

Star Rating

On the basis of Maximum marks from a chapter

Nil

On the basis of Questions included every year from a chapter

Nil

On the basis of Compulsory questions from a chapter

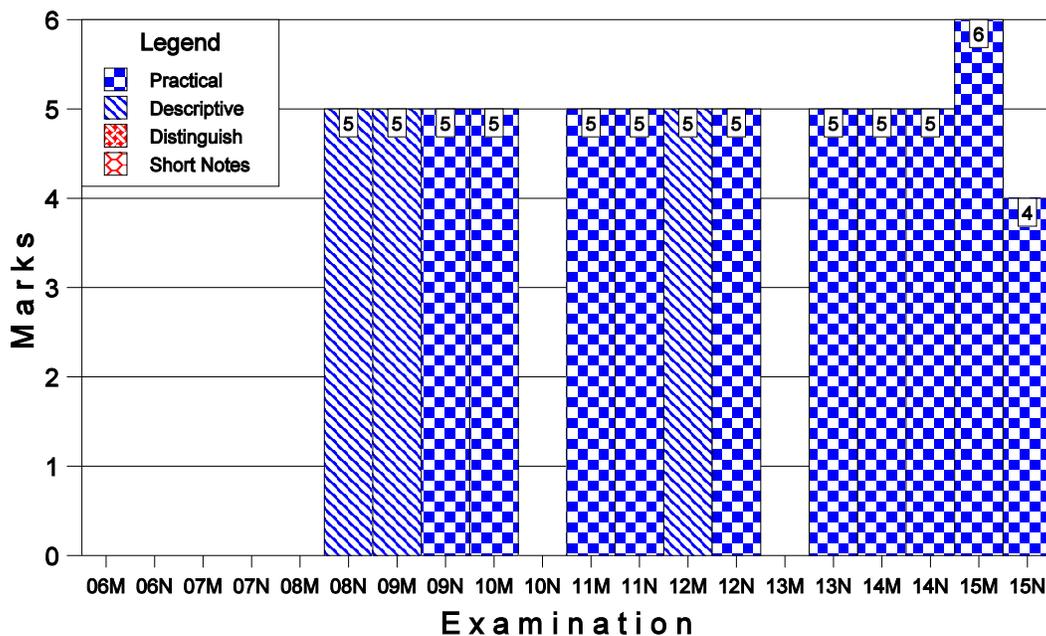
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Declaration and Payment of Dividend

This Chapter Includes : Meaning of Dividend; Declaration of dividend; Right of dividend, rights shares and bonus shares to be held in abeyance Pending registration of transfer of shares; Punishment for failure to distribute dividend.

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions



CA Final Gr. I (New Course)

DESCRIPTIVE QUESTIONS

2008 - Nov [2] (a) Examine the validity of the resolution passed at the annual general meeting of a public company for payment of dividend at a rate higher than that recommended by the board of directors. Is it possible for the board of directors of the company to revoke the dividend declared at the annual general meeting? (5 marks)

Answer :

Legal Provisions : As per Regulation 80 of Table F of the Companies Act, 2013, a company in General meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board of the company. The shareholders at an AGM may reduce the amount of dividend recommended by the Board, but they cannot increase it. Hence, the resolution passed at the AGM for payment of dividend at a rate higher than that recommended by the Board is not valid.

Revocation of Declared Dividend : Ordinarily, a dividend once declared at AGM, cannot be revoked, except, with the consent of the shareholders, for a declaration of dividend creates a debt to the shareholders in whose favour it is declared. If a dividend is declared and the amount is paid or credited to the shareholders as dividend, the character of the credit or payment as dividend cannot be altered by a subsequent resolution [Kishanchand chellavam vs. CIT]

Exception: But where a dividend has been illegally declared due to events intervening- after the declaration, such as fire destroying the company's property, or the out break of a war, or the imposition of new heavy tax burden or other causes diminishing the assets of the company makes it advisable to conserve the remaining assets the Board of Directors will be justified in revoking the declaration of dividend.

2009 - May [1] {C} Answer the following :

(b) Board of Directors of M/s RPP Ltd. in its meeting held on 29th May, 2009 declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting scheduled for 10th June, 2009, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so. (5 marks)

Answer :

Final dividend is paid only after it is approved in the annual general meeting. Interim dividend is usually paid in the middle of the year if Board of Directors find that profitability of the company is good and is likely to be maintained for balance part of the year, or there is adequate surplus profit and loss account. Usually, interim dividend is announced when major part of current financial year (say at least 8-9 months or so) is over and trends in profitability are good.

