity share
↓
till such default continue

Sub-section (5) shall apply to a Nidhi Company, subject to the modification that any dividend payable in cash maybe 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; vide Notification, dated 5th June 2015.

Sec 124 – Unpaid Dividend Account

If any dividend paid declared but not paid or claimed

Within 30 days from the date of the declaration.

Company shall within 7 days after expiry of 30 days

transfer total amount of unpaid or unclaimed dividend

to a special account in any schedule bank

called ***unpaid dividend account***

any person can claim amount from this account till 7 years.

after expiry of 7 years

amount transfer to **IEPF (u/s 125)**

Company shall prepare a statement contain – name , address , amount to each person & place it on the website of the company & CG website as approved.

Default –

Company shall pay interest @ 12 %p.a to its members in proportion to the amount remaining unpaid to them

Default –

Company – fine – Rs 5 lacs to 25 lacs

Officer – Rs 1 lacs to 5 lacs.

SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND.

1 The Central Government → shall establish a Fund to be called → the Investor Education and Protection Fund

2 There shall be credited to the Fund :

- (a) the amount given by the C.G → by way of grants → after due appropriation → made by Parliament by law in this behalf → for being utilised for the purposes of the Fund;
- (b) donations given to the Fund → by the Central Government, State Governments, companies or any other institution → for the purposes of the Fund;
- (c) the amount in the "Unpaid Dividend Account" of companies → transferred to the Fund under sub-section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government → which had been transferred to that account → under sub-section (5) of section 205A of the Companies Act, 1956, → as it stood immediately before the commencement of the Companies (Amendment) Act, 1999, → and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund → under section 205C of the Companies Act, 1956;
- (f) the interest or other income received → out of investments made from the Fund;
- (g) the amount received under sub-section (4) → of section 38;
- (h) the application money received by companies → for allotment of any securities and due for refund;
- (i) matured deposits with companies → other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares → arising out of issuance of bonus shares, merger and amalgamation → for seven or more years;
- (m) redemption amount of preference shares → remaining unpaid or unclaimed → for seven or more years; and → such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND. (2nd Chart)

- 3. The Fund shall be utilised for :
  - (a) the refund in respect of
    - unclaimed dividends,
    - matured deposits,
    - matured debentures,

    → the application money due for refund and interest thereon;
  - (b) promotion of investors' education, awareness and protection;
  - (c) distribution of any disgorged amount among eligible and → identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors → who have suffered losses due to wrong actions by any person, → in accordance with the orders made by the Court which had ordered disgorgement;
  - (d) reimbursement of legal expenses incurred in pursuing class action suits → under sections 37 and 245 by members, debenture-holders or depositors → as may be sanctioned by the Tribunal; and
  - (e) any other purpose → incidental thereto,
- (4) Any person claiming to be entitled to the amount → referred in sub-section (2) → may apply to the authority constituted under sub-section (5) → for the payment of the money claimed.
- (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.
- (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.

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SECTION 125
INVESTOR EDUCATION AND PROTECTION FUND. (3rd Chart)

(7) The Central Government
↓
may provide to the authority such offices, officers, employees and other resources
↓
in accordance with such rules as may be prescribed.

(8) The authority shall administer the Fund and
↓
maintain separate accounts and other relevant records
↓
in relation to the Fund in such form as may be prescribed
↓
after consultation with the Comptroller and Auditor-General of India.

(9) It shall be competent for the authority constituted under sub-section (5)
↓
to spend money out of the Fund
↓
for carrying out the objects specified in sub-section (3).

(10) The accounts of the Fund shall be audited
↓
by the Comptroller and Auditor-General of India
↓
at such intervals as may be specified by him
↓
and such audited accounts together with the audit report
↓
thereon shall be forwarded annually by the authority
↓
to the Central Government.

(11) The authority shall prepare in such form and at such time
↓
for each financial year as may be prescribed
↓
its annual report giving a full account of its activities
↓
during the financial year
↓
and forward a copy thereof to the Central Government and
↓
the Central Government shall cause the annual report and
↓
the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

Sec 125 - These rules may be called the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.

Composition of the Authority.- (I) The Authority shall consist of the following, namely:-

(a) Chairperson

(b) six members

(c) Chief Executive Officer

(2) The Chief Executive Officer shall be the convenor of the Authority.

Chairperson of the Authority.- The Secretary. Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority.

Chief Executive Officer of the Authority.- The Central Government shall appoint a person to be the Chief Executive Officer of the Authority.

Members of the Authority.- The Central Government may appoint the following as the members of the Authority, namely:—

i. a person not below the rank of Executive Director to be nominated by the Reserve Bank of India as ex-officio member;
ii. a person not below the rank of Executive Director to be nominated by the Securities and Exchange Board of India as ex-officio member;
iii. four persons having special knowledge and experience of not less than fifteen years, in finance, management, accountancy or law with one person from each discipline and such person shall have special knowledge, or professional experience, which shall in the opinion of the Central Government shall be useful to the Authority.

The term of office of members of the Authority.- The members of the Authority appointed shall hold office for a period of 3 years and shall be eligible for reappointment;

Provided that no member shall hold office for more than three terms.

Provided further that a member shall be eligible for reappointment after expiration of cooling off period of three years after his term and member also right to relinguish by giving 3 months notice .

The members appointed shall hold office for a period of three years or till attaining the age of 65 years whichever is earlier.

