

### KEY CONCEPTS

■ Divisible Profit ■ Dividend ■ Interim Dividend ■ Final Dividend ■ Entitlement to Dividend ■ Dividend Distribution Policy ■ Unpaid Dividend Account ■ Investor Education Protection Fund ■ Record Date ■ Claim ■ Book Closure

### Learning Objectives

#### To understand:

- Meaning of Profit and ascertainment of Divisible profits
- The meaning and Definition of Dividend
- Types of Dividend
- Types of Companies allowed to pay Dividend
- The legal and procedural aspects relating to distribution of dividend, transfer of unpaid or unclaimed dividend to Unpaid Dividend Account
- The legal and procedural aspects relating to transfer of Unpaid Dividend to Investor Education and Protection Fund (IEPF)

### Lesson Outline

- Profit and Ascertainment of Divisible Profit
- Meaning and Definition of Dividend
- Interest vs. Dividend
- Types of Dividend
- Types of Companies allowed to pay Dividend
- Power to declare Dividend
- Source of payment of Dividend
- Declaration of dividend in case of loss or inadequacy of profit
- Dividend Distribution Policy
- Date for determining entitlement to dividend
- Persons entitled to Dividend
- Transfer of profits to reserve
- Declaration of Dividend
- Rate of Dividend
- Mode of Payment of Dividend
- Unpaid Dividend Account
- Investor Education and Protection Fund (IEPF)
- Procedure for Transfer of Unpaid or Unclaimed Dividend to the Investor Education and Protection Fund
- Shares in respect of Unpaid Dividend to be transferred to Investor Education and Protection Fund (IEPF)
- Refund to Claimant from Investor Education and Protection Fund
- Punishment for failure to distribute Dividends
- Procedure of declaration & payment of Interim Dividend
- Procedure of declaration & payment of Final Dividend
- Lesson Round-up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

## REGULATORY FRAMEWORK

- The Companies Act, 2013 [Section 123-127, 2(35)]
- The Companies (Declaration and Payment of Dividend) Rules, 2014
- IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016
- The SEBI (LODR) Regulations, 2015

## PROFIT AND ASCERTAINMENT OF DIVISIBLE PROFIT

Profit earning and maximisation of shareholders wealth is the main objectives of every business concern.

Generally speaking the profit of a business during a given period is the excess of income over expenditure for the period. The Companies Act, 2013 does not define the term “Profit”, which must, therefore, be understood in its natural and proper sense.

- *In Re. Spanish Prospecting Co. Ltd (1911) 1 Ch 92, Moulton L.J. explained the term ‘Profit’ as under: “Profit implies a comparison between the state of business at two specific dates usually separated by an interval of a year. The fundamental meaning is the amount of gain made by the business during the year. This can only be ascertained by a comparison of the assets of the business at the two dates. If the total assets of the business at the two dates are compared, the increase which they show at the later date as compared with the earlier date (due allowance, of course, being made for capital introduced into or taken out of the business in the mean while) represents, in strict sense, the profits of the business during the period in question”.*
- 'Divisible profits' means the profits which the law allows the company to distribute to the shareholders by way of dividend. According to Palmer's Company Law, the terms 'divisible profits' and 'profits in the legal sense' are synonymous. Thus, the profits of a business mean the net proceeds of the concern after deducting the necessary outgoings without which those proceeds could not be earned. [*Bharat Insurance Co. Ltd. v. CIT (1931) 1 Com Cases 192, 196 (Lah)*].
- Dividend in literal terms means a share of profit, whether at a fixed rate or otherwise, allocated to the holder of share in the company as held in *Henry v. Great Northern Railway Company*.

The shareholders contribute to the capital of the company and these shareholders are entitled to a share in the profits of the company. However, not all the profits made by company is to be distributed to the shareholders. Only divisible profits are available for distribution to the shareholders.

Divisible profits are that portion of the profit which can be distributed legally among the shareholders of the company. These profits are distributed by way of dividends, but only after provisions for past losses and reserves have been made.

## DECLARATION AND PAYMENT OF DIVIDEND

### Meaning and Definition of Dividend

The term 'dividend' takes its root from Latin noun '*dividenda*' which means 'something to be divided'.

As per Black's Law dictionary, dividend is '*A portion of a company's earnings or profits distributed pro rata to its shareholders, usually in the form of 'cash or additional shares'. It is a share allotted to each of several persons entitled to a share in a division of profits or property. Hence, dividend may denote a fund set apart by a company out of its profits, to be apportioned among the shareholders, or the proportional amount falling to each shareholder.*

Therefore, dividend is a return on the share capital subscribed for and paid to its shareholders by a company. In simple words, dividend means the payment made by a company to its shareholders out of its distributable profits.

In the UK Companies Act, 2006, the term 'distribution' is used for denoting payments to members. It is defined in sub-section (1) of section 829 of the UK Companies Act 2006 as follows: 'In this Part "distribution" means every description of distribution of a company's assets to its members, whether in cash or otherwise, subject to the following exceptions.'

Sub-section (2) of the same section provides the exceptions for the same in the form of bonus shares, reduction of share capital, redemption or purchase of shares and distribution of assets on winding up.

*The term 'dividend' is defined in clause (35) of section 2 the Companies Act, 2013 (the Act) to mean "dividend" includes any interim dividend.*

Therefore, it can be said that the term 'Dividend' per se is not defined under the Act; however, only interim dividend is made part of it.

Secretarial Standard-3 defines dividend so as to mean a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose.

Dividend implies two things –

- (i) payment out of profits, and
- (ii) actual release of some assets.

Issue of bonus shares or right shares to the existing members is not considered as dividend because the former does not involve release of any assets and the latter has no relation with the profits of the company. Every trading company has an implied inherent power to distribute its net earnings or profits to the shareholders in the shape of dividends. Power to declare dividends, therefore, need not expressly be given by the Memorandum or Articles of Association. Articles may, however, regulate the manner in which the dividends are to be paid.

The allotment of bonus shares does not entail release of any of the assets of the company. The existing shareholders, instead of receiving any moneys out of the undistributed profits, only receive pro rata fresh shares [*Sivagnanamal v. Thirumagal Mills Ltd., (1948) 18 Comp. Cases 286 AIR 1949 Mad 521*]. There is no distribution of profits among shareholders and hence capitalization of profits in the form of bonus shares would not be construed as Dividend in terms of the Act.

#### **Dividend in light of Judicial precedents**

- In the case of *Griffith, Carr v. Griffith* [(1879) 12 ChD 655], it was also held that dividend payment usually occurs periodically. Where profits are distributed outside these periodic dates, these are usually referred to as "bonuses or bonus dividend".
- In the case of *Kantilal Manilal and Ors v. The Commissioner of Income-Tax, Bombay* [1961 SCR (2) 584], "Dividend" in its ordinary meaning is a distributive share of the profits or income of a company given to its shareholders'.
- In the case of *Navnitlal C. Javeri v. K. K. Sen, Appellate Assistant Commissioner of Income Tax* [1965 SCR (1) 909], it was held that '*The essence of an amount paid as dividend is that it has to represent the proportionate amount a particular shareholder is to get on the basis of the shares held by him out of the profits of the company set apart for payment of dividend to shareholders. Any ad hoc payment of money to a shareholder as advance or loan unrelated to his share in the accumulated profits cannot rationally come within the expression "dividend"*'.

- In *Borland's Trustee v. Steel Brothers & Co. Ltd.* L.R. [1901] 1 Ch. 279, Farwell J. held that “a share in a company cannot properly be likened to a sum of money settled upon and subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the company, measured, for the purposes of liability and dividend, by a sum of money .....” It was suggested that the dividend arises out of the profits accruing from land and is impressed with the same character as the profits and that it does not change its character merely because of the incident that it reaches the hands of the shareholder.

## INTEREST VS. DIVIDEND

Interest and dividend are completely different concepts. The key difference between Interest and Dividend is as follows:

<i>Nature of Difference</i>	<i>Interest</i>	<i>Dividend</i>
<b>Meaning</b>	Interest is the return on borrowed capital	Return on the investment made in the share capital of a company
<b>Nature</b>	It is a charge against profit	It is appropriation of profit
<b>Calculations</b>	It is a liability which has to be discharged even if the company has suffered loss	It is appropriation of profit which is arrived after providing of all expenses including interest
<b>Commitment</b>	Interest is always a commitment which is to be paid by the borrower as per the terms decided between lender and borrower	It is not a commitment
<b>Paid to</b>	The lenders, creditors and debenture holders	Equity Shareholders and Preference Shareholders
<b>Expenditure</b>	Interest on bonds or other debt is an expense of the company. The interest, being an expense, reduces the company's net income and consequently its taxable profits	It is not an expense of the company. The right of preference shareholders to receive dividend is even subject to the availability of distributable profits and this right is not to the receipt of dividend but to preferential treatment if and when dividend is declared
<b>Mandatory</b>	Interest is to be paid even if there is no chance of making profit	To distribute dividend, profits are necessary
<b>Rate</b>	Fixed	Remains constant in the case of preference shares, but fluctuates in case of equity shares.

## Types of Companies and provisions related to payment of dividend

Dividend can be paid companies except section 8 companies (i.e. companies with charitable objects etc.) which prohibit the payment of any dividend to its members. The dividend in other types of entities is as follows:

- (a) **Section 8 Companies:** According to Section 8(1) of the Companies Act, 2013 the company having license under Section 8 (Formation of Companies with Charitable Objects etc.) are prohibited from paying any

dividend to its members. Their profits are intended to be applied only in promoting the objects of the Company.

- (b) **Nidhi Companies:** In terms of Rule 18 of Nidhi Rules, 2014, a Nidhi shall not declare dividend exceeding 25% in a financial year.
- (c) **Producer Companies:** In case of producer companies, dividend is termed as 'Limited Return' as defined in clause (d) of section 378A of the Companies Act, 2013. It is the maximum dividend as the Articles of the producer company may specify. According to Section 378 E of the Companies Act, 2013, in producer Companies, the surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 378ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

'Patronage Bonus', according to clause (i) of section 378A of the Companies Act, 2013, which means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage.

- (d) **Companies Limited by Guarantee:** A Company Limited by Guarantee is primarily used for non-profit purposes and the profits are reinvested and used for promoting its non-profit activities. Although the Companies Act, 2013 does not specifically prohibit distribution of dividend in such companies, however, the Articles of such companies usually provides that all the income of the company shall be applied solely towards the promotion of the objects of the Company and that no portion shall be paid or transferred directly or indirectly by way of dividends or bonus or by way of profit to its members.

### Types of Dividend

There are two types of Dividend:

- (i) Final Dividend
- (ii) Interim Dividend

<i>Basis</i>	<i>Final Dividend</i>	<i>Interim Dividend</i>
<b>Meaning</b>	The Dividend recommended by the Board of Directors and declared by the Members at an Annual General Meeting	Dividend paid by the Company between two annual general meetings
<b>Power to declare Dividend</b>	Recommended by the Board at the board meeting and declared by the Members of the Company	Declared by the Company's Board of Directors
<b>Meetings</b>	Declared in Annual General Meeting of Members	Declared at the Meeting of the Board
<b>Time of Declaration</b>	It is declared after the end of the financial year after the amount of distributable profit has been computed	It is declared on the basis of provincial financial statements or estimates
<b>Frequency of payment</b>	It can be paid only once in a financial year	It can be paid more than once in a financial year

<b>Source of Payment</b>	Paid out of profit earned in the previous financial year	Paid:- (i) out of surplus in the profit and loss account (ii) out of profit of the financial year in which such interim dividend is sought to be declared (iii) profits generated by the Company till the quarter preceding the date of declaration of interim dividend
<b>Quantum of Dividend</b>	Members cannot declare dividend over and above the amount recommended by the Board	It shall not be declared at a rate higher than the average dividends declared by the Company during the immediately preceding three financial years

### Power to declare Dividend

#### Final Dividend

- While approving the financial statements and the appropriation of the profit for the previous financial year, the amount of dividend payable is also determined by board of directors of a company who decide how much to be paid to the shareholders and how much to retain in the business. These amounts vary from year to year depending upon the amount of profit earned by the company.
- The dividend recommended by the board of directors as mentioned in the Directors' Report is declared' at the annual general meeting of the company.
- This constitutes an item of ordinary business to be transacted at every annual general meeting.
- It may be noted that the shareholders may declare dividend which is lesser than the amount recommended by the Board. However, it cannot declare dividend over and above the amount recommended by the Board.

