

Companies Amendment Act 2017
Applicability for Nov 2018 / May 2019 Exams
CA Final (Sec 123 – 148)

Declaration and Payment of Dividend

1) Declaration of dividend [Section 123(1)]

No dividend shall be declared or paid by a company for any financial year except—

- a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of ~~both~~; or **Both**
- "Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or";
- b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:
- Provided that 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:
 - Provided further that 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~~, **transferred by the company to the free reserves** such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:
 - Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

2) Declaration of Interim dividend [Section 123(3)]

- **The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:**
- **Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.**

Accounts and Audit

1) Preparation of Consolidated Financial Statements [Section 129(3)]

- Where a company has one or more subsidiaries or associate companies, it shall also prepare a CFS (consolidated financial statement) of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own and in accordance with applicable accounting standards, which shall also be laid before the AGM.
- Provided that the company shall also attach along with its financial statement, a separate statement containing the SALIENT FEATURES of the financial statement of its subsidiary or subsidiaries and associate company or companies in such form as may be prescribed.
- **Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.** [Substituted by Companies (Amendment) Act, 2017].

2) Re-opening of accounts on court's or Tribunal's orders [Section 130]

- a) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
- i) the relevant earlier accounts were prepared in a fraudulent manner; or
 - ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:
- Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned **or any other person concerned** and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned **or the other person concerned** before passing any order under this section.
- b) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.
- c) **No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:**
- **Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re- opened within such longer period.**

3) Constitution of National Financial Reporting Authority [Section 132]

- (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- (2) Notwithstanding anything contained in any other law for the time being in force, the National

Financial Reporting Authority shall—

- a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

(3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:

- Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:
- Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment:
- Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

(4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
 - Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
 - i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
 - ii) summoning and enforcing the attendance of persons and examining them on oath;
 - iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
 - iv) issuing commissions for examination of witnesses or documents; (c) where professional or other misconduct is proved, have the power to make order for—

(A) Imposing penalty of—

- (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
- (II) not less than **Five lakh rupees**, but which may extend to ten times of the fees received, in case of firms;
- (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.
Explanation.- For the purposes of this sub-section, the expression "professional or other misconduct" shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.
- (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before **"the Appellate Tribunal in such manner and on payment of such fee as may be prescribed"**
- ~~(6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.~~
- ~~(7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.~~
- ~~(8) The fee for filing the appeal shall be such as may be prescribed.~~
- ~~(9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.~~
- (10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
- (11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.
- (12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
- (13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.
- (14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as

certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.

- (15) The National Financial Reporting 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.

4) Right of member to copies of audited financial statement (Section 136)

- (1) ~~Without prejudice to the provisions of section 101,~~ a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than twenty-one days before the date of the meeting:

- "Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members—
 - (a) holding, if the company has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
 - (b) having, if the company has no share capital, not less than ninety- five per cent. of the total voting power exercisable at the meeting: Provided further that";
 - (c) in the second proviso, for the words "Provided further", the words, "Provided also" shall be substituted;
 - (d) for the fourth proviso, the following provisos shall be substituted, namely:—
 - 'Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any: Provided also that a listed company which has a subsidiary incorporated outside India (herein referred to as "foreign subsidiary")—
 - a) where such foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, the requirement of this proviso shall be met if consolidated financial statement of such foreign subsidiary is placed on the website of the listed company;
 - b) where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.;

- (2) A company shall allow every member or trustee of the holder of any debentures issued by the

company to inspect the documents stated under sub-section (1) at its registered office during business hours.

- "Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited financial statements, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it."

(3) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees

5) Copy of Financial statement to be filed with registrar [Section 137]

Section 137(1) - Filing of Annual Accounts with ROC

- A copy of the financial statements along with all the documents which are required to be annexed or attached, duly adopted at the AGM of the company, shall be filed with the Registrar within 30 days of the date of AGM along with Form AOC-4 and AOC-4 CFS. Specified companies given later are required to file their FS in XBRL format.
- Filing of UNADOPTED Annual Accounts with ROC
- Where the financial statements are not adopted at AGM or adjourned AGM, such unadopted financial statements shall be filed with the Registrar within 30 days of the date of AGM and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.
- Such financial statements adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM.
- Note – Time limit for filing Annual accounts for OPC - A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.
- Filing of Accounts of Subsidiary/ Foreign Subsidiary with ROC
- A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.
- Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English. [Inserted by Companies (Amendment) Act, 2017]

Section 137(2) - Filing of Annual Accounts when AGM is not held

- Where the AGM of a company for any year has not been held, the financial statements duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held.