The Central Government shall remove a member from office if he—

- is, or at any time has been, adjudicated as insolvent
- is of unsound mind and stands so declared by a competent court;
- has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

- has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest.

  Provided that no member shall be removed under this sub-rule unless he has been given a reasonable opportunity of being heard in the matter.

The number of officers and employees of the Authority.- The Authority shall have such number of officers and other employees for rendering secretarial assistance and for its day to day functions as are set out in Schedule I to these rules.

Functions of the Authority.-

1. Subject to the provision of the Act. the Authority shall have the duty to administer the Fund for Investor Education and Protection.
2. The general management of the affairs of the Authority shall vest in the Chief Executive Officer, who may exercise powers, which may be authorised by the Authority.
3. The Chief Executive Officer shall function under superintendence and direction of the Chairperson.
4. Without prejudice to the generality of the provisions, the functions of the Authority shall include the following, namely:-

- The Authority may constitute permanent Committees for overseeing its functions;
- Each Committee shall comprise two members, Chief Executive Officer and concerned functional head, who shall be the secretary of the Committee. The Committee shall be headed by an ex-officio member;
- The Committee may invite experts with special knowledge and expertise, as and when required to assist it on any specific issue;
- The Authority may outsource, if required, work related to Funds and Shares Management.
- The broad functional divisions of the Authority shall be as per Schedule II to these rules.

Meetings.-

i. The Authority and its Committees shall meet at such times and places as it may consider necessary.
ii. The Authority and its Committees shall determine its own procedure for holding of meetings.
iii. If the Authority or its Committees has to hold a meeting elsewhere than in New Delhi, the approval of the Chairperson of the Authority shall be obtained indicating the reasons thereof.
iv. The Authority and the Committees shall meet at least once in a quarter and at least four such meetings shall be held in a financial year: Provided that not more than one hundred and twenty days shall intervene between two consecutive meetings.
v. The meeting of the Authority shall be presided over by the Chairperson.
vi. If for any reason, the Chairperson is unable to attend a meeting, any other Member chosen by the Members present from amongst themselves at the meeting shall preside over the meeting.
vii. In case of difference in opinion on any question before the Authority, or any of its Committees, the views of the majority shall be taken as the final decision.

viii. More than fifty percent appointed Members of the Authority shall constitute the quorum for the transaction of business at a meeting of the Authority

ix. Two members of a Committee shall constitute the quorum for the transaction of business at a meeting of the Committee.

x. For journeys performed by a non-official member of the Authority or Committee or a special invitee in connection with the work of the Authority or Committee, the actual expenditure for attending the meeting shall be reimbursed, subject to maximum of such expenditure limit applicable to a Senior Administrative Grade officer of Government of India.

Member not to participate in meetings in certain cases.- A member, who has any pecuniary interest, direct or indirect in any matter that is brought up for consideration at a meeting of the Authority and its Committees, shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Authority and its Committees, and the member shall not take any part in any deliberation or decision of the Authority and its Committees with respect to that matter.

Vacancies, etc., not to invalidate proceedings of Authority.- No act or proceeding of the Authority and its Committees shall be invalid merely by reason of-

- any vacancy in, or any defect in the constitution of the Authority and its Committees;
- any defect in the appointment of a person acting as a member of the Authority and its Committees;
- any laches in the procedure of the Authority and its Committees not affecting the merits of the case.

Protection of action taken in good faith.- No suit, prosecution or other legal proceedings shall lie against the Central Government or Authority or any officer of the Central Government or any member, officer or other employee of the Authority for anything, which is in good faith done or intended to be done under these rules.

Sec 126: Right to dividend, right share & Bonus share kept in abeyance pending registration of transfer of shares:

↓ where any instrument of transfer of shares has been delivered

↓ to any company for registration

↓ but not registered

- ↓ Transfer the dividend
  - ↓ to unpaid dividend account(sec 124)
  - ↓ unless, authorised by registered holder in writing to transfer to transferee
- ↓ keep in abeyance in relation to such shares
  - ↓ any offer of right shares + any issue of fully paid up bonus shares.

Sec 127:- Punishment for failure to distribute dividend

↓ where a dividend → declared by company

↓ but not paid or warrant in respect has not been posted

↓ within 30 days from the date of declaration

↓ to any shareholder entitled to the payment of the dividend.

↓ Default

- ↓ Director
  - ↓ Imp= 2 yr fine= 1000/day till default continue
- ↓ company
  - ↓ shall be liable to pay simple interest @ 18% pa during the period
  - ↓ default continues

No offence

- ↓ Dividend not paid ↓ operation of any loan
- ↓ Directions not complied ↓ and communicated to him
- ↓ Dispute for amount of dividend
- ↓ Dividend ↓ adjusted any sum due to company.
- ↓ Not posted dividend warrant ↓ No default of company

Section 127 shall apply to a Nidhi company, subject to the modification that where the dividend payable to a member is Rs 100 or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhis for at least three months; vide Notification ,dated 5th June 2015.

Dividend questions (Sec 123 to 127)

Q.1 Examine the validity of the resolution passed at the Annual General Meeting of a public company for payment of dividend at a rate higher that recommended by the board of directors.

Ans. As per Regulation 80 contained in Table F of Schedule I to the Companies Act, 2013, a company in general meeting declare dividends, but no dividend shall exceed the amount recommended by the Board.