Article 80 of Table F of schedule I states that 'The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.

#### Interim Dividend

- As per 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.
- It is also provided in article 81 of table F that Subject to the provisions of section 123, 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.
- The declaration of interim dividend is dependent on the provisional financial statements or estimates.

Therefore, before approving payment of interim dividend, the directors should satisfy themselves that the profit is available for distribution by way of dividend.

*While Final Dividend is recommended by the Board and declared by the Members, approval of Members is not required for declaration of Interim Dividend. Where a company has an Audit Committee, this Committee shall consider the financial results which shall thereafter be submitted to the Board for its consideration and declaration of Interim Dividend.*

- In the case of *Raghunandan Neotia v. Swadeshi Cloth dealers Ltd*, it was held that Final Dividend can be declared at the annual general meeting only, the Board of Directors proposes and the members declare the same.
- In the case of *Maharani Lalita Rajya Lakshmi v. Indian Motor Co (Hazaribag) Ltd.*, it was held that no enhancement of rate of dividend than that recommended by the Board is possible.
- In the case of *Tarajan TeaCo. (P) Ltd. v. CIT*, it was held that a dividend declared by the members at an annual general meeting is a debt against the company and is recoverable by the members only after declaration by members and not at the time of recommendation made by the board of directors.
- In the case of *J. Dalmia v. Commissioner of Income Tax, New Delhi*, it was held that power to pay interim dividend is usually vested, by the articles of association, in the directors. For paying interim dividend a resolution of the company is not required: if the directors are authorized by the articles of association they may pay such amount as they think proper having regard to their estimates of the profit made by the Company. Interim dividend is therefore paid pursuant to the resolution of the directors on some day between the ordinary general meetings of the company.
- The declaration of a Dividend need not be only once a year. It may be at any time the directors choose, and there may be several declarations in the course of one year. [*Steel Co. of Canada Ltd. v. Ramsay (1932) 2 Comp. Cases 23 (PC)*]

*SS-3 while clarifying the interim dividend provides that while declaring the Interim Dividend, the Board shall consider the financial results for the period for which Interim Dividend is to be declared and should be satisfied that the financial position of the company justifies and supports the declaration of such Dividend. The financial results shall take into account –*

- (a) Depreciation for the full year,*
- (b) Tax on profits of the company including deferred tax for full year,*
- (c) Other anticipated losses for the financial year,*
- (d) Dividend that would be required to be paid at the fixed rate on preference shares,*
- (e) The losses incurred, if any, during the current financial year upto the end of the quarter, immediately preceding the date of declaration of Interim Dividend.*

*Further, in case of clause (e) above, Interim Dividend shall not be declared at a rate higher than average Dividend declared during the immediately preceding three financial years.*

*Further SS-3 provides that Interim Dividend shall be declared at a meeting of the Board. In the event of a loss or inadequacy of profits during a financial year, no Interim Dividend shall be declared/ paid out of Free Reserves.*

SS-3 further provides that where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue.

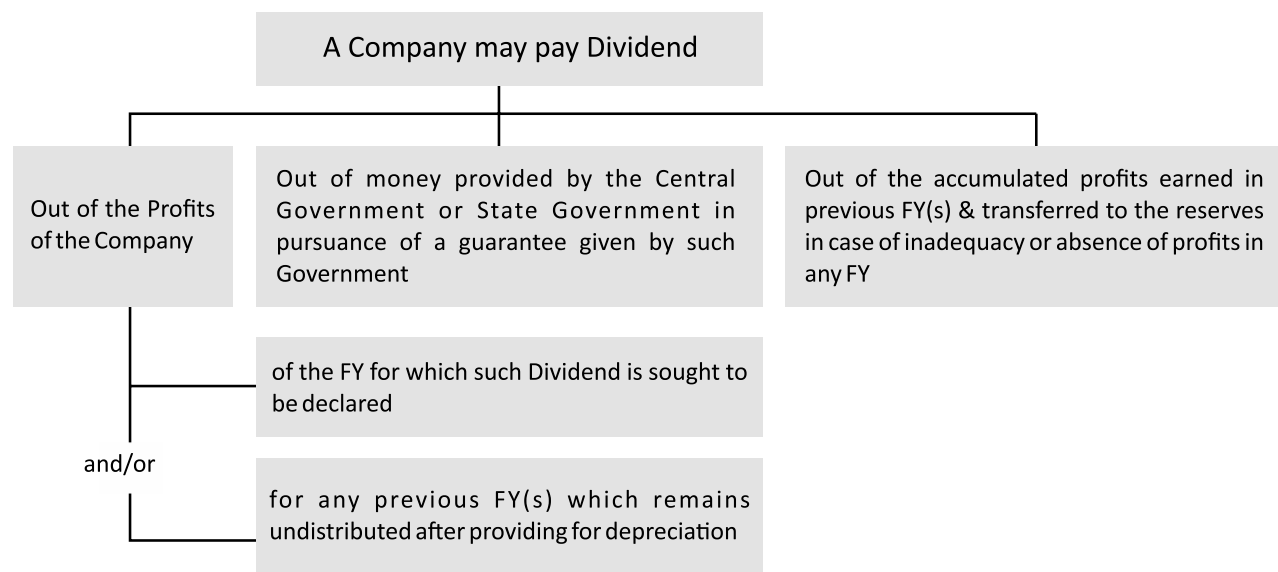
In case Interim Dividend is declared on only one class of equity shares, the Board shall ensure that the profit as shown in the financial results is adequate to meet the Dividend that would have to be paid on the other classes of equity shares in accordance with the terms of issue.

Where a company has issued equity shares with differential rights as to voting only, no differentiation shall be made in the declaration of Interim Dividend on such shares, unless the terms of issue provide otherwise.

Shain Ltd., incurred loss in business upto current quarter of financial year 2021-22. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of Shain Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013 ?

### Source of payment of Dividend (Section 123)

Section 51 of the Act, states that a company may, if so authorized by its articles, pay dividend in proportion to the amount paid up on each share.



**Sources of declaration of dividend:** Section 123(1) of Companies Act 2013 provides that the dividend shall be declared or paid by a company for any financial year only out of —

- (a) (i) 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 (i) and (ii), or

*In computing profits of any amount representing unrealised gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values 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.

*\* depreciation shall be provided in accordance with the provisions of Schedule II.*

In line with the requirements of fifth proviso to sub-section (1) of Section 123 of the Act, no company shall declare Dividend unless carried over previous losses and depreciation not provided in the previous year or years are set off against profit of the company for the current year.

A company shall also not declare any Dividend, if it has defaulted in –

- (a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,
- (b) Redemption of preference shares or creation of capital redemption reserve,
- (c) Payment of Dividend declared in the current or previous financial year(s), or
- (d) Repayment of any term loan to a bank or financial institution or interest thereon, till such time the default is subsisting.

No Dividend shall be declared by the company during the extended time, if any, granted by the Tribunal/ Court for repayment of above liabilities.

No dividend shall be declared or paid by a company from its reserves other than free reserves.

Free reserves as defined under section 2(43) of the Companies Act, 2013 means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that the following shall not be treated as free reserves:—

- (1) *any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or*
- (2) *any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.*

Dividend shall not be declared out of the Securities Premium Account or the Capital Redemption Reserve or Revaluation Reserve or Amalgamation Reserve or out of profits on re-issue of forfeited shares or out of profits earned prior to incorporation of the company.

Regulation 43 of the SEBI (LODR) Regulations, 2015 provides that the listed entity shall declare and disclose the dividend on per share basis only. Further, part A of schedule IV regarding the disclosures in financial results as per regulation 33(1) (e) of SEBI (LODR) Regulations, 2015 also mandates disclosure for amount of dividends distributed or proposed for distribution on per share basis.

**Illustration:**

In view of the provisions of the Companies Act, 2013 relating to 'securities premium', state whether the amount lying in securities premium account of a company can be used for payment of dividend declared by the company at its general meeting ?

For payment of dividend declared by the company at its general meeting. Securities premium Account since not covered by section 123(1) cannot be utilized for the purpose of declaring dividend.

### Transfer of profits to reserve

As per Second Proviso to sub-section (1) of Section 123 of the Act provides 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.

Therefore, the transfer of profits to reserves is left to the discretion of the Board of Directors of the Company.

A company shall not declare Dividend on its equity shares in case of non-compliance of provisions relating to the acceptance of deposits under the Act, till such time the deposits accepted have been repaid with interest in accordance with the terms and conditions of the agreement entered with the depositors.

### Declaration of dividend in case of loss or inadequacy of profit

Third proviso to sub-section (1) of section 123 provides that owing to inadequacy or absence of profits in any financial year, if 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 prescribed in this behalf. The conditions for the declaration of dividend in case of inadequacy or absence of profits are prescribed in Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014. Rule 3 specifies that in the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves subject to the fulfillment of the prescribed conditions.

**As per Rule 3, the conditions for declaration of dividend in the event of inadequacy or absence of profits in any year are as follows:**

<b>Rate of Dividend</b>	<ul style="list-style-type: none"> <li>It shall not exceed the average of the rates at which dividend was declared by it in 3 years immediately preceding that year. <i>(This rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.)</i></li> </ul>
<b>Amount to be drawn</b>	<ul style="list-style-type: none"> <li>Total amount to be drawn from such accumulated profit shall not exceed 1/10 th of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.</li> </ul>
<b>Utilisation of the amount</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>
<b>Balance of Reserve</b>	<ul style="list-style-type: none"> <li>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.</li> </ul>

*Vide notification no. G.S.R. 463(E) dated 05.06.2015, an exemption has been given to a Government Company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. Hence, such companies need not comply with the above conditions.*

XYZ Ltd., which has inadequacy of profits, proposes to declare Dividend out of general reserves.

Following are the facts of the case:

- 17,500 preference shares of Rs. 100 each fully paid; (Dividend @ 9%)
- 7,00,000 equity shares of Rs. 10 each
- General reserves: Rs. 21,00,000
- Capital reserves: Rs. 3,50,000
- Securities premium: Rs. 3,50,000
- Surplus (P&L): Rs. 63,000
- Net profit for the year: Rs. 3,57,000
- Average rate of Dividend during the last three years: 15%
- Board of directors of the company wishes to declare 10% Dividend.
- Maximum amount that can be withdrawn : Rs. 10,91,300 [1/10 of (Rs. 17,50,000 + Rs. 70,00,000 + Rs. 21,00,000+63000)]
- Permissible withdrawal from the balance of Reserves : Rs. 8,50,500

**Calculation:**

- 15% of total capital Rs. 87,50,000 to be retained in the Reserves i.e. Rs. 13,12,500
- General Reserves: [Rs. 21,00,000 + 63000 (Surplus-P&L)]
- Maximum amount that can be taken from Reserves: Rs. 8,50,500 (Rs. 21,63,000 – Rs. 13,12,500)
- Available profits : Rs. 2,62,500 ( Rs. 63,000 + Rs. 3,57,000 – Rs. 1,57,500); [Rs. 1,57,500 is 9% preference Dividend on 17,500 preference shares of Rs.100 each]
- Dividend desired to be declared by the Board of the company: Rs. 7,00,000
- Profit available for declaration of Dividend : Rs. 2,62,500
- Balance amount that can be withdrawn from Reserves: Rs. 4,37,500 (Rs. 7,00,000 – Rs. 2,62,500).

