

CORPORATE LAW

UNIT- IV

DIVIDENDS, ACCOUNT, AUDIT

MEANING OF DIVIDEND

Dividend is that part of profits earned by the company which is divided amongst the shareholders in proportion to the amount paid up on shares held by them. According to L.B Curzon, the term "dividend" means a part of a company's net profit distributed by means of "dividend warrants" among shareholders in proportion to their shareholding.

PROVISIONS RELATING TO PAYMENT OF DIVIDEND

1) DIVIDEND TO BE PAID ONLY OUT OF PROFITS

Section 123 of the company's act 2013 provides that dividend should be paid out of profits only. No dividend can be paid out of capital. It is the fundamental principle that the dividend should only be paid out of profits. The company's act provides three sources from which dividends are to be paid-

- a) the profits of the company for that financial year for which dividends are to be paid;
- b) undistributed profits of the previous financial year;
- c) money provided by the central government or state government for the payment of dividends in pursuance of a guarantee by the government concerned

2) PROVISION FOR DEPRECIATION

Before declaration of dividend in any financial year, a company is required to provide for depreciation in accordance with the provisions contained in Schedule II to the Company's act 2013.

3) SET OFF OF PREVIOUS LOSSES AND DEPRECIATION NOT PROVIDED IN PREVIOUS YEAR OR YEARS

No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

4) TRANSFER TO RESERVES

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

5) DIVIDEND ONLY OUT OF FREE RESERVES

No dividend shall be declared or paid by a company from its reserves other than free reserves.

6) INTERIM DIVIDEND IN CASE OF PROFIT

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.

7) INTERIM DIVIDEND IN CASE OF LOSS

In case the company has incurred loss during the current financial year upto 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.

8) DIVIDEND OUT OF FREE RESERVES IN CASE OF INADEQUACY OR ABSENCE OF PROFIT

Where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules may be prescribed in this behalf.

9) DECLARATION OF DIVIDEND OUT OF CAPITAL PROFITS

There is no guidance given in the Companies Act 2013 as to whether capital profit can be used for distribution of dividend

BOOKS OF ACCOUNTS

Section 2(13) of the Companies Act 2013 states that "books of account" includes records maintained in respect of:

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure takes place.
- (ii) all sales and purchase of goods and services by the company
- (iii) the assets and liabilities of the company and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified.

PROVISIONS

MAINTENANCE OF BOOKS OF ACCOUNTS (section 128)

According to section 128 (1) of the Companies Act, 2013, every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of affairs of the company.

BOOKS OF ACCOUNT: OPEN FOR INSPECTION [Section 128 (3)]

In terms of Section 128(3) of the Companies Act 2013, these books of accounts and papers maintained by the company within India shall be open for inspection by any director during business hours.

In case of financial information maintained outside India, copies of such financial information shall be maintained and produced for inspection by any director.

PERIOD FOR WHICH THE BOOKS OF ACCOUNT ARE TO BE KEPT [Section 128 (5)]

As provide in section 128 (5) of the Companies Act 2013, the books of accounts of every company relating to a period of not less than eight financial years immediately preceding a financial year.

PERSON RESPONSIBLE FOR MAINTENANCE OF BOOKS OF ACCOUNTS [Section 128 (6)]

As provide in Section 128 (6) of the Companies Act 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc, shall be:

- a) Managing director
- b) Whole-time director, in charge of finance
- c) Chief Financial Officer
- d) Any other person of a company charged by the board with duty of complying with provisions of section 128.

AUDIT

According to Montgomery, a leading American accountant, "Auditing is a systematic examination of the books of accounts and records of a business or other organisation, in order to ascertain or verify, and to report upon the facts regarding its financial operations and the results thereof"

PROVISIONS OF AUDIT

INTERNAL AUDIT (section 138)

Section 138 (1) of the Company's Act provides that such class or classes of companies

as may be prescribed shall be required to appoint an internal auditor, who shall be either a chartered accountant or cost accountant, or such other professional as may be decided by the board to conduct internal audit of the functions and activities of the company

Company's required to appoint internal auditor

a) every listed company

b) every unlisted public company having-

i) paid up share capital of fifty crore rupees or more during the preceding financial year; or

ii) turnover of two hundred crore rupees or more during the preceding financial year

iii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year; or

iv) Outstanding deposits of twenty five crore rupees or more at any point of time during the preceding financial year.

c) every private company having-

i) turnover of two hundred crore rupees or more during the preceding financial year; or

ii) outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

QUALIFICATION OF AUDITOR (section 141)

According to section 141 (1) of the Companies Act 2013, a person shall be eligible for appointment as an auditor of a company only if he is a Chartered Accountant.

APPOINTMENT OF AUDITORS (SECTION 139)

Appointment of auditors of a company can be categorised as under

(1) Appointment of First Auditor

(a) In case of a Government company or company controlled by Central Government or State Government.

(b) Other than a Government Company

(2) Appointment of Subsequent Auditor

(a) In case of a Government Company or company controlled by Central Government or State Government

(b) Other than a Government Company

(3) Appointment in case of casual vacancy

(a) In case of a Government company or company controlled by Central Government or State Government

(b) Other than a Government Company

ROTATION OF AUDITORS

With the implementation of Companies Act , 2013 the Ministry of Corporate Affairs has notified the provisions relating to rotation of Auditors w.e.f 1st April, 2014. Companies are now required to rotate the auditor of the firm.

Statutory provisions related to rotation of Auditors / Audit Firm Chapter x of Companies Act 2013 containing the 10 sections from Section 139 to Section 148 covers the provisions related to Audit and Auditors.

CLASSES OF COMPANIES COVERED IN ROTATION SCHEME

According to Rule 5 of The Companies (Audit and Auditors) Rules, 2014 for the purposes of sub-section (2) of section 139 (Rotation of Auditors), the class of Companies shall mean the following classes of Companies excluding one person Companies and small companies:

- (a) All listed companies
- (b) All unlisted public companies having paid up share capital of rupees 10 crore or more;
- (c) All private limited companies having paid up share capital of rupees 20 crore or more
- (d) All companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crore or more.

AUDIT REPORT

An audit report is a report prepared and presented by an auditor expressing his opinion on the financial statements of the organization under audit. It is a written opinion of an auditor regarding whether an entity's financial statements present fairly its financial position

According to Perry and Tailor, “ Audit Report is a statement through which the auditor states his opinion of the view of the state of affairs represented by the balance sheet, profit and loss account etc”

SECRETARIAL AUDIT

“ Secretarial Audit” has been introduced by the Companies Act, 2013. It is a process to check compliances made by the company under Corporate Law and other laws, rules, regulations, procedures etc. It is a mechanism to monitor compliance with the requirements of sated laws and processes.

COMPANIES IN WHICH SECRETARIAL AUDIT IS MANDATORY:

As per section 2014 of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, following classes of companies are required to obtain 'Secretarial Audit Report' from independent practicing company secretary;

(1) Every listed company

(2) Every public company having a paid-up share capital of Fifty Crore rupees or more; or

(3) Every public company having a turnover of Two Hundred Fifty Crore rupees or more