Following conclusions are worth noting;

(a) The power to declare dividend vests in the members, but the members can exercise such power only if the dividend proposed/recommended by the Board.

(b) The rate of dividend proposed/recommend by the Board may be reduced by the members.

(c) The rate of dividend proposed/recommended by the Board cannot be increased by the members.

(d) Any provision in the articles, which authorises the members to declare dividend higher then the rate recommended by Board, is void.

Therefore, in the given case, the resolution passed at the Annual General Meeting declaring dividend at a rate higher than recommended by the Board of directors is not valid.

Conditions for declaration and payment of dividend (Section 123 of the Companies Act, 2013)

Q 2. Advice the BOD of a public limited company in relation to following matters, under the provisions of the Companies Act-

i. **Sources out of which the company can declare dividend.**
ii. **Transfer of profits to reserves before declaring dividend, for a particular financial year.**

OR

The BOD of N Ltd limited proposes to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the BOD of the said company explaining the relevant Provisions?

Ans .

1. Sources of dividend

   The fundamental rule ,is that dividend is to be declared or paid only out of profits. In other words, the dividend for financial can be declared or paid only out of the following sources:

   - Profits of the company for that financial year (after providing for depreciation)
   - Profits of the company for any previous financial year(s) and remaining undistributed (after providing for depreciation
   - Moneys provided by the Central Government or State Government m pursuance of a guarantee given by it.

2. Provision for Depreciation

   Depreciation shall be provided in accordance with the provisions of Schedule II.

3. Transfer to reserves

   A company may before the declaration of any dividend in any financial year, transfer such percentage of its profits for the financial year as it may consider appropriate to the reserves of the company.

Advanced Practical Problems

Transfer of profits to reserves

Q.3 Rich Ltd. has made a profit of Rs. 200 crore during the financial year 2014-15. A dividend @ 25% was proposed and declared for the financial year 2014-15. However, Rich Ltd. did not transfer any profits to reserves. Is it c contravention of the provisions of the

Companies Act 2013 ? Would your answer be different, if Rich Ltd. had transferred 15% of its profits to reserves?

Ans. As per First Proviso to section 123(1), a company may transfer such percentage of its profits to reserves as it may deem fit. In the present case, the decision of the company not to transfer any profits to reserves is valid since it is the discretion of the company whether to transfer any profits to reserves or not. Irrespective of the rate of dividend, the Companies Act, 2013 does not make it mandatory for the company to transfer any percentage of its profits to reserves.

Had Rich Ltd. transferred 15% of its profits to reserves, it would also have been valid since a company may transfer to reserves such percentage of its profits as it may deem fit.

Liability of the company and of the directors in case of non-payment of dividend within the time limit

Q.4 The Annual General Meeting of ABC Limited declared o dividend at the rate of 30 percent payable on paid up equity shore capital of the Company as recommended by Board of Directors on 30th April, 2013. But the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the company, up to 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for default period. Decide in the light of provisions of the Companies Act, whether Mr. Ranjan would succeed? Also state the directors' liability in this regard under the Act. [CA (Final) Nov. 2013]

Ans. As per section 127 of the Companies Act, 2013, the dividend shall be paid within 30 days from the date of declaration of dividend. In case, the dividend warrant is posted by the company within 30 days of declaration of dividend, it is considered to be a sufficient compliance of section 127 of the Companies Act, 2013.

In the present case the company has failed to post the dividend warrant within 30 days of declaration of dividend, and so, this amounts to contravention of section, 127 of the Companies Act, 2013, attracting the penal provisions of section 127 of the Companies Act 2013, stated as under:

i. Mr. Ranjon has the right to sue the company for recovery of dividend along with interest. However, the company shall be liable to pay Simple interest @ 18% per annum, and not 20% per annum.
ii. Every director who is knowingly a party to the default, shall be liable for imprisonment upto 2 years and shall also be liable for fine of not less than Rs. 1,000 per day for each day of default.

Payment of dividend to shareholders made after 45 days - Consequences

Q.5 The Board of Directors of XYZ Company Limited at its meeting declared o dividend on its on its paid-up equity share capital which was later on approved by the company's AGM In the meantime the directors at another meeting of the Board decided by passing a resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result dividend was paid to shareholders after 45 days. Examining the provisions of 'the Companies Act, 2013, state.

i. Whether the act of directors is in violation of the provisions of the act and also the consequences that shall follow for the above act of directors?
ii. What would be your answer in case the amount of dividend to o shareholder is adjusted by the company against certain dues to the company from the shareholder?
[CA (Final) Nov. 2014]

Ans. As per section 127 of the Companies Act, 2013, the dividend shall be paid within 30 days from the date of declaration of dividend. In case, the dividend warrant is posted by the company within 30 days of declaration of dividend, it is considered to be a sufficient compliance of section 127 of the Companies Act, 2013.

i. In the present case, XYZ Company Limited has failed to pay the dividend within 30 days of declaration of dividend, and so, this amounts to violation of section 127 of the Companies Act, 2013, attracting the penal provisions of section 127 of the Companies Act, 2013, stated as under :
   a) XYZ Company Lim fed is liable to pay simple interest @ 18% per annum
   b) Every director who is knowingly a party to the default, is liable for imprisonment upto 2 years and is also liable for fine of not less than Rs. 1,000 per day for each day of default.

(ii) As per section 127, there shall not be a contravention of section 127 where dividend is lawfully adjusted by the company against any sum due to it from the shareholder.

