

## **COMPANY ACT AMENDMENTS**

### **Section 123 (Declaration of Dividend)**

1. Declaration and Payment of Dividend Rules (DAPD) / Deposit of Dividend money in scheduled bank account within 5 days / are "not applicable" to Government Company in which the "entire paid up share capital" is held by the "CG / SG / CG + SG". Hence no restriction on payment of dividend out of reserves in case of wholly owned Government Company. LAW RTP has given wrong interpretation that such companies cannot give dividend out of reserves. In Exams write proper interpretation and at the end specify alternative interpretation.

2. In case of Nidhi Companies if dividend is not claimed within 30 days then it can be paid by crediting same amount to credit of members account, so it's ok even if actual cash payment is not done but only in these circumstances.

(Nidhi Companies are incorporated with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit)

3. Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided (unaccounted depreciation should be first accounted) in previous year or years are set off against profit of the company for the current year. (This was earlier presented in rule but now it is part of section, so no real amendment but it is important so clarified below)

a. If dividend is "paid out of CY profits" then "all past losses" (if any) should be adjusted then remaining profits can be used for dividend.

b. If dividend is "paid out of General Reserves" then "only CY losses" should be adjusted.

### **Section 127 (Punishment for failure to distribute dividends)**

4. In case of Nidhi Company if dividend amount is Rs 100 or less then no need to send dividend warrants to each and every member if it 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 Nidhi for at least three months.

### **Section 129**

5. AS 17 (Segment Reporting) not applicable to the Government company engaged in defence production.

6. Forms and items contained in financial statements & its preparation → Sch III + AS or Ind AS (Just a clarification, it was already understood)

### **Sec 134 (Board Report etc)**

7. Frauds which are not reported to CG under Sec 143(12) which are not exceeding 1 crore should be disclosed in BOD report. *(Limit should be there for fraud reporting is amendment of 5<sup>th</sup> June which is applicable but actual limit was announced in Dec is applicable from Nov16)*

8. Points related to policy of appointing & remuneration of Directors/ Annual evaluation is not applicable to government company & conservation of energy / technology adoption & foreign currency earnings and outgo shall not apply to a Government company engaged in producing defence equipment.

### **Sec 136 (Right of members to get audited financial statements)**

9. In case of section 8 companies financial statements should be sent 14 days before AGM instead of 21 days as in case of other companies.

10. No need to send financial statements to individual members in case of Nidhi Companies, in the case of members who do not individually or jointly hold shares of more than one thousand rupees in face value or more than one per cent, of the total paid-up share capital whichever is less, Only intimation should be sent by public notice in newspaper circulated in the district in which the Registered Office of the Nidhi is situated stating the date, time and venue of Annual General Meeting 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.

11. In case of a foreign subsidiary, which is not required to get its accounts audited as per legal requirements prevalent in the country of its incorporation (For example in Dubai it is not compulsory) and which does not get such accounts audited, the holding/parent Indian may place/file such unaudited accounts to comply with requirements of sections 136(1) and 137(1) as applicable. These, however, would need to be translated in English, if the original accounts are not in English. Further, the format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such accounts.

### **Sec 137 (Sending Financial Statements to Registrar)**

12. Form AOC-4 (XBRL) is also applicable to consolidated financial statements.

*(Following is not a amendment but students are generally unaware)*

*1. all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or*

*2. all companies having paid up capital of rupees five crore or above;*

*3. all companies having turnover of rupees hundred crore or above; or*

*4. all companies which were hitherto covered under the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011:*

*Provided that the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies need not file financial statements under this rule.)*

### **Sec 141 (Qualifications & Disqualifications of Audit)**

13. Following companies should be excluded while complying with limit of 20 in auditors disqualification One person company, Small Company, Dormant Company, Private Company having paid up share capital less than 100 crores

So as per above CA can do any numbers of audits for above companies but there is ICAI guidelines as per which upper limit is 30 and there is no such exemption there so upper limit will 30 including above companies.

### **Sec 143 (Powers/ Duties/ Fraud Reporting)**

14. Only frauds above certain limits should be reported to CG, Limit is Rs 1 crore other frauds should be disclosed in BOD report. *(Limit should be there for fraud reporting is amendment of 5<sup>th</sup> June which is applicable but actual limit was announced in Dec is applicable from Nov16)*

**143(3)**

(f) the observations or comments (*Qualification / Adverse / Disclaimer / EMP / OPM*) of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company (*Affects going concern / Non Determination of Obsolete Stock / Significant Impairments of Assets in short significant expenses / losses not reported or Incomes or Profits Overstated*) ;

(g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;

(h) any qualification, reservation or adverse (*EMP / OPM not covered*) remark relating to the maintenance of accounts and other matters (*Journal / Ledger / Cash Book not updated , not accounted regularly , many mistakes, not properly totalled , TB doesn't tally etc*) connected therewith;

(i) whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls; (*Separate annexure at the end of audit report*)