Hence, company can declare Dividend @ 10%

**Illustration:**

The profits of X Ltd. for F.Y. 2021-22 are inadequate and considering the different scenarios the declaration of dividend may be as under :

<b>Financial Year</b>	<b>Dividend paid during the year</b>		
	<b>Case 1</b>	<b>Case 2</b>	<b>Case 3</b>
<b>2018-19</b>	10%	Nil	Nil
<b>2019-20</b>	Nil	Nil	12%
<b>2020-21</b>	5%	Nil	Nil
Maximum rate of dividend for the year 2021-22	Average rate of dividend $15/3 = 5\%$ [The Company can declare Dividend upto 5% subject to the compliance of other conditions prescribed under the Rules].	*The stipulation regarding average rate of Dividend is not applicable as no Dividend is declared in any of the three preceding financial years. Accordingly, the dividend for 2021-22 may be declared at any rate, subject to the compliance of other conditions prescribed under the Rules.  (*Proviso to Rule 3(1) of Companies (Declaration and Payment of Dividend) Rules, 2014 shall not apply to a company, which has not declared any Dividend in each of the three preceding financial year.)	Average of Dividend $12/3 = 4\%$ [The Company can declare Dividend upto 4% subject to the compliance of other conditions prescribed under the rules.

**Illustration:**

The following summarized information is available in respect of a company for the year ended 31st March, 2022:

Equity Share Capital 10,000 shares of the face value of Rs.100 each= Rs. 10 Lakhs

Free Reserve= Rs. 2 Lakhs

Revaluation Reserve= Rs. 1 Lakh

Profit and Loss Account (Dr.)= Rs. 0.35 Lakhs

Net loss for the year 2021-2022= Rs. 0.25 Lakhs

The company has paid dividends to the equity shareholders @ 8%, 10% and 12% during the immediately preceding three financial years. Advise the Board of directors the maximum amount they can pay this year by way of dividends.

**Calculation:**

In the instant case, the net loss for the year 2021-22 is Rs.25000.

According to Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 the following conditions must be fulfilled:

- (i) The rate of dividend cannot exceed the average of the rates at which dividend was declared in the three years immediately preceding that year i.e.  $(8\%+10\%+12\%)/3 = 10\%$ , so in this case, the amount of dividend should not exceed Rs.1 Lakh.
- (ii) 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. Thus the company can draw only upto Rs.1.2 lakh.
- (iii) The balance of reserves after such withdrawal shall not fall below 15% of its paid up capital as appearing in the latest audited balance sheet. Accordingly, the maximum that may be withdrawn cannot exceed Rs.50000.
- (iv) However, the amount so withdrawn must be used to set-off losses of the current year i.e. Rs.25000.

Therefore, the maximum amount in this instant case that can be paid by way of dividend is Rs.25000.

**Illustration:**

ABC Ltd. issued equity shares of Rs. 10 fully paid up and declared Dividend thereon. Mr. X and Mr. Y, are the shareholders who paid Rs. 5 towards the call money and Rs. 5 remains unpaid on the date of Dividend declaration.

The Company ABC Ltd. may adjust the amount of Dividend declared on such shares towards the unpaid call money due from Mr. X and Mr. Y.

**Illustration:**

**Following situations depict the adjustment of sum due from a Member in capacity other than a Member:**

**Case (i):** Mr. John is a debtor as well as Member of X Ltd., a public listed company.

X Ltd. declares Dividend of Rs. 5000 on the shares owned by Mr. John and proposes to adjust the said amount against the debt of Rs. 10,000 due from Mr. John. In the given case, X Ltd. may adjust the amount of Dividend only against calls in arrears or any other sums due from Mr. John in the capacity of a Member and not otherwise. Therefore, the amount due from Mr. John in the capacity of trade debtor will not be adjusted and the company need to pay Dividend amount to Mr. John.

**Case (ii):** In the above example, if X Ltd. is an unlisted company and has adopted regulation 84 of Table F of schedule – I to the Act, then it can only adjust the amount due from Mr. John in relation to the shares of the company and not otherwise.

Regulation 84 of Table F to the Act read as under:

The Board may deduct from any Dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

Therefore, in both the above situations (i) & (ii) the Dividend amount needs to be paid to Mr. John without any adjustment.

**Case (iii):** In the above example, if X Ltd. is an unlisted company and the Articles of Association provide for adjustment of Dividend amount with the amount due from a Member in a capacity other than that of a Member, then, the Dividend may be adjusted against the amount due from Mr. John.

### Dividend Distribution Policy

While considering the financial statements for declaration of Dividend, the Board should take into account the Dividend Policy of the company, if any.

The various determinants of the Dividend Policy ordinarily include:

- (a) **Legal and contractual restrictions:** This includes the restrictions/ conditions imposed under the applicable laws or by the financial institutions/banks in the loan agreement;
- (b) **Earnings of the company:** Current earnings provide the best index of what a company can pay;
- (c) **Cash position and liquidity:** The cash position of a company is an important consideration in paying Dividends, the greater the cash availability and overall liquidity the greater is the ability to pay Dividend;
- (d) **Financial needs:** There are many financial needs of a company such as meeting the cost of capital borrowed, non-availability of external capital and making provisions for any expansion or growth plans of the company;
- (e) **Tax considerations:** The tax burden is a determining factor in the formulation of a Dividend Policy.

The Board should recommend the Dividend to be declared by the Members in the Annual General Meeting on being satisfied that the company has sufficient profits to be distributed as Dividend, i.e. sufficient profits remain after all charges against the current income (e.g. taxation, depreciation, etc.) and after making provision for past losses, unabsorbed depreciation for past years, transfers to reserves, if any, or for any other purposes as may be warranted and as may be required by the Dividend Policy of the company.

As per Regulation 43A of SEBI (LODR) Regulations, 2015, the top 1000 listed entities based on market capitalization shall formulate a dividend distribution policy which shall be disclosed on the website of the listed entity and a web-link shall also be provided in their annual reports.

The dividend distribution policy shall include the following parameters:

- (a) the circumstances under which the shareholders of the listed entities may or may not expect dividend;
- (b) the financial parameters that shall be considered while declaring dividend;
- (c) internal and external factors that shall be considered for declaration of dividend;
- (d) policy as to how the retained earnings shall be utilized; and
- (e) parameters that shall be adopted with regard to various classes of shares.

If the listed entity proposes to declare dividend on the basis of parameters in addition to clauses (a) to (e) or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.

The listed entities other than those specified at sub-regulation (1) of this regulation may disclose their dividend distribution policies on a voluntary basis on their websites and provide a web-link in their annual reports.

### Date for determining entitlement to dividend

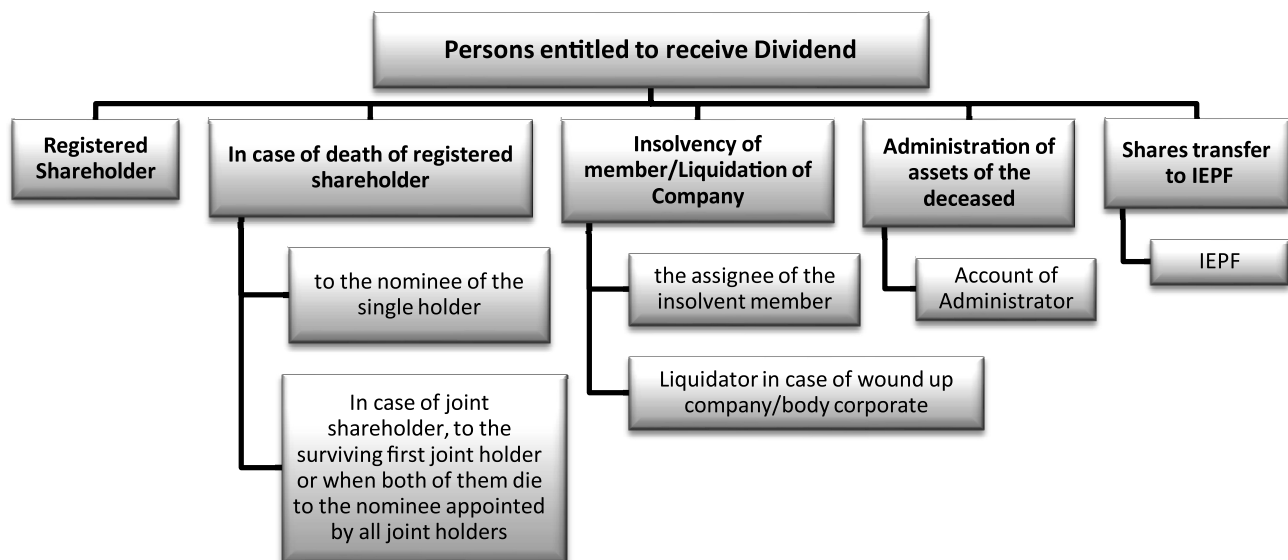
The company may close its registers or fix a record date for deciding the entitlement to receive dividend.

Regulation 60 of the SEBI (LODR) Regulation, 2015 provides, the listed entity shall fix a record date as per sub-regulation (7) of regulation 23 of the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021.

The listed entity shall give notice in advance of at least three working days(excluding the date of intimation and the record date) to the recognised stock exchange(s) of the record date or of as many days as the stock exchange(s) may agree to or require specifying the purpose of the record date.

In case of unlisted companies, the company may close its register of members by complying with provision of section 91 of the Act.

### Persons entitled to dividend



- Dividend should be paid by the company only to its registered shareholders or to his order or to his Banker and not to any other person. The shareholder has the option to direct the company to pay the dividend due to him to any other person. The company may fix any record date of the determination of entitlement of shareholders for dividend.
- Where the company has received intimation of death of a member, the dividend may be paid by the company to the nominee of the single holder, where shares are held by more than one person jointly and any joint holder dies, to the surviving first joint holder and where shares are held by more than one person jointly and all the joint holders die, to the nominee appointed by all the joint holders.
- In case of insolvency of a member, the dividend may be paid to the assignee of the insolvent member and in case of a company or body corporate which is being wound up, to the liquidator.
- In case of administration of assets of the deceased, dividend is to be paid to the account of administrator.
- In case of shares transfer to IEPF, dividend is to be paid to IEPF.
- When bonus shares are issued ranking pari passu with the existing equity shares, shareholders are entitled to Dividend in respect of such bonus shares also, if the record date for the purpose of payment of Dividend falls after the date of allotment of such bonus shares.

- In the case of *Chunilal Kuhshaldash Patel v. H.K. Adhyaru*, Dividend is payable to the Shareholder whose name appears in the register of members on the relevant date even if, prior to that date, he has sold the shares but the transfer deed in respect thereof has not been lodged with the company.
- In the case of *Hariprasad v. A.C. Traders (P) Ltd.*, the transfer of shares on cum-Dividend basis does not entitle the transferee to receive from the company any Dividend declared before such transfer.