Thus, where the amount of dividend is adjusted by the company against sums due to the company from the shareholders, it shall not amount to a violation of section 127.

Practical Problems from CA Examinations

Whether Board is entitled to revoke the interim dividend?

Q.6 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 ore required to State with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so. [CA (Final) June 2009 (Modified)]

Ans. As per section 2(35) of the Companies Act, 2013, dividend includes any interim dividend. Therefore, all the provisions applicable to final dividend shall equally apply to interim dividend.

Thus, interim dividend once declared, like final dividend, is a debt due from the company. Accordingly, once declared, interim dividend cannot be revoked except under the same circumstances in which the final dividend can be revoked.

The amount of interim dividend is to be compulsorily deposited in a separate bank account, within 5 days of passing the Board resolution declaring the interim dividend [Section 123(4) of the Companies Act. 2013].

All the provisions contained in Section 123 and Section 127 of the Companies Act, 2013 shall, as far as may be. also apply to any interim dividend.

As per section 127 of the Companies Act, 2013, dividend must be paid within 30 days of its declaration. Thus, interim dividend must also be paid within 30 days of its declaration, i.e., within 30 days of date of passing the Board resolution declaring the interim dividend.

In the instant case on declaration of interim dividend by the Board in a Board Meeting held on 29th May, 2014, the Liability of the company to pay the interim dividend has become certain, and the payment of interim dividend must be made within next 30 days, viz. on or before 28th June 2014.

Therefore, revocation of interim dividend in the Board Meeting held on 10th June, 2014 is not possible.

Is it permissible to declare dividend @20% out of reserves or out of profits retained in the P&L Account ?

Q.7 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 reserves which can be utilised for maintaining the rate of dividend at 20% Advice the company as to how it should go about it if it wants to declare dividend at the rate of 20% for the year 2014-15 . Would your answer be different if the company utilised only the profits made in the previous year and retained in the profits and loss account for the purpose of payment of dividend at the rate of 20% for the year 2014-2015 ?

Hint - In the present case, the average rate of dividend declared by the company during the preceding 3 financial years is 20%. 5o, the company may declare dividend at the rate of 20%, subject to fulfillment of all the conditions contained in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014, i.e. the total amount to be drawn from reserves shall not exceed 1/10th of the sum of paid-up share capital and free reserves, and the balance of reserves after such withdrawal shall not fall below 15% of paid up shore capital.

The dividend of 20% shall be first proposed by the Board of directors, and then, in the AGM, the members shall have to pass an ordinary resolution declaring the dividend at the rate of 20%.

Payment of dividend by utilising credit balance of Profit and Loss Account

Carried forward profits which have not been transferred to the reserves (i.e. credit balance in the Profit and Loss Account) can be utilised for payment of dividend without any restriction. Such utilisation does not amount to declaration of dividend out of reserves.

Thus, the company may declare dividend @20% for the year 2014-2015 out of the accumulated profits retained in the Profit and Loss Account without any restriction, and without fulfilling any condition contained in the Companies (Declaration and Payment of Dividend) Rules, 2014.

Is it permissible to declare dividend @20% out of reserves if the average dividend in past 3 years was 10%?

Q.8 The agenda for the meeting of the Board of Directors of M/s. Brilliant Enterprises Ltd. held on 20-6-2015 for adopting the annual accounts for the year ended 31- 03-2015 included an item relating to declaration of dividend. At the meeting it become apparent that the profits made during the year ended 31.03-2015 were inadequate to declare dividend. It is intended by the Board that the dividend be declared at the rate of 20%, whereas the dividend was declared lay the company @ 10% in each of the past 3 financial years. 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 (Final) May 2011 (Modified)]

Hint - In the present case. the average rate of dividend declared by the company during the preceding 3 financial years is 10%. So, the company cannot declare dividend at the rate of 20% as per Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014. Accordingly,-the maximum dividend that con be declared is 10%.

The dividend of 10% shall be first proposed by the Board of directors, and then, in the AGM, the members shall have to pass an ordinary resolution declaring the dividend at the rate of 10% .

Is it permissible to declare dividend @15% out of free reserves?

Q.9 X & Co. Ltd. mode a loss of Rs. 20 lakhs after providing for depreciation for the year ended 31st March, 2015 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 share payable out of the free reserves. The paid up share capita! of the company and its free reserves as on 31st March. 2015 (as per the audited Balance Sheet) are Rs 2 crore & 10 crore respectively. The average dividend declared by the company in the last three years is 25%. Examine the validity of declaration of Dividend. [CA (Final) May 2010 (Modified)]

Ans. The present case is discussed as under:

a) The average rate of dividend declared by the company during the preceding 3 F.Y is 25% . so , for the current FY , the rate of dividend shall not exceed 25% .

b) The maximum amount that may be drawn from the reserves shall not exceed 10% of (Rs. 2 crore + Rs 10 crore) i e Rs 1.2 crore
c) Out of the amount drawn from the reserves (Rs. 1.2 crore), loss for the current financial year (Rs. 0.20 crore) shall first be set off .
d) Available balance in reserve = Rs 10 crore – 1.2 = Rs 8.8. crore

Hence , company can declare dividend @ 25%

<u>Q.10</u> WL Limited is facing loss in business during the current financial year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10% and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so?

Declaration of Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, in case the company has incurred loss during the current financial year up to the end of 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.