Board can declare interim dividend out of profits: 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. [Sec. 123(3) of the 2013 Act].

Subject to the provisions of Sec. 123 of the 2013 Act, the Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company [Regulation 81 of Model Articles of company limited by shares as contained in Table-F of Schedule I of the 2013 Act].

Provided also that 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. [Companies Amendment Act, 2015]

Thus, Board of Directors can declare dividend out of surplus in profit and loss account at the beginning of the year or profit during the current financial year after following provision of Companies Amendment Act, 2015.

Legal Provisions applicable to interim dividend:

All provisions relating to dividend equally apply to interim dividend also. Provisions regarding depositing amount in separate bank account, payment within 30 days, transfer of unpaid dividend to special account, interest for late payment, transfer to Investor Protection Fund after seven years, penalty for non payment etc. will obviously apply to interim dividend also.

In case of listed companies, if shares are in demat form, 15 days advance notice is required to be given to stock exchange for fixing 'record date'. If shares are not in demat form, 21 days notice is required.

Present Case :

In view of the above Legal Provisions, the Board of RPP Ltd must deposit the amount of interim dividend declared on 29th May, 2009 into a separate Bank A/c on or before 3rd June, 2009, i.e., within 5 days from 29th May, 2009 the day when interim dividend was declared. As stated above, the amount once deposited into a separate Bank A/c, can be used only for payment of interim dividend.

As per the provisions of Act, the Board of RPP Ltd. has no power to revoke the interim dividend declared on 29th May, 2009 and shall not have any power to use the interim dividend amount transferred to a separate Bank A/c for any other purpose.

In case if the interim dividend amount has not been transferred to a separate Bank A/c and is not paid within the time, the company and its directors will become liable to the applicable penal provisions of the said Act.

2012 - May [1] {C} (c) The Board of Directors of M/s RPP Ltd. in a meeting held on 30th April 2012 declared an interim dividend payable on the paid up equity share capital of the company. In the board meeting scheduled for 15th May 2012, the board wants to revoke the said declaration. State with reference to the provisions of the Companies Act, 2013 whether the board of directors can do so. (5 marks)

Answer :

Please refer 2009 - May [1] {C} (b) on page no.19

PRACTICAL QUESTIONS

2009 - Nov [1] (b) A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 5 years. The Company has not made adequate profits during the year ended 31st March, 2009, but it has got adequate reserves which can be utilised for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2008-2009. Would your answer be different if the company utilised only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2008-2009 ? (5 marks)

Answer :

(1) Declaration of dividend out of accumulated profits: Where a company, owing to inadequacy or absence of profits in any financial year, 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 be made only in accordance with prescribe rules. Such dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend.

For declaration of dividend out of accumulated profits, the Ministry of Corporate Affairs has provided the Companies (Declaration and Payment of Dividend) Rules, 2014: Thereby, when there is inadequacy or absence of profits in any year, a company may declare dividend out of free reserves. However, the following conditions shall be fulfilled before declaring dividend out of reserves:

1. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year:
However, this rule will not apply if a company has not declared any dividend in each of the three preceding financial year.
2. The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.

Therefore,

$$\boxed{\begin{array}{c} \text{Total amount that can be} \\ \text{drawn from accumulated} \\ \text{profits} \end{array}} \leq \boxed{\begin{array}{c} 1/10 \text{ of (Paid up share capital} \\ \text{+ Free reserves)} \end{array}}$$

- (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.
- (5) 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 of the current year.

Note : In exercise of powers conferred under Sec. 123(1) read with Sec. 469 of the Companies Act, 2013, in the Companies (Declaration and Payment of Dividend) Rules, 2015, Rule 3(5) is now redundant.

(2) 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 provided such profit has been arrived at after providing for depreciation in accordance with the provisions. Such utilisation would not amount to withdrawal of profits from reserves.

- (3) Present case: (1)** The company intends to distribute dividend at the rate of 20%. As per the provision above the company can do so.