### Dividend on preference shares

Preference shares carry a preferential right as to Dividend in accordance with the terms of issue. However, this right is subject to the availability of distributable profits. Since the Dividend on preference shares is governed by the terms of issue already approved by the Shareholders, the Board may declare Dividend on such shares in accordance with the terms of issue.

The right of Preference Shareholders to receive Dividend is subject to the availability of distributable profits and it may be noted that this right is not to receipt of Dividend but to preferential treatment if and when Dividend is declared.

Dividend on preference shares can be paid out of free reserve subject to its declaration.

Even where Dividend is declared out of free reserves, in case of absence or inadequacy of profits, Preference Shareholders have priority over equity Shareholders in respect of payment of Dividend. However, when the Board declares Interim Dividend on equity shares, it is not necessary to declare Interim Dividend on preference shares also.

If there are two or more classes of preference shares, the holders of the class which has priority are entitled to their preference Dividend before any Dividend is paid in respect of the other class, if the terms of issue so provide.

However, if the terms of issue are silent, Dividend shall be distributed on pro-rata basis. In the case of Interim Dividend, while Preference Shareholders need not necessarily be paid Dividend before Interim Dividend is paid to equity Shareholders, the Board should take into account such sum as would be necessary to pay Dividend to the Preference Shareholders before consideration of Interim Dividend.

**Board of Directors of AVB Limited wants to declare dividend Rs. 15 lakh out of capital profits for the year ended 31st March, 2022, without making a provisions for depreciation. Referring to the provisions of the Companies Act, 2013, you being the Secretary of the Company advise the board whether it can go ahead with its proposal ?**

In accordance with the provisions of the Companies Act, 2013, as contained in third proviso to section 123(1), no dividend shall be declared or paid by a company from its reserves other than free reserves.

As per section 2(43) of the Companies Act, 2013, "free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. Further according to section 123(2), for the purposes of declaration of dividend by a company as per section 123(1)(a), depreciation shall be provided in accordance with the provisions of Schedule II.

Therefore, in the given case, AVB Limited cannot declare dividend without making provision for depreciation.

However, if capital profit arises on sale of fixed assets, it can be utilised for distribution if such profit is actually realised in cash and such distribution is not contrary to the Memorandum and Articles of Association of the company.

### Dividend on Equity shares with differential rights

Where a company issues equity shares with differential rights as to Dividend, the terms of issue of such shares shall govern the rights of each such class of holders as to receipt of Dividend. Subject to the rights of persons, if any, entitled to shares with special rights as to Dividends, all Dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the Dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, Dividends may be declared and paid according to the amounts of the shares. [Regulation 83(i) of Table F of Schedule I to the Act].

### Dividend in case of Beneficial Owner

As provided under Section 89(9) of the Companies Act, 2013, the obligation of the company of payment of dividend is towards the member and not towards the beneficial owner. However, the dividend may be paid to a beneficial owner where the shareholder instructs the company to do so. Since, sub-section (5) of Section 123 includes payment of dividend to registered shareholder or “to his order”, the company shall pay the dividend according to the instruction given.

While furthering this contention for ‘deemed dividend’ under Income Tax Act, 1961, the Supreme Court has held in the case of *Rameshwar Lal Sanwaramal vs. Commissioner of Income Tax, Assam* that ‘it is difficult to see how a beneficial owner of shares whose name does not appear in the register of shareholders of the company can be said to be “shareholder”. It is only the person whose name is entered in the register of shareholders of the company as the holder of the shares who can be said to be a shareholder qua the company, and not the person beneficially entitled to the shares. It is the former who is a “shareholder” within the matrix and scheme of the company law and not the latter.

Therefore, it is only where a loan is advanced by the company to a registered shareholder and the other conditions set out in the Income Tax Act, 1961 are satisfied that the amount of the loan would be liable to be regarded as “deemed dividend”. This establishes the position that payments advanced directly to beneficial owner will not assume the character of deemed dividend.

The concept of Deemed Dividend is embedded in Section 2(22)(e) of the Income-tax Act, 1961, where a closely held company extends a loan or an advance to:

- a. any of its shareholders who has more than 10% voting power in the company; or
- b. to any concern in which such shareholder is substantially interested; or
- c. for the individual benefit of such shareholder; or
- d. on behalf of such shareholder to the extent the company has accumulated profits, such payment would be deemed as a dividend under Section 2(22).

#### **Illustration:**

ABC Pvt Ltd. is a company, the public is not substantially interested in. Mr. X is one of the company shareholders, who hold 20% shares. The company has accumulated profits of Rs. 50 lakhs as on 31 March 2022. The company granted a loan of Rs. 100,000 to Mr. X, by way of an account payee cheque. He repaid the amount on 5 May 2020.

In this case, even if the loan has been repaid by Hari, the loan amount granted to the extent of accumulated profits are treated as deemed dividend.

***Distribution of discount coupons to all the Shareholders shall not be treated as deemed Dividend.***

*Discount coupons given by the company with respect to its products or services, to all the shareholders, should not be treated as Dividend. It is a general practice adopted by the company for promotion of its products or services.*

***In the case of Gopal & Sons (HUF) v.CIT, Supreme Court***

Is loan to HUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?

**Facts of the Case:**

The assessee is a Hindu Undivided Family (HUF). During the previous year to the Assessment year, the assessee had received certain advances from one M/s G.S. Fertilizers (P) Ltd. (hereinafter referred to as the 'Company'). The Company is the manufacturer and distributor of various grades of NPK Fertilizers and other agricultural inputs. In the audit report and annual return for the relevant period, which was filed by it before the Registrar of Companies (ROC), it was found that the subscribed share capital of the said company was Rs.1,05,75,000/- (i.e. 10,57,500 shares of Rs.10/- each). Out of this, 3,92,500 number of shares were subscribed by the assessee which represented 37.12% of the total shareholding of the Company.

From this fact, the AO concluded that the assessee was both the registered shareholder of the Company and also the beneficial owner of shares, as it was holding more than 10% of voting power. On this basis, after noticing that the audited accounts of the Company was showing a balance of Rs.1,20,10,988/- as "Reserve & Surplus" as on 31<sup>st</sup> March, 2006, this amount was included in the income of the assessee as deemed dividend. In the appeal filed by the assessee, the aforesaid addition was affirmed by the CIT(A). The Tribunal reversed the CIT(A). The High Court reversed the Tribunal.

Before the Supreme Court, the assessee argued that being a HUF, it was neither the beneficial shareholder nor the registered shareholder. It was further argued that the Company had issued shares in the name of Shri. Gopal Kumar Sanei, Karta of the HUF, and not in the name of the assessee/HUF as shares could not be directly allotted to a HUF. On the basis, it was submitted that provisions of Section 2(22)(e) of the Act cannot be attracted.

**Judgment**

The Supreme Court held as the shares are issued in the name of the Karta, the HUF is not the 'registered shareholder' and so Section 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the ROC, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as any payment to a concern (i.e. the HUF) in which shareholder (i.e., the Karta) has substantial interest is also covered.

**Waiver of right to receive Dividend**

Receipt of dividend is a right of shareholder and not an obligation. There is no provision under the act to deal with the waiver of dividend. Hence, such provisions may be contained in the articles of the company. Further, such waiver can either be full or partial.

**Declaration of Dividend**

Dividend being an important decision and having impact on the financial position of the company should be considered at a meeting of the Board and not at a meeting of a committee of the Board or by way of a Resolution passed by circulation.

Unless the Dividend has been recommended by the Board, Members in Annual General Meeting cannot on their own declare any Dividend.

Where a company has an Audit Committee, this Committee shall consider the annual financial statements before submission to the Board. Dividend shall be recommended by the Board after consideration and approval of said financial statements.

The listed entity shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.

### Declaration of Dividend to be unconditional

All requisite approvals shall be obtained before declaration of Dividend. Dividend shall not be declared subject to any condition such as the approval of financial institutions/ banks or foreign collaborators or compliance with any other contractual obligation.

The above paragraph pertaining to requisite approval of financial institutions/ banks or foreign collaborators etc. is equally applicable to both Interim and Final Dividend. Dividend should not be declared subject to any condition such as obtaining of approval from financial institutions/banks etc. [Erstwhile Department of Company Affairs (DCA) Circular No. 2/98 dated 13.04.1998].

**Due to inadequacy of profits, the Board of directors of Rise Ltd. decided not to recommend any dividend for the financial year ended 31st March, 2022. Certain shareholders of the company complained to the Tribunal regarding mismanagement of the affairs of the company, since the Board of the company did not recommend any dividend. Explaining the provisions of the Companies Act, 2013, examine whether the contention of the shareholders is tenable ?**

Section 241 of the Companies Act, 2013 provides for relief in cases of mismanagement. For a petition under this section to succeed, it must be established that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or public interest or that, by reason of any change in the management or control of the company, it is likely that the affairs of the company will be conducted in that manner. If the court (Tribunal) is convinced, it may with a view to bringing to an end of preventing the matter complained or apprehended, make such order as it thinks fit.

It was held in the case of *Indowind Energy Ltd. v. ICICI Bank Ltd.* [2010] 153 Com Cases 394 (CLB) that non-declaration of dividend would not amount to oppression and mismanagement.

Therefore, applying the above facts and precedent in the given case, it can concluded that the non-payment of dividend does not amount to mismanagement and hence the contention of the shareholders shall not be tenable.

### Test Yourself:

Favourite Ltd., an unlisted Company, has the following figures at the end of the last financial year :

Paid-up share capital : Rs.110.00 Crore

Turnover : Rs. 600.00 Crore

Borrowings by way of loans, debentures and deposits : Rs.60.00 Crore

List the conditions to be satisfied for declaration of dividend out of reserves ?

### Dividend to be deposited in separate bank account

In terms of sub-section (4) of Section 123 of the Act, the amount of Dividend, including Interim Dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such Dividend.

Any amount which remains unpaid or unclaimed after the period of 30 days shall be transferred to the Unpaid Dividend Account to be opened by the company.

SS-3 hereby clarifies that the Dividend shall be deposited in a separate bank account within five days from the date of declaration and shall be paid within thirty days of declaration. The intervening holidays, if any, falling during such period shall be included.

By virtue of MCA exemption notification G.S.R.463(E) dated 5th June 2015 the requirement of deposit of Dividend amount in a separate bank account within five days from the date of its declaration, as provided under Section 123(4) shall not apply to a Government Company in which the entire paid up share capital is held by the Central Government or State Government(s) or jointly by both or by one or more Government Company.

#### Illustration

If the Board of Directors of XYZ Ltd. declared an Interim Dividend on 13th August 2022, then the amount of Dividend should be deposited in a separate bank account within five days from the date of declaration i.e. latest by 18th August 2022 irrespective of the intervening holidays.

Considering the above requirements, there may be following two scenarios:

#### Scenario 1: Dividend claimed within 30 days

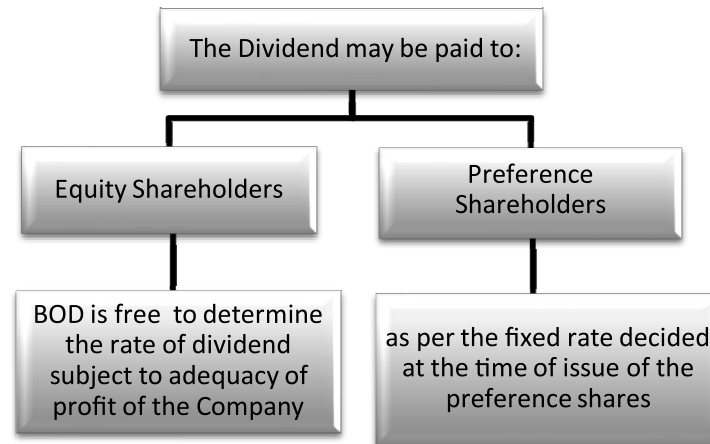
Once a separate bank account is opened by a company for the purpose of payment of Dividend and the entire Dividend is paid from such account and no balance stands in its credit. The same separate bank account may be used for the purpose of deposit of Dividend declared in future years, as long as the entire Dividend is paid / claimed from such account and nothing is left as unpaid Dividend.