In the given case the company is facing loss during the current financial year 2015-16. In the immediate preceding three financial years, the company declared dividend at the rate of 8%, 10% and 12%. As per the above mentioned provision, 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 [i.e. 8+10+12=30/3=10%].

Therefore, decision of Board of Directors to declare 12% of the interim dividend for the current financial year is not tenable.

Chapter - 8
Books of Accounts
Sec 128 to 138

Account of companies

Section 128 :-Books of accounts → to be kept by company

- Every company
  - shall prepare & keep
    - as its Registered office → books of accounts
      - for every F.Y
      - true & fair view
        - accrual basis
        - double entry basis
    - other place also books of accounts can be kept
      - provided notice send to ROC within 7 days
        - Giving full address of that other place.
- Accounts of branch office (India/Out Side India)
  - sufficiently complied provided → if proper summarized return sent by the branch office to the Company.
- Inspection.
  - → Books of Accounts → in India
    - shall be open for inspection at Registered Office during business hours.
  - → Outside India → inspection of financial info. director may request to company & company shall provide within 15 days.
  - → inspection of subsidiary Company accounts the person authorised.
    - by a resolution of the board of directors.

Default

- MD/WTD/CFO/Other Person
  - Imprisonment= 1 year or fine
  - fine=50000
    - 5 lacs or both

Company can also keep books of accounts in electronic form.

Period for keeping books of accounts → may be kept for longer period

- For 8 Financial Year → immediate preceding the Financial Year.
- may be kept for longer period
  - if C.G ordered for investigation → During inspection, the officer & other employees ot the Company → shall give to the person → such assistance in connection with the inspection.

\# If a company → had been in existence for a period of less than 8 years.

- for all years

SEC 129:- Financial Statement

- Financial system → shall lay down in AGM
  - shall give a true & fair view → comply with Accounting Standards.
- Company
  - having a subsidiary Company
  - prepare consolidated financial statements (+Joint Venture + Associate Company + Subsidiary Company)
- Non compliance with Accounting Standards
  - the company shall disclose
    - → Deviation from Accouting Standard
    - → Reason for such Deviation
    - → the financial effects, if any arising out of such deviation.
- Contravention
  - If a company contravenes → MD/WTD/CFO
    - Imprisonment = 1 year
    - or
    - Fine = 50000 → 5 lacs
    - Or Both

Provided That :
For Companies

Insurance → Insurance Act 1938 & IRDA 1999

Banking → Banking Regulation Act 1949

Electricity → Electricity Act 2003

The Financial Statement shall not be treated as not disclosing a true & fair view ,if they comply their respective Acts.

** Form of Statement containing salient features of financial statements of subsidiaries.associate company or companies and joint venture or ventures shall be in Form AOC-1.

** Sec 129 shall not apply to Govt co. to the extent of application of AS 17 to the companies engaged in defence production vide notification dated 5 June 2015.

Sec 130 – Re-opening of accounts on court or Tribunal orders

A company

Shall not re-open

Its books of accounts & recast its financial statement.

Unless an application

Is made by the CG/Income tax authority/ SEBI or any other statutory or any person concerned. → YES → an order is made by Court/ tribunal

That

Before making any order, Court or Tribunal shall give notice to applicant authorities to make any representation.

The relevant earlier accounts were prepared in a fraudulent manner.

The affairs of the company

were mismanaged

during the relevant period

causing a doubt on the reliability of financial statement

Without prejudice to the above , accounts so revised or recast shall be final.

Sec 131 – Voluntary revision of financial statement or Board report.

If it appears to the directors of a company that

Financial statement OR the report of the board.

do not comply with the provisions of Sec 129 or 134

They may prepare revised financial statement or a revised report

After obtaining → approval of tribunal

On an application made by the company → in such form(as may be prescribed) + copy of the order passed by the tribunal → filled to ROC

Shall give notice to the CG & Income tax authorities shall take into considerations

Before passing any order

Provided that such financial statement or report → shall not be prepared or filled more than once in a financial year.

Where copies of the previous financial statement or report have been sent out to members or delivered to the registrar & laid down in General meeting

the revision must be confirmed to

The correction not complied u/s 129 or 134 in previous financial statement	the making of any necessary consequential alternation.

Section 134:-
Financial Statement,Board Report etc..

- Financial statement (Including Consolidated financial statement)
  - shall be approved by the BOD
    - before they are signed on behalf of Board by chairman or 2 director
      - MD & CEO
  - In case of OPC
    - only by one director
  - For Submission to the auditor for his report thereon.

- Statements Contain
  - The extract of annual return
  - Number of meetings of the board
  - Director's Responsibility Statement
  - a statement on declaration given by Independent Director
  - particulars of loans, gaurantee or Investment u/s 186.
  - the state of the company's affairs
  - the amount which it,proposes to carry to any reserve
  - Recommendation of → Dividend
  - Explanation by the board on every qualification specified by auditor
  - details of policy developed
  - Etc.

- Director's Responsibility Statement;
  - Accounting Standards had been followed
  - Accounting policies → applied them consistently
  - Directors had taken proper care for maintenance of adequate accounting records
  - Directors had prepared annual accounts → on a going concern basis
  - Internal controls are adequate
  - Etc...

Default
- Co. → 50000 → 25 lacs
- every officer
  - Imprisonment = 3 years
  - Fine= 50000 → 5 lacs

Section 135:- Corporate Social Responsibility

Every Co. Having

- Net Worth of Rs 500 crore or more
- or Turnover of Rs 1000 cr. or more
- or a Net profit of Rs 5 Cr or more.

during any F.Y → Shall constitute a CSR Committee of the Board

↓

Constituting of 3 or more directors

→ Out of which atleast one director

→ Shall be an independent director.