## **TAX AUDIT**

1. Disqualifications of TAX Auditor

### **HUF**

→ Family member of HUF\*\*\*

### **AOP**

→ Member of AOP\*\*\*

### **Firm**

→ Partner of firm\*\*\*

### **Company**

→ Who is disqualified to do statutory audit under Sec 141 (3)

### **All Assesses**

→ Who can verify return u/s 139\*\*\*

(All points below are similar to company audit disqualifications but there are changes so be careful)

→ Officer or employee of Assessee

→ Partner or Employee of Employee or Officer

→ Direct / Indirect Business Relationship with assessee

→ Convicted by court for fraud, 10 years from date of conviction

→ @Holding any Security or Interest in assessee (Only Relative exempt up to FV 1,00,000)

→ @Indebted to assessee for any amount (Only Relative exempt up to Rs 1,00,000)

→ @Guarantee or Security of assessee for third party for any amount (Only Relative exempt up to Rs 1,00,000)

\*\*\* Including Relatives

@By individual or His partner or His Relative

2. ICDS as studied in Direct Tax / Accounts

## **CHANGES IN LISTING AGREEMENT (ONLY RELEVANT CHANGE IS COVERED)**

→ Name has changes to LODR (Listing Obligation & Disclosure Requirements)

→ Passing of an ordinary resolution instead of special resolution in case of all material related party transactions

## **CHANGES IN PROFESSIONAL ETHICS**

### **Website Guidelines**

Disclosure of names of clients and/or fees charged, on the website is permissible only where it is required by a regulator, whether or not constituted under a statute, in India or outside India, provided that such disclosure is only to the extent of requirement of the regulator. Where such disclosure of names of clients and/or fees charged is made on the website, the member/ firm shall ensure that it is mentioned on the website [in italics], below such disclosure itself, that "This disclosure is in terms of the requirement of [name of the regulator] having jurisdiction in [name of the country/ area where such regulator has jurisdiction] vide [Rule/ Directive etc. under which the disclosure is required by the Regulator]."

### **Not a recent amendment but important**

Hello everyone this is very important amendment of 1st August 2012, it is NOT covered in Module / PM / Suggested Answers / Code of Ethics Book & many authors also.

So please note points from (d) to (h). Related to charging fees on %. Because of this one answer on Bank Funding. will change which was asked Nov 2008 / 2011.

I don't want any student to miss even single mark. Fortunately no question asked on this after amendment. This is applicable to May 16 exams.

Exemptions while charging fees on percentage basis

"(d) in the case of certain management consultancy services as may be decided by the resolution of the Council from time to time, the fees may be based on percentage basis which may be contingent upon the findings, or results of such work;

(e) in the case of certain fund raising services, the fees may be based on a percentage of the fund raised;

(f) in the case of debt recovery services, the fees may be based on a percentage of the debt recovered;

(g) in the case of services related to cost optimisation, the fees may be based on a percentage of the benefit derived; and

(h) any other service or audit as may be decided by the Council."

## **SOME RECENT CASES FOR PROFESSIONAL ETHICS (Not Amendments but Imp)**

### **Schedule II, Part 1, Clause 4**

Whether a statutory auditor can accept the system audit of same entity?

Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it do not involve any scrutiny/review of financial data and information.

### **Schedule I, Part 1, Clause 7**

Whether the office of a CA is permitted to go in for ISO 9001:2000 certification or other similar certifications?

Yes, there is no bar for a member to go in for ISO9001:2000 certification or other similar certifications.

However, the member cannot use the expression like "ISO Certified" on his professional documents, visiting cards, letterheads or sign boards etc."

### **Schedule I, Part 1, Clause 6 & Clause 7**

Publishing a book by a firm containing its history for the purpose of distributing to clients, associates, friends and well wishers And printing of the words 'Celebrating 75 years in the Profession' on special letterheads and envelopes of the firm will lead to solicitation of professional work, hence not permissible as per the provisions of Clauses (6) and (7) of Part I of the first Schedule to the C.A. Act, 1949."

### **Schedule II, Part 1, Clause 4**

Concurrent audit and the assignment of Quarterly review of the same entity cannot be taken simultaneously as the concurrent audit being a kind of Internal audit and the quarterly review being a kind of Statutory audit undertaken simultaneously are prohibited under the provisions of 'Guidance Note Independence of Auditors'."

### **Schedule II, Part 2, Clause 2**

It is prohibitive to undertake the assignments of internal Audit of a client and entry of the transaction for Accounting simultaneously being violative of the provisions of the 'Guidance Note on Independence of Auditors'."

### **Schedule I, Part 1, Clause 7**

CCM, RCM and Member of Managing Comm. of Branches may print either their residential address, or office address including Tel. / Fax No. without mentioning the firm's name on the back of the visiting cards"

### **Schedule I, Part 1, Clause 7**

Member who is in practice cannot use the designation of 'District Governer' in his rotary visiting card along with the word 'Chartered Accountant' "

### **"What is the procedure for registration of a new firm name which is similar to an existing firm?"**

- Yes, the members/s is/are required to apply for approval of firm name in form no. 117,
- The form should be signed by all the partners,
- Out of them at least one of such partners should be a partner of the existing firm.
- After the approval, the particulars of firm in Form No. 18 should be submitted.
- The registration is given effect prospectively and not retrospectively.
- All such firms with identical/same or similar name should be treated as new firms with new FRN."