#### Scenario 2: Dividend remains unpaid or unclaimed after 30 days

In such situation, the nomenclature of the separate account opened by a company may be changed to "Unpaid Dividend Account" after the said period of 30 days instead of opening a different account for transferring the unpaid Dividend. However, in this case a separate bank account needs to be opened for future Dividend declared by the company.

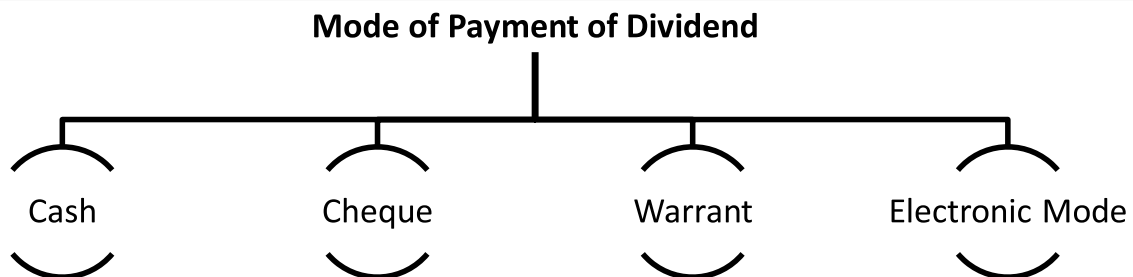
### Remittance of Dividend to Non-Resident members

Dividend can be remitted to Non-Resident members provided it is allowed under the terms of the permission given by the Reserve Bank of India (RBI). For remittance of Dividend to non-resident members, the company shall apply to authorised dealer along with the documents as may be required by the authorized dealer for this purpose. The authorized dealer may allow the remittance of Dividend in accordance with the procedure prescribed by the RBI.

**Rate of Dividend**

Further, proviso to sub-section (3) of Section 123 of the Act provides 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 the immediately preceding three financial years.

However, in case a company has not declared dividend in the immediately preceding three financial years, the above provision regarding average rate does not apply.

**Mode of Payment of Dividend (Section 123(5))**

- Dividend can be paid in cash and not in kind.

Where a company gifts to its shareholders, shares held by it in another company under a scheme, it is nothing but payment of dividend in kind which is expressly prohibited under section 123; hence, such scheme could not have been sanctioned.

- Dividend payable in cash may be paid through payable at par cheque or warrant or in any electronic mode of payment approved by the Reserve Bank of India.
- Closely held companies also use the method of purchasing demand drafts on the name of the shareholders. In such situation dividend would be treated as paid on the date of issue of demand draft by bank by debiting dividend account of the company.
- Where payment of Dividend is not possible through any electronic mode, such Dividend shall be paid by way of cheque payable at par or Dividend warrant.

- The cheque or warrant shall be sent to the registered address of the Member and, in the case of joint holders, to the registered address of the Member named first in the Register of Members or to such person or to such address as the Member or the joint holders have directed, in writing.
- In order to minimize pilferage and fraudulent encashment of Dividend warrants by unauthorised persons, companies should ascertain from the Member, his Bank Account Number and name and address of the Bank branch where he maintains the account and indicate these details on the face of the Dividend warrant. Moreover, companies may also introduce holograms on Dividend warrants as a security measure.
- When payment is made by Dividend warrant, the name of the bank and account number, if available, shall be mentioned in the warrant after the name. In case these are not available, address of the Member shall be printed after the name.
- In case of payment of Dividend through warrant or cheque payable at par, if the amount of Dividend exceeds one thousand and five hundred rupees, the company shall ensure to send such Dividend warrant or cheque either by speed post or registered post to the concerned Member at his registered address.
- Initial validity of the Dividend cheque or warrant shall be for three months.
- The Dividend cheque or warrant shall be accompanied by a statement in writing showing the amount of Dividend paid, Folio no./DP ID and Client ID nos., number of shares held by the concerned Member as on the record date, amount paid up on each share and the financial year to which the Dividend pertains.
- Dividend shall be paid proportionately on the paid-up value of shares.
- Nothing in this Section i.e. 123(5) of the Companies Act, 2013 shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.
- No Dividend shall bear interest against the company except in case of default in payment of Dividend Dividend warrant/cheque within the prescribed period.

### Liability to pay Final Dividend

While analyzing the nature of provisions made for payment of dividend, Supreme Court explained the whole process in the case of *Vazir Sultan Tobacco Co. Ltd. Etc. v. Commissioner of Income-Tax Andhra Pradesh, Hyderabad* and held that '*It is, no doubt, true that the recommendations of the Directors for payment of any dividend does not create any kind of liability for the payment of the said amount. The liability for payment of any amount by way of dividend only arises when the share-holders accept the recommendations and a dividend is declared at the annual general meeting of the Company. It is open to the Directors to modify or withdraw the recommendation with regard to the payment of dividend before the said recommendation is accepted by the sh-re- holders. It is also open to the shareholders not to accept the recommendation of the Directors in its entirety and to modify the same. The legal liability for the payment of any dividend only arises after the share-holders at the annual general meeting have decided to declare a dividend on the basis of the recommendations of the Directors or on the basis of any modification thereof. The liability for the payment of dividend only arises after the dividend has been declared by the share-holders at the annual general meeting and this liability does not relate back to any earlier date on the basis of the recommendations of the directors as the directors do not enjoy any power of declaring the dividend. The amount that may be set apart for payment of any dividend on the basis of the recommendations made by the Directors, cannot be considered to be an amount set apart for meeting a known or existing liability*'.

**CASE STUDY**

16.10.2017

*Zylog Systems Limited**Whole Time Member, Securities  
and Exchange Board of India***Facts of the Case:**

Zylog Systems Limited ('the company / ZSL') is a company incorporated under the Companies Act, 1956. Securities and Exchange Board of India (SEBI) received several complaints from investors alleging that ZSL has not paid the dividend declared by it. The shares of ZSL were listed on the National Stock Exchange of India Limited (NSE) and the Bombay Stock Exchange Limited (BSE). It was observed that ZSL declared dividend to its shareholders at the rate of Rs.5 per equity share of the face value of Rs.5/- each and the same was approved in the Annual General Meeting held on September 25, 2012. The total amount of dividend declared was Rs.16,44,64,200 (Rupees Sixteen crores forty four lakhs sixty four thousand two hundred only).

On receiving such complaints, SEBI issued a letter dated February 13, 2013 asking the company to furnish information regarding declaration and payment of dividends under the Companies Act, 1956 and reasons for default. ZSL vide its letter to SEBI dated February 20, 2013 submitted that they have not been able to pay dividend to the shareholders due to strain on the liquidity position of the company. ZSL further submitted that Mr. Sudarshan Venkatraman, Mr. Ramanaujam Sesharathnam, Mr. Parthasarathy Srikanth, Mr. Madurai Gajanathan, Mr. S. Rajagopal, Mr. V. K Ramani and Mr. Vasanthakumar Ayyavu Palanichamy were the Directors of the ZSL as on the date of declaration of dividend i.e. September 25, 2012.

Therefore, SEBI issued a common Show Cause Notice (SCN) dated October 20, 2016 to all the directors, calling upon them to show cause as to why suitable directions under Section 11 and 11B of the SEBI Act, 1992 should not be issued against them for violation of Sections 205(1A) and 207 of the Companies Act, 1956. The SCN alleged that the directors of the company had knowledge about the declaration of the dividend and the non-payment of the declared dividend by the company. Thus the directors have failed to comply with the obligations and duties mandated under section 205(1A) of the Companies Act, 1956.

Mr. Madurai Gajanathan (Independent Director), who became the member of the new audit committee brought up the issue of non- payment of statutory dues and dividend before the management again along with chairman of the new audit committee and Mr. Parthasarathy Srikanth. In spite of the requests and insistence from the side of the audit committee, the dividend was not paid.

**SEBI Order:**

SEBI disposed off the Show Cause Notices against the Independent Directors.

**No dividend to be declared/paid in case of failure of repayment of deposits:** Section 123(6) of the Companies Act, 2013 provides that a company which fails to comply with the provisions of sections 73 (prohibition of acceptance of deposits except in the manner provided) and 74 (Repayment of deposits etc. accepted before commencement of the Companies Act 2013) shall not, so long as such failure continues, declare any dividend on its equity shares.

**The Board of Directors of Peculiar Ltd. proposes to recommend a final dividend of Rs.25 each to all the equity shareholders of the company. The company seeks your opinion on the following :**

- (1) The company wants to deposit the dividend amount to co-operative bank.
- (2) The company is a defaulter in the repayment of deposits and proposes to repay its all deposit after the payment of dividend within 10 days.
- (3) Dividend will be declared out of the capital reserves of the company.

The Peculiar Ltd has to follow below procedure for recommending final dividend:

- (1) Referring to section 123(4) of Companies Act, 2013, the amount of the dividend has to be deposited in a scheduled bank. The company should first ensure that said co-operative bank is scheduled bank from the list of scheduled bank available at RBI website, and then it may deposit the dividend amount in the scheduled Co-operative Bank.
- (2) Referring to section 123(6) of Companies Act, 2013 a company which fails to comply with the provisions relating to acceptance and repayment of deposits shall not, so long as such failure continues, declare any dividend on its equity shares. Hence Peculiar ltd. cannot declare dividend till the failure persists.
- (3) Referring to third proviso to Section 123(1) no dividend shall be declared or paid by a company from its reserves other than free reserves.

Free reserves, as per Section 2(43), means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend :

Provided that –

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;

Hence dividend cannot be declared out of the capital reserves of the company.