The Board report

↓

Shall disclose the composition of CSR Committee.

Functions:

→ Formulate & Recommend to the Board a CSR Policy indicate the activity.

→ Recommend the amount of expenditure to be incurred on the activities.

→ Monitor the CSR policy of the Company.

Amound Spend :-

→ The BOD of every Company

→ Shall ensure that the company spends

→ in every Financial year

↓

atleast 2% of the average net profit of the company made

↓

during the 3 immediately preceeding F.Y.

→ in pursuance of its CSR Policies.

The Company shall give preferance to the local area for spending CSR amount.

If fails to Spend → BOD Specify reason for not spending.

Section 135 shall not apply for a period of five years from the commencement of business of a Specified IFSC public pr private company vide Notification dated 04th January, 2017.

Section 136:- Right of members to copies of audited Financial Statement.

(1)
A copy of financial statement
+ Consolidated Financial Statement
+ Auditors Report &
+ every other documents required to be annexed
→ Which are to be laid before a company in G.M.
→ shall be sent to every member every Trustee for the Debenture Holder to all persons
→ Being the person so entitled
→ Not less than 21 days(14 days for Sec 8 Co.) before the date of meeting.

(2)
In case of Listed Company.
above provision deemed to be complied → if the Copies of the documents are made to
→ available for inspection → at registered office → durig working hours → for a period of 21 days before the date of the meeting.
&
a statement in prescribed form (AOC-3)
Contain salient features of such documents
→ is sent to every member of the Company & to every trustee for the holder of any debenture issued by the Company.
→ Not less than 21 days before the date of the meeting.

(3)
C.G. → Specify manner of circulation of financial Statement
→ In case of all listed Company
+
Such Public Co. → Net worth= more than 1 crore
&
Turnover= more than 10 crore
→ may be sent
→ by electronic mode email id.
→ by Dispatched of physical copies.

(4) A listed Company, every company having a subsidiaries Shall.
→ Place separate audited accounts of each subsidiary
→ Provide a copy of Financial Statement if share holders ask for it.

Default :
→ Co. → 25000
→ Officer → 5000

Section 136 (1) shall apply to Nidhi company,in the case of members who do not individually or jointly hold shares of more than Rs 1000 in face value or more than 1%, of the total paid-up share capital whichever is less, it shall be sufficient compliance with the provisions of the section if an intimation is sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhiis situated stating the date, time and venue of AGM and the financial statement with its enclosures can be inspected at the registered office of the company, and the financial statement with enclosures are affixed in the Notice Board of the company and a member is entitled to vote either in person or through proxy; vide Notification dated 5th June 2015.

Section 137:- Copy of financial statement to be filled with ROC

- Filling of Financial Statement
  - To ROC within 30 days of the date of AGM
- If Financial Statements are not adopted
  - at AGM shall be filled to ROC within 30 days of the date of AGM.
  - ROC shall take them in his records as provisional till the Financial Statement are filled with him → after their adoption
    - In the adjourned AGM
      - yes
        - Shall be filled with the ROC within 30 days of the date of adjourned AGM.
- Where AGM not hold
  - The Financial.Statement → duly signed
    +
    Other documents attached
    +
    Statment → reason for not holding AGM.
    - Filled to ROC within 30 days.

Company having subsidiaries

- A Company along with its Financial Statement + accounts of its subsidiaries incorporated outside India.

Penalty

- Company
  - 1000/day failure continues
    - Upto 10 lacs
- MD/CFO or other Director
  - Imp= 6 m
  - Fine= 1 lacs
    - 5 lacs

Section 138:- Internal Audit

- Applicability
  - Every listed Company
  - Every unlisted public Co. having
    - Paid up share capital Rs 50 crore or more during previous Financial year
    - Turnover of Rs 200 Cr or more
    - Outstanding loans or borrowings from banks or PFI exceeding Rs 100 cr or more AT ANY POINT OF TIME during Previous Financial Year.
    - Outstanding deposit of Rs 25 crore or more at any point of time during Previous Financial Year.
  - Every Private co. having
    - Turnover= 200 cr or more during Previous Financial Year
    - or
    - O/S loans or Borrowings 100 Crore or more.
- Who is internal Auditor
  - Shall either be a CA/CWA or other professional as decided by board.
    - * Not necessary a PCA/PCWA Internal auditor may or may not be an employee of the company.

Transitional Period

Existing Company shall comply with the Requiredment within 6 months of the commencement of such section.

PFI = Public Financial Institution

Section 138 shall apply to a Specified IFSC public or private company, if the articles of the company provides for the same; vide Notification dated 04th January, 2017.

Accounts questions (Sec 128 to 138)

Whether a member holding 76% of the equity shares of the company is entitled to inspect the books of account?