### **Can a member outside India retain his proprietary firm?**

- No, as per Section 27 of the CA Act, 1949 each office or firm of CA in India shall be under the separate charge of the member.
- A member working abroad can have a proprietary firm in India provided the member is actively associated with the firm in India.
- Such association shall be deemed to exist if the member resided in the place where the firm is situated for a period of not less than 182 days in a year
- Alternatively, he can engage a member as paid assistant to be incharge of his firm in India.
- If either of these conditions is not satisfied the member is not permitted to retain his proprietary firm in India."

**"The Council has issued the following guidelines** for use of expressions such as 'Associates of 'Correspondents of... etc. on letter heads, visiting cards etc. of firms of Chartered Accountants:

The use of expressions / words 'in Association with .... 'Associates of 'Correspondents of.... etc., on the stationery letter heads, visiting cards and professional documents etc. of firms of Chartered Accountants is not permissible in view of the provisions of clause (7) of Part I of the First Schedule to the Chartered Accountants Act, 1949 irrespective of whether the connection bearing name sought to be used was the name of an Indian firm or a foreign firm. The Council has not barred entering into such association and the restriction given under the above clause is to bar an advertisement appearing / derived from such associations."

### **"Audit of listed companies shall now be carried out only by the auditors who have undergone Peer Review Process**

- And have obtained Peer Review Certificate from the Peer Review Board.
- This decision is effective for accounting periods commencing on or after 1st April, 2009."

### **"Whether an Associate Member of the Institute practicing abroad is eligible to become Fellow Member ?**

No. Only members who being associates and who have been in continuous practice in India for atleast five years are eligible to apply for admission to fellowship on payment of prescribed fee and submission of Form '3' [Section 5(3) of the Chartered Accountant Act, 1949]."



**"Whether a member's service as a paid assistant outside India with a firm of chartered accountants can be recognized for the purpose of fellowship?"**

The member working as a paid assistant with a foreign firm of accountants outside India is eligible for admission as a fellow member provided the firm is having at least one partner who is/was either the member of the ICAI or who is/was eligible to become its member under Section 4(1)(v) of the Chartered accountants Act."

**Whether an Associate Member employed in Industry abroad is eligible to become fellow member ?**

An associate member serving in an industry abroad for a continuous period of not less than 5 years in one or more posts carrying duties relating to accounts, cost accounts, audit, finance, taxation, company law and/or secretarial work, is eligible to become a fellow member.

If there is a break in the continuity of service, the same can be condoned for a period not exceeding one year so however that the actual period of service shall not be less than 5 years [Regulation 5(3)]"

**"Can a member in Salaried employment abroad hold C.O.P.?"**

Yes, he can hold C.O.P but his status would be treated as a member in part-time practice."

**"Can a member of the Institute holding Certificate of Practice residing outside India, do any attest functions?"**

Yes. He can do attest functions outside India, subject to the local laws permitting him to do so."

**"Can a Member working abroad have a Proprietary Firm in India?"**

Yes. A member working abroad can have a proprietary firm in India provided the firm in India is under the charge of a member of the Institute who should be a full time paid assistant. This is a mandatory requirement under Section 27 of the Chartered Accountants Act, 1949. "

**"Can a member having a proprietary firm in India and recently shifted from India, continue to be a proprietor of a firm in India?"**

Ans. The member can continue to be a proprietor of the firm in India if the member himself is actively associated with the firm by residing in India for a period of not less than 182 days as provided in Appendix 10 of the Chartered Accountants Act 1949."

**"Whether a member residing abroad can be a partner of a firm of chartered accountants in India?"**

Yes, a member can be a partner in a firm of Chartered Accountants in India provided he holds C.O.P. Because Clause says CA should be in practice it doesn't specify ""in India""

**"Can a member holding Certificate of Practice and residing abroad be incharge of the branch office of the firm outside India?"**

Yes, a member can be in charge of the branch office of the firm outside India provided the Head Office of the firm is registered in India. He can be in charge of the branch office in his capacity either as a paid assistant or partner of the firm."

**"Can a member practicing outside India impart articles training under the Chartered Accountants Act and Regulations?"**

As per the proviso to Regulation 43(i) of the Chartered Accountants Regulations 1988 as amended by the Chartered Accountants (Amendments) Regulations 2007, a member practicing outside India is also eligible to engage an articled assistant subject to such additional terms and conditions as the Council may impose.

Moreover, if a firm of chartered accountants has an office in India and also an office abroad (not being a separate partnership) a partner or the proprietor thereof would be permitted to train articled assistant in India or outside the country, provided that the member concerned could ensure that proper training, in accordance with the requirements of the Regulations, is imparted to the articled assistants"