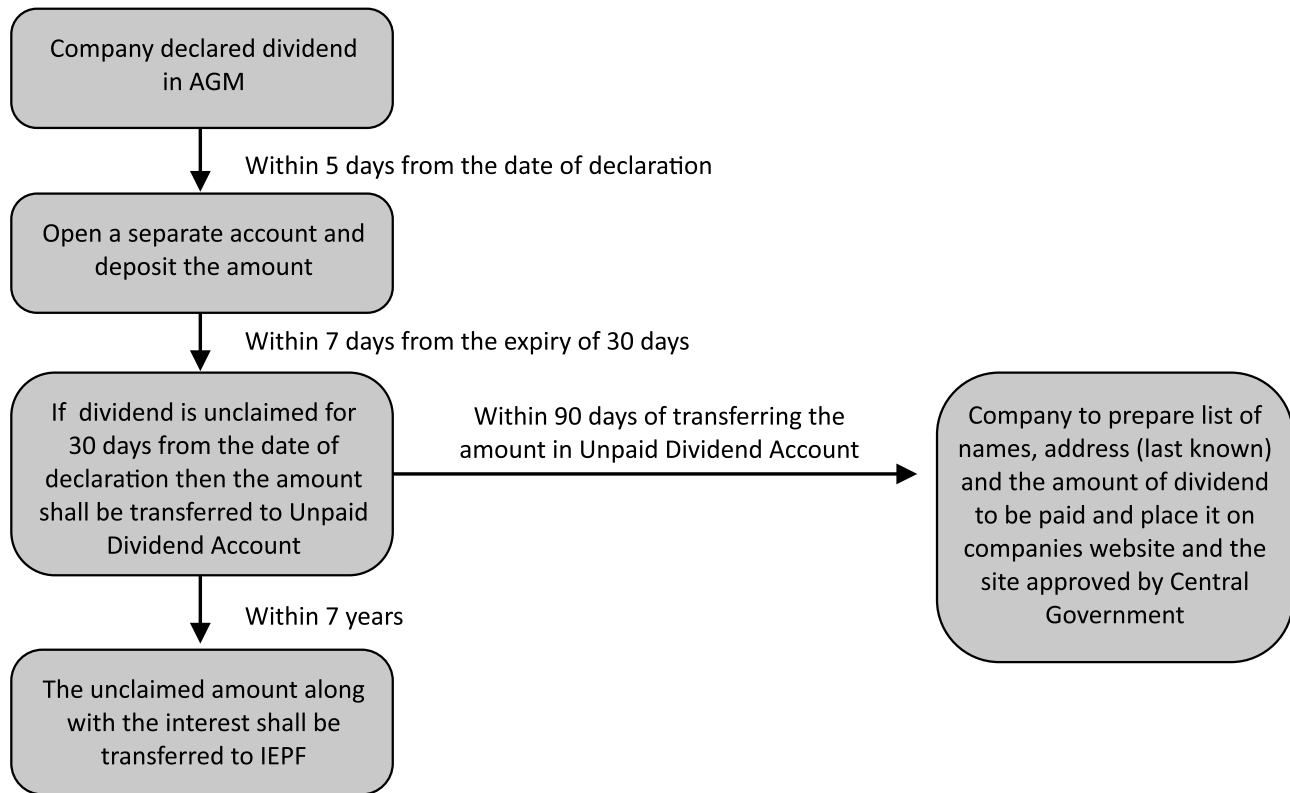
### UNPAID DIVIDEND ACCOUNT (SECTION 124)

The company is required to deposit the amount of dividend in a separate bank account in a scheduled bank within 5 days from the date of its declaration. In case dividend has been declared by a company but has not been paid to or claimed by any shareholder entitled to the payment of the dividend within 30 days from the date of declaration, the company shall within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special bank account to be opened by the company in that behalf in any scheduled bank to be called “Unpaid Dividend Account”.

The company shall, within a period of 90 days of making any transfer of an amount to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Section 124(5) prescribes that, any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

*Explanation.—For the removal of doubts, it is hereby clarified that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.*

**Illustration**

The Board of Directors of XYZ Ltd. declared an Interim Dividend on 13th August 2022 and the amount of Dividend was deposited in a separate bank account on 18th August 2022. After a period of 30 days from the date of declaration of Dividend i.e. 12th September 2022, if any amount remains unpaid or unclaimed in the said bank account, then such amount shall be transferred to the 'Unpaid Dividend Account' within next seven days i.e. latest by 19th September 2022.

**A company declared dividend on 21st June, 2022. It reports on 22nd July, 2022 that it could not pay dividend to 46 members as they are not traceable for last three years. Advise the company with regard to unpaid dividend under the provisions of the Companies Act, 2013.**

According to Section 126(1) of the Companies Act, 2013 where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

In the given case the company declared dividend on 21st June, 2022, the dividend remains unpaid after 30 days of declaration i.e. 22nd July, 2022. The company is advised to transfer the remaining unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account in any scheduled bank within seven days from the date of expiry of the said period of thirty days. Further any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund.

**CASE STUDY****IDP Education Exam Services Private Limited (Adjudication Order No.ROC/D/ADJ order/sec 123/5938 – 5942 dated 11th October 2022)****Consequences of default in depositing the declared dividend in a separate bank account within specified time under the provisions of Companies Act 2013**

The company (IDP Education Exam Services Private Limited) is the subsidiary company of its foreign holding company BC Trading International Limited which holds 99.99% of the shares in the company. The company conducted board meeting and declared interim dividend payable to the registered shareholders of the company for the financial year 2020-21 out of the accumulated surplus in the profit and loss account as on 31st March 2020 and the profit of the current year i.e. 2020-21. Pursuant to section 123(4) of the Companies Act 2013, the company was required to deposit the amount of the interim dividend in a scheduled bank in a separate bank account within five days from the date of declaration of the interim dividend by the board of directors. But the company failed to deposit the same within the stipulated time of five days in a separate bank account. However, the company has deposited the interim dividend in a separate bank account with a delay of 7 days, resultantly that company has made default in depositing the amount of interim dividend.

Upon realizing the default committed by the company and its directors, the company has filed an application for compounding under section 441 of the Companies Act 2013 for the violation of section 123(1) of the Companies Act 2013. The Registrar of Companies issued a show cause notice to the company calling for additional information and also fixed a personal hearing on this matter.

The company responded the show cause notice. In the submission made in the reply, the company admitted the default and said that no penalty should be levied on the non-executive directors of the company for violation of section 123(1) of the Companies Act 2013.

**Order:**

Registrar of Companies observed that IDP Education Exam Services Private Limited is the subsidiary company of its foreign holding company therefore the company does not get covered under the purview of small company. Adjudicating Officer came to the conclusions that the company and its directors have made the default in complying with the provisions of Rule 14 (8) of the Companies (Prospectus and allotment of securities) Rules, 2014 of the Companies Act 2013 as private placement offer cum application at different dates were issued before filing the special resolution to the Registrar of Companies. Hence they are liable for penalties under section 450 of the Companies Act 2013. The RoC imposed a penalty on the company and its directors for violation and ordered to pay the specified amount of penalty.

**The Investor Education and Protection Fund (IEPF) (Section 125)**

For administration of Investor Education and Protection Fund, Government of India has on 7th September, 2016 established Investor Education and Protection Fund Authority under the provisions of section 125 of the Companies Act, 2013.

The Authority is entrusted with the responsibility of administration of the Investor Education Protection Fund (IEPF), make refunds of shares, unclaimed dividends, matured deposits/debentures etc. to investors and to promote awareness among investors.

Section 125(2) of the Companies Act, 2013, prescribes that the following amount shall be credited to the Fund –

- (a) the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

- (b) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) the amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- (d) the amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;
- (e) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received under sub-section (4) of section 38;
- (h) the application money received by companies for allotment of any securities and due for refund;
- (i) matured deposits with companies other than banking companies;
- (j) matured debentures with companies;
- (k) interest accrued on the amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) Other prescribed amounts.

As per Rule 3 of the IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, there shall be credited to the Fund, the following amounts, namely:-

- (i) all amounts payable as mentioned in clause (a) to (n) of sub-section (2) of section 125 of the Companies Act, 2013;
- (ii) all shares in accordance with sub-section (6) of section 124 of the Companies Act, 2013;
- (iii) all the resultant benefits arising out of shares held by the Authority under clause (b);
- (iv) all grants, fees and charges received by the Authority under these rules;
- (v) all sums received by the Authority from such other sources as may be decided upon by the Central Government;
- (vi) all income earned by the Authority in any year;
- (vii) all amounts payable as mentioned in sub-section (3) of section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, section 10B of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, sub-section (3) of section 38A of the State Bank of India Act, 1955 and section 40A of the State Bank of India (Subsidiary Bank) Act, 1959; and
- (viii) all shares held by authority in accordance with Section 90(9) of the Act & the resultant benefits arising out of such shares, without restriction;
- (ix) all other sums of money collected by the Authority as envisaged in the Act.

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

Rule 5 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, details the procedure for transfer of Unpaid or Unclaimed Dividend to the IEPF. The procedure is explained as under:

- (1) The amount of unclaimed or unpaid dividend required to be credited by the companies to the Fund shall be remitted online along with a statement in **Form No. IEPF-1** containing details of such transfer to the Authority within a period of 30 days of such amounts becoming due to be credited to the Fund.
- (2) The companies which have transferred any amount referred to in clauses (a) to (d) of sub-section (2) of section 205C of the Companies Act, 1956 (1 of 1956) to Investor Education and Protection Fund or Central Government, but have not filed the statement or have filed the statement in any format other than in excel template, as required under sub-rule (1) of rule 5 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016, have to submit details mentioned in sub-rule (1) of rule 5 in **Form No. IEPF-1A** along with excel template within 60 days of notification of these amended rule *[inserted by the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2019, Effective from 20th August 2019]*.
- (3) The amount may also be remitted by Electronic Fund Transfer in such manner, as may be specified by the Central Government.
- (4) On receipt of the statement, the Authority shall enter the details of such receipt in a Register maintained physically or electronically by it in respect of each company every year, and reconcile the amount so remitted and collected, with the concerned designated bank on monthly basis.
- (5) Each designated bank shall furnish an abstract of such receipts during the month to the Authority within 7 days after the close of every month.
- (6) The company shall maintain the record filed under sub-rule 5(1) as above in the same format along with all supporting documents and the Authority shall have the powers to inspect such records.
- (7) The provisions of this rule shall be applicable mutatis mutandis in respect of the amounts to be credited to the Fund in pursuance of clauses (h) to (m) of sub-section (2) of section 125.

#### **Name of shareholders to be hosted on website**

As per Rule 5(8) of IEPF Rules, 2016, every company shall within a period of 60 days after the holding of Annual General Meeting or the date on which it should have been held as per the provisions of section 96 of the Act, whichever is earlier and every year thereafter till completion of the seven years period, identify the unclaimed amounts, as referred in subsection (2) of section 125 of the Act, as on the date of closure of financial year the account of which are to be adopted in the Annual General Meeting as per sub-section (1) of section 137 of the Act, separately furnish and upload on its own website and also on website of Authority or any other website as may be specified by the Government, a statement or information of unclaimed and unpaid amounts separately for each of the previous seven financial years through **Form No. IEPF-2**, containing following information, namely:-

- (a) the names and last known addresses of the persons entitled to receive the sum;
- (b) the nature of amount;
- (c) the amount to which each person is entitled;
- (d) the due date for transfer into the Investor Education and Protection Fund; and
- (e) such other information as may be considered necessary.

Section 124(6) also prescribed that all shares, in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as prescribed.

Any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as prescribed.

Rule 6 of IEPF Rules, 2016 prescribes that the shares shall be credited to DEMAT Account of the Authority to be opened by the Authority for the said purpose, within a period of 30 days of such shares becoming due to be transferred to the Fund.

In case the beneficial owner has encashed any dividend warrant or any dividend amount has been credited to bank account of the owner of such shares during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.

Transfer of shares by the companies to the Fund shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the fund.