Section 137(3) - Punishment in case of non-compliance

Punishment for non-compliance shall be as follows: -

- On Company - Fine of ₹ 1,000 per day but not exceeding ₹ 10 lacs
- MD and CFO of the company, if any, and, in their absence, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company.
- **Note - Any Reference to Section 403 in this sub-section is omitted via Companies Amendment Act, 2017**

6) Term of Auditor [Section 139(2)]:

- a) Section 139(2) provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-
 - (i) an individual as auditor for more than one term of five consecutive years; and
 - (ii) an audit firm as auditor for more than two terms of five consecutive years.
- b) The Companies (Audit and Auditors) Rules, 2014 has prescribed the following classes of companies for the purposes of Section 139(2):
 - (i) all unlisted public companies having paid up share capital of rupees 10 crore or more;
 - (ii) all private limited companies having paid up share capital of rupees ~~20 crore~~ **50 crore** or more;
 - (iii) all companies having paid up share capital of below threshold limit mentioned in (2) and (3) above, but having public borrowings from financial institutions, banks or public deposits of rupees 50 crores or more.

7) Removal, resignation of auditor and giving of special notice [Section 140(3)]

- If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than ~~fifty thousand rupees~~ **fifty thousand rupees or the remuneration of the auditor, whichever is less** but which may extend to five lakh rupees.

8) Eligibility, qualifications and disqualifications of auditors [Section 141(3)]

■ **Section 141(3)(g)-**

a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies.

Exemption Notification dated 5th June 2015 for Section 141 (3) (g)

- (a) Private Companies having PUSC < ` 100 Crores.
- (b) One Person Company u/s 2(62)
- (c) Dormant Company u/s 455
- (d) Small Company u/s 2(85).

■ **Section 141(3)(i)**

a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

Explanation-For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144. [Substituted via Amendment Act, 2017]

9) Powers and duties of auditors and auditing standards (Section 143)

143 (1)

- Every auditor of a company shall have a right of access at all times to the books of account and vouchers of the company, whether kept at the registered office of the company or at any other place and shall be entitled to require from the officers of the company such information and explanation as he may consider necessary for the performance of his duties as auditor and amongst other matters inquire into the following matters, namely:—
 - a) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;
 - b) whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;
 - c) where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchase by the company;
 - d) whether loans and advances made by the company have been shown as deposits;
 - e) whether personal expenses have been charged to revenue account;
 - f) where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading;

Provided that the auditor of a company which is a holding company shall also have the right of access to the records of all ~~its subsidiaries~~ **its subsidiaries and associate companies** in so far as it relates to the consolidation of its financial statements with that of its subsidiaries.

143(3)(i) -

- The auditor's report shall also state—
 - a) Whether the company has adequate internal financial controls with reference to **Financial Statements** [Substituted via Amendment Act, 2017] in place and the operating effectiveness of such controls.
 - Section 143(3)(i), shall not apply to a private company:-
 - (a) which is a OPC or a SMALL company; or
 - (b) which has turnover < ₹ 50 cr. as per latest audited financial statement or which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year < ₹ 25 Cr.

143(14)-

- The provisions of this section shall mutatis mutandis apply to—
 - a) the cost accountant **in-practice** conducting cost audit under section 148; or
 - b) the company secretary in practice conducting secretarial audit under section 204

10) Punishment for contravention (Section 147)

(2) If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees or four times the remuneration of the auditor, whichever is less:

Provided that if an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year ~~and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees~~ **and with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees or eight times the remuneration of the auditor, whichever is less.**

(3) Where an auditor has been convicted under sub-section (2), he shall be liable to—

(i) refund the remuneration received by him to the company; and

(ii) pay for damages to the company, statutory bodies or authorities ~~or to any other persons~~ **or to members or creditors of the company** for loss arising out of incorrect or misleading statements of particulars made in his audit report.

(4) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

11) Central Government to specify audit of items of cost in respect of certain companies (Section 148)

(3) The audit under sub-section (2) shall be conducted by a Cost Accountant ~~in-practice~~ who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed:

Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records:

Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards.

Explanation.—For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the ~~Institute of Cost and Works Accountants of India~~, **Institute of Cost Accountants of India** constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

(5) The qualifications, disqualifications, rights, duties and obligations applicable to auditors under this Chapter shall, so far as may be applicable, apply to a cost auditor appointed under this section and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company: Provided that the report on the audit of cost records shall be submitted by the cost accountant ~~in practice~~ to the Board of Directors of the company.

~~Cost Accountant [Section 2(28)] - "cost accountant" means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959.~~

"Cost Accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act; [Substituted via The Companies (Amendment) Act, 2017]