Q.1 Mr. Bharat recently acquired 76% of the equity shares of M/s Reliance Company Ltd. in the hope of earning good dividend income Unfortunately the existing Board of Directors have been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced Mr Bharat seeks permission of the company to allow him to examine the Books of Accounts, which is summarily rejected by the Company Examine and advise the provisions relating to inspection of Books of Accounts and remedy available. [CA (Final) Nov 2014]

OR

ABC Ltd. was registered in the year 2005 under Companies Act, 1956. There are allegations that the three directors who manage the affairs of the company are siphoning the funds of the company. The company has not declared any dividends on the ground that company is incurring losses Mr. A, who controls 51% of the share capital of the company sends a notice to the management that he will inspect the books of account to verify the allegations. Examine the right of Mr. A to carry out the inspection. State the persons who have the right to carry out the inspection under the Companies Act, 2013. [CA(final) May 2011]

Ans. The present problem relates to section 128, 206 and 212 of the Companies Act, 2013 read with Regulation 89 of Table I contained in Schedule I.

1. As per section 128 read with Rule 4, a director of the company is entitled to inspect the books of account of the company. However, section 128 does not empower any member (irrespective of the percentage of share capital held by him) to make inspection of the books of account.

2. As per section 206, following persons are empowered to inspect the books of account;

(a) Registrar of Companies

(b) Such officer of the Government as may be authorised by the Central Government in this behalf,

3. As per section 212, the books of account of a company shall be open tc inspection of the officers of Serious Fraud Investigation Office (SFIO).

4. Regulation 89 of Table F reads as under.

(i) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors

(ii)No member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by law or authorised by the Board or by the company in general meeting.

In the given case, Mr. Bharat has not been authorised to inspect the books of account by the Board or by the members in the general meeting. Thus, Mr. Bharat shall not have any right to inspect the books of account even if he holds 76% of the equity shares of the company.

However, Mr. Bharat may, by using the majority of voting power held by him and complying with the provisions of the Companies Act, 2013, get appointed as a director of M/s Reliance Company Ltd., and then, he shall be entitled (in the capacity of director) to make the inspection of books of account.

<u>Can a director appoint an agent for inspection of books of account?</u>

<u>Q.2</u> Mr. R, one of The Directors in Delhi Food Processing Limited was not satisfied with the performance of the company in financial matters. He requested Mr. A, a Chartered Accountant, to inspect the books of accounts of the company on his behalf. Decide, under the provisions of the Companies Act, 2013 whether the said company con refuse to allow Mr. A to inspect the books accounts? [CA (Final) May 2013]

Ans. As per section 128 of the Companies Act, 2013, the books of account maintained within India shall be open for inspection during business hours by any director at the registered office of the company or at such other place in India where the books have been kept.

In Vakhana v Supreme General Film Exchange Co. Ltd. (1948) it was held that a director is entitled to make inspection personally or through an agent provided there is no reasonable objection to the person chosen and the agent undertakes not to utilise the information obtained by him for any purpose other than the purpose of his principal. The right of inspection can however be refused if it is found that the inspection is being sought to pass on the information to a rival of the company.

In the given case, the director, Mr. R, seeks to inspect the books of account through his representative Mr A which is allowed as discussed above. Thus, the company, Delhi Food Processing Limited cannot restrain Mr. A from' making the inspection.

<u>Resolution charging the chief accountant with duty of maintaining proper books of account and preparation of annual accounts</u>

<u>Q.3</u> Mr White is working as chief accountant in M/S White metal limited The BOD of the said company propose to change him with the duty of ensuring compliance with the provisions of the Companies Act, 1956 so that books of account can be properly maintained and Balance Sheet and profit and Loss Account can be prepared as per the provisions of law. Draft a Board Resolution for the said purpose. (Final) Nov. 2003, June 2009, May 2010, Nov. 2011]

Ans. The required resolution is given as follows:

Subject ' Charging a person with the duty of compliance with the provisions of sections 128 and 129 of the Companies Act, 2013

Passing Authority - Board of directors

Nature of Resolution - Resolution with simple majority

"RESOLVED THAT subject to the provisions of sections 128, 129 and other applicable provisions of the Companies Act 2013 if any, Mr. White, the chief accountant of the company be and is hereby charged with the duty of ensuring compliance with proper maintenance of books of accounts and preparation of financial statement.

RESOLVED FURTHER that the duties of Mr. White shall be supervision of functioning of the 'Finance and Accounts Department' of the company, handling day to .ay affairs of the Department, regularly reporting to Board on the activities of the Department and to perform all other duties that the Board may delegate to him from time to time."

Accounts questions (Sec 128 to 138)

Can the books of account be kept at a place other than the registered office?

Q.4 The registered office of S Ltd. is situated at Nariman Point, Mumbai. Due to shortage of space ct Mumbai office the Board of directors' Of Shortage Ltd. decides to shift the books of account to Nagpur office. Advise

Ans. The present problem relates to section 128 of the Companies Act, 2013. As per section 128, all or any of the books of account may be kept at a place other than the registered office of the company, subject to compliance of following conditions;

(a) Such other place must be situated in India.

(b) A resolution of the Board is required to authorise the keeping of books at such other place.

(c) Within 7 days of passing the Boa-d resolution, a notice shall be given to the Registrar. The notice shall specify the full address of such other place.

Thus, the Board of directors of Shortage Ltd. may decide to keep the books at Delhi office in accordance with above provisions.

Can the books of account be prepared on cash basis?

Q.5 The Board of directors of Omaxe Residents' Club (a non-profit company) desires to prepare the books of account on cash basis Can the Board of directors do so with the approval of the members or the Central Government?

Ans. The present problem relates to section 128 of the Companies Act, 2013, As per section 128, the books of account shall be prepared on accrual basis.