For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

The company shall follow the following procedure while transferring the shares, namely:

- (a) The company shall inform, at the latest available address, the shareholder concerned regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.
- (b) In case, where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996 or shares already been transferred as above, the company shall not transfer such shares to the Fund. Further, the company shall furnish details of such shares and unpaid dividend to the Authority in **Form No. IEPF 4** within thirty days from the end of financial year.
- (c) For the purposes of effecting the transfer, where the shares are dealt with in a depository-
  - (i) the Company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority.
  - (ii) on receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.
- (d) For the purposes of effecting the transfer shares held in physical form-
  - (i) the Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate;
  - (ii) on receipt of the application under clause (a), a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that  
 “Issued in lieu of share certificate No. for the purpose of transfer to IEPF” and the same be recorded in the register maintained for the purpose;
  - (iii) particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014;

- (iv) after issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.”
- (e) The company shall make such transfers through corporate action and shall preserve copies for its records.
- (f) While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken under clause (c) of sub-rule (3) of rule 6 containing details of such transfer and the company shall also attach a copy of the public notice published under clause (a) of sub-rule (3) of rule 6 in Form No IEPF-4.
- (g) The voting rights on shares transferred to the Fund shall remain frozen until the rightful owner claims the shares. Further for the purpose of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the shares which have been transferred to the Authority shall not be excluded while calculating the total voting rights.
- (h) The company shall maintain all such statements filed under sub-rule (5) in the same format along with all supporting documents and the Authority shall have the powers to inspect such records.
- (i) All benefits accruing on such shares like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account by the company which shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action containing details of such transfer.
- (j) The shares held in such DEMAT account shall not be transferred or dealt with in any manner whatsoever except for the purposes of transferring the shares back to the claimant as and when he approaches the Authority or in accordance with sub-rules (10), (11) and (11A).]
- (k) If the company is getting delisted, the Authority shall surrender shares on behalf of the shareholders in accordance with the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 and the proceeds realised shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds.
- (l) In case the company whose shares or securities are held by the Authority is being wound up, the Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds.
- (m) In case an application for purchase of shares under section 236 is received through the company, the Authority may receive the amount entitled on behalf of the minority shareholders from the company as per procedures provided under sub-section 5 of the said section 236 and credit the amount to the Fund and a separate ledger account shall be maintained for such proceeds:
- Provided that Authority before such receipt of money on behalf of such shareholders shall verify that the conditions provided under the relevant section of the Act and rules framed thereunder have been satisfied and shall also call a report from the company on the following, namely:-
- (a) whether the acquirer to whom the shares held by the Authority would be transferred has fulfilled the requirements of section 236;
- (b) whether the shares have been valued in accordance with the provisions of sub-section (2) of section 236 and the rules made thereunder; and

(c) any other relevant information:

Provided further that the company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated and the Authority shall not be liable to indemnify the minority shareholder or the Company or any other person for any liability arising, leading to any litigation or complaint arising thereof:

Provided also that any claimant entitled to claim transfer of such shares from the Authority under sub-section (6) of section 124 shall only be entitled to the amount received by the Authority on behalf of the minority shareholder without any interest thereon.

- (n) Any further dividend received on such shares shall be credited to the Fund and a separate ledger account shall be maintained for such proceeds”.
- (o) Any amount required to be credited by the companies to the Fund as provided under sub-rules (10), (11) and sub-rule (12) shall be remitted online to the Authority within a period of thirty days from the date such amount becomes due and the details thereof shall be furnished to the Authority in Form No. IEPF-1.
- (p) Any amount required to be credited by the companies to the Fund as provided under sub-rule (11A) shall be remitted online to the Authority within a period of thirty days from the date such amount becomes due] and the details thereof shall be furnished to the Authority in Form No. IEPF-7 .
- (q) Authority shall furnish its report to the Central Government as and when noncompliance of the rules by companies came to its knowledge.”

### **Procedure for Transfer of shares u/s 90(9) to The Investor Education and Protection Fund**

MCA has amended the IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016 w.e.f. 09th June, 2021 to insert new Rule 6A, which provides the manner of transfer of shares as per sub-section (9) of Section 90 to the IEPF authority.

As per the Rule 6A, the shares shall be credited to DEMAT Account of the IEPF Authority within a period of 30 days of such shares due to be transferred to the IEPF Authority with the following important conditions:

Transfer of shares by the companies to the IEPF Authority shall be deemed to be transmission of shares and the procedure to be followed for transmission of shares shall be followed by the companies while transferring the shares to the IEPF Authority.

Such shares shall be transferred to the IEPF Authority without any restrictions and no application shall be filed for claiming back such shares from the IEPF Authority.

The voting rights on shares transferred to the IEPF Fund shall remain frozen. However, for the purpose of the SEBI (SAST) Regulations, 2011, the shares which have been transferred to the IEPF Authority shall not be excluded while calculating the total voting rights.

While under Section 124, shares on which dividend remains unpaid or unclaimed for seven years, are also required to be transferred to IEPF Authority but the significant difference with respect to shares transferred to IEPF Authority under sub-section (9), is that such shares once transferred can't be claimed back, as opposed to shares transferred under Section 124, which can be claimed back from IEPF authority. It is because of the restriction on claiming back the shares transferred to IEPF Authority under sub-section (9) that both the disclosure of significant beneficial ownership and obligation cast on a company, are of great importance.

The company shall follow the following procedure while transferring the shares, namely:-

<i>Where the shares are dealt with in a demat form</i>	<i>Where the shares are dealt with in physical form</i>
The company shall inform the depository by way of corporate action, where the shareholders have their accounts for transfer in favour of the Authority.	The Company Secretary or the person authorised by the Board shall make an application, on behalf of the concerned shareholder, to the company, for issue of a new share certificate.
<p>On receipt of such intimation, the depository shall effect the transfer of shares in favour of DEMAT account of the Authority.</p> <p>While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken containing details of such transfer and the company shall also attach following documents:</p> <ul style="list-style-type: none"> <li>● a copy of order of the Tribunal under sub-section (8) of section 90 of the Act;</li> <li>● a declaration that no application under sub-section (9) of section 90 of the Act has been made or is pending before the Tribunal.</li> </ul>	On receipt of the application above, a new share certificate for each such shareholder shall be issued and it shall be stated on the face of the certificate that "Issued in lieu of share certificate No..... for the purpose of transfer to IEPF under sub section (9) of section 90 of the Act" and the same be recorded in the register maintained for the purpose.
	Particulars of every share certificate shall be in Form No. SH-1 as specified in the Companies (Share Capital and Debentures) Rules, 2014.
	After issue of a new share certificate, the company shall inform the depository by way of corporate action to convert the share certificates into DEMAT form and transfer in favour of the Authority.
	<p>While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF-4 within thirty days of the corporate action taken containing details of such transfer and the company shall also attach following documents:</p> <ul style="list-style-type: none"> <li>● a copy of order of the Tribunal under sub-section (8) of section 90 of the Act;</li> <li>● a declaration that no application under sub-section (9) of section 90 of the Act has been made or is pending before the Tribunal.</li> </ul>

**Other Corporate Action or Conditions on such transferred Shares:**

**In case of bonus shares, split etc.:** All benefits accruing on shares transferred to IEPF Authority like bonus shares, split, consolidation, fraction shares and the like except right issue shall also be credited to such DEMAT account by the company which shall send a statement to the IEPF Authority in **Form IEPF-4** within thirty days of the corporate action containing details of such transfer.

**In case of Delisting:** If the company is getting delisted, the IEPF Authority shall surrender shares on behalf of the shareholders in accordance with the SEBI Delisting Regulations and the proceeds realised shall be credited to the IEPF Fund and a separate ledger account shall be maintained for such proceeds.

**In case of Winding-up:** In case the company whose shares or securities are held by the IEPF Authority is being wound up, the IEPF Authority may surrender the securities to receive the amount entitled on behalf of the security holder and credit the amount to the IEPF Fund and a separate ledger account shall be maintained for such proceeds.

**In case of further dividend:** Any further dividend received on such shares shall be credited to the IEPF Fund and a separate ledger account shall be maintained for such proceeds.

Any amount required to be credited by the companies to the Fund as mentioned above shall be remitted online to the Authority and the details thereof shall be furnished to the Authority in Form No. IEPF-1 within thirty days of such amount becoming due to be credited to the Fund.

All such amounts shall be transferred to the Authority without any restrictions and no application shall be filed for claiming back such amounts from the Authority.

Authority shall furnish its report to the Central Government as and when non-compliance of the rules by companies came to its knowledge.

**Effect of non-transfer**

In terms of sub-section (3) of Section 124 of the Act, if a company fails to transfer unpaid/ unclaimed Dividend amount to the Unpaid Dividend Account within 7 days from the expiry of 30 days of declaration, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account at the rate of 12% per annum and the interest accruing on such amount shall ensure to the benefit of the Members in proportion to the amount of Dividend remaining unpaid to them.

*By virtue of MCA exemption notification G.S.R.465(E) dated 5th June 2015 in case of a Nidhi Company any Dividend payable in cash may be paid by crediting the same to the account of the member, if the Dividend is not claimed within 30 days from the date of declaration of the Dividend.*

**Entitlement of Dividend from Unpaid Dividend Account**

Sub-section (4) of Section 124 of the Act provides that any person claiming to be entitled to any Dividend transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the Dividend.

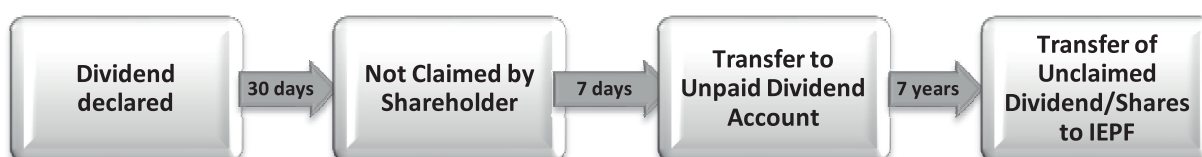
After declaration of Dividend, the company has no beneficial interest in the amount so declared, but is merely a custodian in the nature of a trustee until the amount is paid/transferred to a special account.

The company should enter the details of unpaid or unclaimed Dividend in a register and reconcile the amount of Unpaid or Unclaimed Dividend Account, with the concerned bankers, periodically. A listed company, should ensure such reconciliation through its Share Registrar and the Dividend banker on a fortnightly basis during the initial validity of the Dividend warrants and thereafter on a quarterly basis till transfer of funds to the Investor Education and Protection Fund.

The whole objective of Section 124 is to ensure that the amount of Dividend is fully secured by the company by depositing the same in a separate Dividend account and this objective is fully met if a separate Dividend account is opened and the Dividend amount is transferred to such account. A similar view has also been taken in the case of *Krebs Biochemicals Ltd. v. Registrar of Companies*.

### Penalty for default in complying with Section 124

<b>Company</b>	penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees.
<b>Officer in default</b>	penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.



### Illustration

- 1) On 18th September 2018 XYZ Ltd. transferred unpaid/unclaimed Dividend amounting to Rs. 1 Crore to the 'Unpaid Dividend Account'.

After settlement of various Dividend claims till 17th September 2025, Rs. 20 lakh remains unpaid / unclaimed in the said account.

The amount of Rs. 20 Lakh should be transferred to the Investor Education and Protection Fund (IEPF) within the next 30 days i.e. latest by 17th October 2025.

- 2) Whether the underlying shares of unpaid or unclaimed dividends are required to be transferred to IEPF when the amount of unpaid or unclaimed dividend is being transferred?

Under the erstwhile Act, there was no requirement to transfer the shares for which the dividend is unpaid or unclaimed to the IEPF. However, with the enforcement of the corresponding section, i.e. 124 (6) under the Act, 2013, every Company is mandatorily required to transfer the underlying shares for which the dividend has remained unpaid or unclaimed for a consecutive period of seven years. Here it is pertinent to note that the foremost condition for transfer of shares is that the dividend on such shares shall be unpaid or unclaimed for a seven consecutive years. Accordingly, as per section 124 (6) of the Act, 2013 the underlying shares of unpaid or unclaimed dividend are also required to be transferred to IEPF apart from the amount of unpaid or unclaimed dividend.

- 3) Within what time should the shares be transferred to the IEPF?

As per rule 6 of the IEPF Rules, the shares shall be credited to DEMAT Account opened by the IEPF Authority within thirty days of such shares becoming due to be transferred to the IEPF.