Present case: (2) The company can declare dividend @20% for the year 2008-2009 out of accumulated profits retained in the Profit and Loss Account provided such profit has been arrived at after providing for depreciation in accordance with the provisions.

2010 - May [2] (b) X & Co. Ltd. made a loss of ₹ 20 lakhs after providing for depreciation for the year ended 31st March, 2009 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 shares payable out of free reserves. The paid up share capital of the company and its free reserves as on 31st March, 2009 are ₹ 2 crores and 10 crores respectively. The average dividend declared by the Company in the last five years is 25%. Examine the validity of declaration of dividend. (5 marks)

Answer :

Declaration of Dividend out of Reserve:

Please refer 2009 - Nov [1] (b) on page no. 21

Present Case:

Rate of Dividend declared = 15%

Rate of Dividend declared in the last 3 years = 25%

Paid up share capital + Free Reserve = 12 Cr.

Total amount that can be withdrawn from accumulated profit = $\frac{1}{10}$ th of 12

Cr. = 1.2Cr.

Since 15% is less than 25% company can declare dividend of 15%.

2011 - May [1] {C} (a) The agenda for the meeting of the Board of Directors of M/s. Brilliant Enterprises Ltd. held on 20-3-2011 for adopting the annual accounts for the year ended 31-12-2010 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-12-2010 were inadequate to declare dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. 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. (5 marks)

Answer :

Declaration of Dividend Out of Reserve

Please refer 2010 - May [2] (b) on page no. 23

Present Case:

Rate of Dividend to be declared = 20%

Thus: Company can declare a dividend at the rate of 20% provided it has followed the provisions mentioned above.

2011 - Nov [1] {C} (d) M/s. USA Industries Limited has constituted "Investor Education and Protection Fund" as required under the Companies Act, 1956 but so far no amounts have been deposited into the said account. Explain with reference to the above said enactment, the amounts payable to the credit of the said account and the period within which the amounts shall be paid. (5 marks)

Answer :**Meaning and provisions applicable to Investor Education and Protection Fund'**

The Investor Education and Protection Fund shall be established by the Central Government.

1. **Credits to the Fund:** Following sums shall be credited to the Fund:
 - Following sums remaining unclaimed and unpaid for 7 years from the due date:
 - (a) Amount in the unpaid dividend account
 - (b) Application moneys received and due for refund
 - (c) Deposits matured but remaining unpaid
 - (d) Debentures matured but remaining unpaid
 - (e) Interest accrued on amount transferred/referred to in clauses (a) to (d)
 - (f) Grants and donations by the Central Govt. or State Govt. or any other institutions.
 - (g) Interest or other income received out of the investments.
2. **Treatment of dividend remaining unpaid in 'unpaid dividend account':**
 - (a) **Transfer to 'Investor Education and Protection Fund' :** Any money transferred to the unpaid dividend account of a company which remains unpaid for 7 years from the date of such transfer shall be transferred by the company to the 'Investor Education and Protection Fund' (hereinafter called as 'Fund'). [Sec. 205A(5)]

- (b) **Discharge of company** : On transfer of unpaid dividend to the Fund, the company shall be discharged of all its liabilities in respect of unpaid dividend. [Sec. 205A(7)]
- (c) **No payment after 7 years** : No person shall be entitled to claim any money transferred to the Fund, i.e., if unpaid dividend is not claimed by the shareholder within 7 years, he shall lose all his rights to recover it.

Note: Sec. 125 of Companies Act, 2013 corresponding to Sec. 205A of the Companies Act, 1956 is not yet notified.

2012 - Nov [1] {C} (b) The Board of Directors of Nimbahera Chemicals Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 2013 and the rules thereunder. (5 marks)

Answer :

Transfer to reserves: As per Sec. 123 of Act, 2013, 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. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.

Present case

Thus in light of above provisions the BOD of Nimbahera Chemicals may transfer more than 10% of the profits of the company to the reserves for the current year provided they satisfy the applicable conditions mentioned above.

2013 - Nov [1]{C} (a) The Annual General Meeting of ABC Limited declared a dividend at the rate of 30 percent payable on paid up equity share 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, 2013, whether Mr. Ranjan would succeed ? Also state the directors' liability in this regard under the Act. (5 marks)

Answer:

Provisions relating to time limit for payment of dividend.