Section 128 does not provide any exemption permitting a company to prepare the books of account on any basis other than accrual basis. Further, the requirement to prepare the books of account on accrual basis is applicable on all companies, whether public or private, whether having a share capital or not, whether company is a government company or non-profit company.'

Further, section 128 does not empower the members or the Central Government to permit a company to prepare the books of account on any basis other than accrual basis.

Thus, the books of account of Omaxe Resident's Club cannot be prepared on cash basis. If the books ore prepared on cash basis it would amount to contravention of section 128.

Obligations of holding company

Q.6 Bata India Ltd, is a subsidiary of Papa Holdings Ltd. Papa Holdings Ltd. has not included any financial information with respect to Beta India Ltd in its own financial statement or other documents.

Ans As per section 129 of the Companies Act, 2013, where a company has one or more subsidiaries, it shall also prepare a consolidated financial statement of the company and of all the subsidiaries. The consolidated financial statement shall be prepared in the some form and some manner in which the financial statement of the company is prepared.

Further, section 129 requires that the company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of each of its subsidiary in Form No. AOC-1.

Thus, Papa Holdings Ltd. has contravened the provisions of section 129 of the Companies Act, 2013

Signing of financial statement by 2 directors - Whether valid?

Q.7 The BOD of A Ltd consist of Mr G, Mr H (Director) and Mr I (MD) . The company has also employed a full time secretary. The financial statements of the company were signed by Mr G. & Mr H. Explain wheather the authentication of financial statements of the company was in accordance with the provisions of the companies act 2013?

Ans -

Assuming that there is no chairman of the Board or if there is a chairman of the board, he has not been authorised , the financial statement should have been signed by -

(i) Mr. I (Managing director)

(ii) Mr. G or Mr. H (Directors)

(iii) Whole time secretary.

Thus signing of financial statement by Mr G and Mr H amounts to contravention of Sec 134 of the companies act 2013.

Filing of financial statements where AGM is not held, and where financial statements are not adopted

Q.8 The AGM of M/s Robertson Ltd. for laying the annual accounts thereat for the year ended 31st March 2014 was not held as the accounts were not ready. In this context advise the company regarding compliance of the provisions of Section 137 of the companies act 2013 for filling of copies of financial statements with the ROC . Will it make any difference in case the financial statements were duly laid before the AGM held on 27th September 2014?

Ans - In this case the AGM has not been held upto the last due date (viz. 30th September, 2014) Thus, as per section 137 the financial statement and other documents shall be filled with the ROC within 30 days of the last before which the AGM should have been held (30 Oct 2014) . A statement of facts and reason for not holding the AGM shall also be filed with the Roc.

However, if the AGM was held on 27th September, 2014 but the financial statements were not adopted then –

i. The unadopted financial statements and other documents shall be filed with the Registrar within 30 days of the date of AGM.
ii. the Registrar shall take the unadopted financial statements and other documents in his records as provisional till the financial statements ore filed with him after their adoption ,n the adjourned AGM for that purpose'
iii. the financial statement and other documents adopted in the adjourned AGM shall be filled with the ROC within 30 days of the date of such adjourned AGM.

Revision of accounts before audit

Q.9 Examine the validity of the following:

The Board of directors of a company decides to revise the accounts which have been submitted to the auditors, but the auditor have not yet given their report.

Ans : Where the auditors have not yet given their report, the Board may revise the accounts. The revised accounts shall be approved by the Board and thereafter signed on behalf of the Board in accordance with the provisions of section 134 of the Companies Act, 2013, Then, the revised accounts shall be submitted to the auditors. The auditors' report shall be based on the revised accounts submitted by the Board.

Revision of accounts before adoption by shareholders - Whether permissible?

Q.10 The Board of directors of c company decides to revise the accounts already submitted to the auditors of the company, which have not yet been approved by the shareholders in general meeting. Advise.

OR

Examine the validity of the following:

The Board of directors of a company decides to revise the audited accounts before adoption by the shareholders in the annual general meeting. [CA (Final) May 2006]

Ans The given problem is dealt with under the guidance Note on Auditor's Report on Revised Accounts of Companies before Circulation to Shareholders . As per the said Guidance Note, in case the auditors have submitted their report, the Board may revise the accounts and resubmit them to the auditor, provided that -

- the accounts already approved by the Board hove not been circulated to, and placed before the shareholders at the annual general meeting;
- the auditor's report on the revised accounts is given in substitution of his earlier audit report;
- adequate disclosure regarding revision of accounts is made by the Board in the revised accounts: and
- adequate disclosure regarding revised audit report is made by the auditor in his audit report.

Reopening or revision of accounts after adoption by shareholders - Whether permissible?

Q.11 The-Board of directors of a company decides to revise the accounts which have already been adopted by the shareholders in annual general meeting. Advise. [CA (Final) May 2006, May 1995]

Ans. There is no provision in the Companies Act, expressly permitting or prohibiting revision or reopening of accounts after adoption.

Generally, reopening or rectification of accounts is not permitted if the accounts have already been adopted at the annual general meeting. The Institute of Chartered Accountants of India is also of this opinion. Accordingly, accounts once adopted by the members cannot be reopened, revised or rectified under any circumstances.

However, the Department of Company Affairs (now Ministry of Corporate Affairs) has permitted revision/rectification of accounts provided that -

- the revision is made for meeting the technical requirements of taxation laws or of any other low;
- such revision will result in true and fair view of state of affairs of the company.