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MODULE 2

PAPER 5

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LEGAL ASPECTS OF DIVIDENDS (Pg No. 210 of the study)

The Companies Act, 2013 makes the following provision for payment of dividends:

1. Dividends to be paid only out of profits

According to Section 123(1) of Companies Act 2013, no dividend shall be declared or paid by a company for any financial year except –

- (a) (i) 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
 - (ii) 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
 - (iii) out of both; or For the above purpose, depreciation shall be provided in accordance with the provisions of Schedule II and 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.

Before declaration of dividend, a company may transfer such percentage of its profit for that Financial year as it may consider appropriate to the reserves of the company. The company is free to decide the percentage for such transfer to the reserve.

Second proviso to Section 123(1) states that 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 free reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

Third proviso to Section 123(1) states that that no dividend shall be declared or paid by a company from its reserves other than free reserves.

Another proviso added to section 123(1) by the Companies (Amendment) Act, 2013 states 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.

Section 123(3) of the Companies Act, 2013 provides that 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 Annual General Meeting out of the surplus in the Profit

and Loss Account or out of profit 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. 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.

Section 123(4) of the Companies Act, 2013 provides that the amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.