According to Sec. 127 of the Companies Act, 2013, dividend has to be paid within 30 days from the date of its declaration. The posting of dividend warrant by the company within 30 days will be deemed to be payment irrespective of the fact whether the shareholder has encashed it or not. Failure to pay or post dividend warrant within 30 days, constitutes an offence under the Act and renders every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

Present Case : Mr. Ranjan's Right

The company was unable to post dividend warrant within 30 days of declaration. Thus as per Sec. 127 of the Companies Act, 2013, Mr. Ranjan can file a suit against the company for payment of dividend. But he would be entitled to dividend along with interest at the rate of 18% and not 20% for the default period.

Directors Liability

Every director of the company, if he is knowingly a party to the default, punishable with simple imprisonment for a term which may extend to two years and also to a fine of one thousand rupees for every day during which such default continues.

2014 - May [1] {C} (b) CBA Ltd. wants to declare dividend in the year 2013-14 though it will not earn any profit this year due to heavy losses. The company has been declaring dividend for the last 5 years. To maintain its reputation the company wants to declare dividend this year too out of accumulated past profits. Explain how the company can achieve the objective to declare dividend. (5 marks)

Answer:

Please refer 2009 - Nov [1] (b) on page no. 21

2014 - Nov [1] {C} (b) The Board of Directors of XYZ Company Limited at its meeting declared a dividend on its paid-up equity share capital which was later on approved by the company's Annual General Meeting. 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 a shareholder is adjusted by the company against certain dues to the company from the shareholder? (5 marks)

Answer:

Sec.127 of the Companies Act, 2013 contains punishment for failure to distribute dividends.

Provided that no offence under this section shall be deemed to have been committed:

- (a) Where the dividend could not be paid by reason of the operation of any law.
- (b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him.
- (c) Where there is a dispute regarding the right to receive the dividend,
- (d) Where the dividend has been lawfully adjusted by the company against any sum due to if from the shareholder or
- (e) Where, for any other reason, the failure to pay the dividend/to post the warrant within the period under this section was not due to any default on the part of the company.
 - (i) Thus, keeping in mind the above provision it can be said that the act of directors is in violation of the provisions of the act as purchase of investment is not an exception as enumerated in Sec. 127 (a to e) and the dividend was paid after 45 days and not 30 days of declaration. **Consequences:** Every director of the company shall,

if he is knowingly a part of the default, be punishable with imprisonment which may extend to 2 years and with a fine which shall not be less than ₹ 1,000 for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent p.a. during the period for which such default continues.

- (ii) As in the second case, it is provided in the Sec. 127(d) and thus such adjustment does not constitute violation of the provisions of the act.

2015 - May [1] {C} (b) (i) Referring to the provisions of the Companies Act, 2013, examine the validity of the following:

The Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act. (3 marks)

- (ii) 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?

(3 marks)

Answer:

(i) Prohibition on declaration of dividend

Provision:

The Companies Act, 2013, by virtue of Section 123 (6) specifically provides that a company which fails to comply with the provisions of Section 73 (Prohibition on acceptance of deposits from public) and Section 74 (Repayment of deposits etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

Analysis & Conclusion:

In the given case, the Board of Directors of ABC Limited proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of Companies Act, 2013. As per the above provision, the Board of Directors of ABC Limited shall not declare any dividend on its equity shares. The declaration of dividend is thus not valid.

Answer:

- (ii) **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.

Provision:

When the company has incurred any 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 the immediately preceding three financial years.

Analysis and Conclusion:

As per the above provision WL Limited can declare maximum interim dividend as follows:

$$\begin{aligned} \text{Average rate of dividend of preceding three financial year} \\ &= \frac{8\% + 10\% + 12\%}{3} \\ &= 10\% \end{aligned}$$

The Board of Directors has decided to declare 12% interim dividend for the current financial year which is more than maximum permissible limit. So, the Board of Directors cannot do so.

2015 - Nov [1] {C} (a) Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases:

- (i) Mrs. Sheela, holding 250 shares had mandated the company to

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directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy.

- (ii) Dividend amount of ₹ 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends.

(4 marks)

Table Showing Marks of Compulsory Questions										
Year	11 M	11 N	12 M	12 N	13 M	13 N	14 M	14 N	15 M	15 N
Descriptive			5							
Practical	5	5		5		5	5	5	6	4
Total	5	5	5	5		5	5	5	6	4