

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.

Sec 134 (Board Report etc)

6. 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 5th June which is applicable but actual limit was announced in Dec is applicable from Nov16)*

7. 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)

8. 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.

9. 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.

10. 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 along with such accounts.

Sec 141 (Qualifications & Disqualifications of Audit)

11. 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)

12. 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 5th 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 / OMP 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*)