- 4) Whether one form IEPF-2 is to be filed providing details of unclaimed and unpaid amounts pertaining to all the previous seven years or whether separate forms for each year needs to be filed?

A statement or information of unclaimed and unpaid amounts separately for each of the previous seven financial years through Form No. IEPF-2 is required to be filed.

The IEPF is to be utilized for :

- The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- Promotion of investors' education, awareness and protection;
- Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal;
- Any other purpose incidental thereto, in accordance with such rules as may be prescribed:

Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the Fund in respect of such claims in accordance with rules made under this section.

Any money transferred to the Unpaid Dividend Account of a company in pursuance of Section 124 of the Companies Act, 2013 which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund (IEPF) and the company shall send a statement in the prescribed form of the details of such transfer to the Investor Education and Protection Fund Authority and it shall issue a receipt to the company as evidence of such transfer.

### Refund to Claimant from Investor Education and Protection Fund

In terms of Section 124(6) of Companies Act, 2013 and the Rules notified there under, the shares in respect of which dividend has not been paid or claimed for a period of seven consecutive years or more, are required to be transferred by the Company to the IEPF Authority.

**lepf**  
Investor Education and Protection Fund

## ATTENTION INVESTORS!

Investors/depositors whose shares, unpaid dividends, matured deposits or debentures etc. have been transferred to Investor Education and Protection Fund (IEPF) under Companies Act 1956/2013 can claim refund in simple steps

- Claimant to file e-form IEPF-5 online available on the website [www.iepf.gov.in](http://www.iepf.gov.in)
- Take a print and submit a copy of filled e-form and requisite documents to the concerned company.
- Nodal officer of the company to verify the claim and furnish the verification report to IEPF Authority within 15 days.
- On the basis of verification report refund will be released by IEPF Authority in favour of claimant's account through electronic transfer.

To avoid transfer of shares to IEPF, claim your dividend on regular basis as the Companies Act, 2013 requires that for dividends remaining unclaimed for seven consecutive years, the related shares are also transferred to IEPF.

Government of India  
Ministry of Corporate Affairs  
Investor Education and Protection Fund Authority

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Rule 7 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules 2016, details the procedure which may be adopted by any claimant. The procedure is explained as under:

**Step 1: Online application to be filed by claimant to Authority**

Any person whose shares, unclaimed dividend, matured deposits, matured debentures, application money due for refund, or interest thereon, sale proceeds of fractional shares, redemption proceeds of preference shares etc., has been transferred to the Fund, may claim the shares to the Authority by making an online application in **form IEPF 5** which is available on website [www.iepf.gov.in](http://www.iepf.gov.in) along with fees as decided by the Authority.

**Step 2: Sending documents to the Company at its registered office**

Upon submission, Form-5 shall be transmitted online to nodal officer of the company for verification of claims

Claimant shall send the following documents to the Company at its registered office :

- Print out of duly filled claim form with claimant signature;
- Copy of acknowledgement generated on online submission of e-Form IEPF – 5 bearing a unique serial number (SRN);
- Indemnity Bond (original) with claimant signature;
- Advanced Stamp Receipt (original) with revenue stamp and signature of claimant and witnesses;
- Original matured deposit / debenture / share certificate (in case of securities held in physical form) or copy of transaction statement in case of securities held in Demat Form;
- Copy of Aadhaar Card;
- Proof of entitlement (certificate of share/Interest warrant Application No. etc.);
- Cancelled Cheque leaf;
- Copy of Passport, OCI and PIO card in case of foreigners and NRI; and
- Other optional document, (if any).

**Appointment of Nodal Officer**

- Every company which has deposited the amount to the fund shall nominate a Nodal Officer for the purposes of verification of claims and coordination with Investor Education and Protection Fund Authority, who shall either be a Director or Chief financial Officer or Company Secretary of the company.
- Company may appoint one or more deputy nodal officer, who shall assist the nodal officer.
- The Nodal Officer shall be solely liable for all actions of any officer appointed as Deputy Nodal Officer.
- In case a company fails to appoint Nodal Officer, every director of the company shall be deemed to be nodal officer and be liable for any failure to comply with requirement of these rules.

Any change in the Nodal Officer or his details shall be communicated to the Authority through **Form No. IEPF-2** within 7 days of such change along with board resolution thereof.

**Step 3: Company to send verification report**

The company has to send an online verification report to the Authority after verification in the format specified by the Authority along with all the documents submitted by the claimant and shall attach the scanned copy of all the original documents submitted by the claimant in physical form duly certified by its nodal officer along

with the e-verification report along with a scanned copy of both sides of original physical share certificate or original bond or deposit or debenture certificate/s duly cancelled and certified.

- within 30 days from the date of receipt of the claim;
- After 30 days of filing of claim, the company may do so by paying additional fee of Rs.50 for every day subject to maximum of Rs.2500;
- The company shall be liable to maintain the original documents submitted to it by the claimant and shall produce such documents whenever required;
- In case of non-receipt of verification report along with documents by the Authority after the expiry of 60 days from the date of filing of **Form No. IEPF-5**, the Authority may reject Form No. IEPF-5, after sending a communication to the claimant and the concerned company, on the e-mail address of the claimant and the company, to furnish response within a period of 15 days.

**Step 4: Authority to refund the amount/shares**

After verification of the entitlement of the claimant:

- to the amount claimed, the Authority and then Drawing and Disbursement Officer of the Authority shall present a bill to the Pay and Accounts Office for e-payment as per the guidelines;
- to the shares claimed, the Authority shall issue a refund sanction order with the approval of the Competent Authority and shall credit the shares to the DEMAT account of the claimant to the extent of the claimant's entitlement.

**Time period for disposing the claim by Authority**

- An application received for refund of any claim duly verified by the concerned company shall be disposed off by the Authority within 60 days from the date of receipt of the verification report from the company, complete in all respects; and
- any delay beyond 60 days shall be recorded in writing specifying the reasons for the delay and the same shall be communicated to the claimant in writing or by electronic means.

**Cases where Application is defective or incomplete or further information is required**

- Where the Authority, on examining any application for claim,
  - finds it necessary to call for further information; or
  - finds such application or e-form or document to be defective or incomplete in any respect,
 the Authority shall give intimation of such information called for or defects or incompleteness, by e-mail on the email address of the claimant and the company, which has filed such application or eform or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within 15 days from the date of receipt of such communication, failing which the Authority may reject the claim or **Form No. IEPF-5**.
- If such information or incompleteness is called from the claimant, he shall file the Form and shall send such documents as called for within 15 days, duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim and company shall send a revised verification report. Provided further, if any such information or incompleteness is called from the company, the company shall file the revised verification report and shall send such documents as called for within 30 days.

**Registering transmission of securities**

- In case, claimant is
  - a legal heir or
  - successor or
  - administrator or
  - nominee of the registered share holder,

the claimant shall ensure to submission of self-attested scanned copy of all prescribed documents online along with the **Form No. IEPF-5**.

- In case of loss of securities held in physical form, the claimant has to ensure to submission of self-attested scanned copy of additional documents detailed in Schedule III of these rules online along with the **Form No. IEPF-5**:

Provided further that the claimant shall submit in original all these documents duly signed by him, to the Nodal Officer of the concerned company at its registered office for verification of the claim.

- In case, claimant is
  - a legal heir or
  - successor or
  - administrator or
  - nominee of any other registered security or
  - in cases where request of transfer or transmission of shares is received after the transfer of shares by company to the Authority,

the company shall verify all requisite documents required for registering transfer or transmission and shall issue letter to the claimant indicating his entitlement to the said security and furnish a copy of the same to the Authority while verifying the claim of such claimant through its e-verification report. Further, the authority shall dispose such request of transfer or transmission based on the e-verification report of the company subject to verification of such request.

***Liability in case of litigation of Complaint***

- The company shall be liable under all circumstances whatsoever to indemnify the Authority in case of any dispute or lawsuit that may be initiated due to any incongruity or inconsistency or disparity in the verification report or otherwise and the Authority shall not be liable to indemnify the security holder or Company for any liability arising out of any discrepancy in verification report submitted etc., leading to any litigation or complaint arising thereof.
- Any fraudulent claim by the claimant shall be deemed to be fraud within the meaning of Section 447 of the Companies Act, 2013 and the claimant shall be liable accordingly.
- If any person deceitfully personates an owner of any security or of any share warrant or coupon issued in pursuance of this Act and thereby files any claim to obtain or attempts to obtain any such security or interest or any such warrant or coupon due to the lawful owner, he shall be punishable under sections 57, 447 and 448 of the Act.

**CASE STUDY*****Kamala Srinivasan vs. Union of India dated 14th February, 2020, Madras High Court*****Fact of the Case:**

The instant writ petition challenges the vires of Section 124 (6) of the Companies Act, 2013 and Rule 6 and 7 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 as unconstitutional being violative of Article 14, 21 and 300 A of the Constitution of India.

The petitioner states that her son R. Murali Srinivasan passed away on 30/8/1993 intestate at Quriyat, Oman, leaving behind the petitioner and his wife. The 'petitioner's son was having shares in a Company called I-Flex Solutions Limited (IFLEX). The said Company was taken over by M/s. Oracle Financial Services Software Limited, fourth respondent herein. These shares were allotted to the petitioner in the year 1992.

Over the years, bonus shares were issued and the petitioner was holding 3200 shares. The market value of the share as on date would be about 1.14 crores. It is also stated that after the 'petitioner's son passed away, the dividends which were not received and as on date, unclaimed dividends is worth Rs.29,92,000/-. It is stated by the petitioner that Section 124 (6) of the Companies Act, 2013 which deals with unclaimed dividends provides that all the shares in respect of which dividends have not been claimed for seven consecutive years or more than shall be transferred by the Company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed. Proviso to sub-Section 6 of Section 124 states that claimant of the shares shall be entitled to claim the transfer of shares from the Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.

Learned counsel for the petitioner, submitted that there is no rationale behind Section 124(6) of the Act which provides for transfer of shares along with dividend remaining unpaid or unclaimed for a period of 7 years from the Unpaid Dividend account of the company to the Investors Education and Protection Fund (IEPF). He submitted that the erstwhile Companies Act, 1956 did not have any provision which provided for transfer of shares along with unpaid/unclaimed dividend. This was introduced only in the new Companies Act, 2013. He stated that the introduction of the Section does not effectively remedy any mischief which was present under the erstwhile Act. He also stated that no reasons have been given in order to bring out the intent behind its introduction.

**Judgment**

In light of the facts of the present case, it was observed that the impugned provisions are not "manifestly arbitrary". There is an avowed purpose for bringing this piece of legislation. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. There is no reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. To strike down Section 124(6) and Investor Education and Protection Authority Fund (Accounting, Audit, Transfer and Refund) Rules, 2016, will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest.

It is also equally well settled that just because Rules are cumbersome and it is difficult to carry out the procedure prescribed under the Rules cannot make the Rules violative of Article 14. Section 124(6) has been brought out to ensure that the companies do not profit out of unclaimed dividends. The Rules have been brought out only to ensure that only claims of genuine persons can be entertained. The fact that the procedure to reclaim the shares and the dividend is more expensive and the conditions are more onerous does not make it fall foul of Article 14 of the Constitution of India. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

**CASE LAW**

**In the case of India Awake for Transparency vs. UOI on 5 December, 2017, Delhi High Court** clarified that Section 124(6) does not result in a statutory vesting of any property. The IEPF merely enforces a transfer of shares from a company that has yielded unclaimed dividends for a consecutive period of 7 years to the IEPF, and the said authority of the fund after the transfer of such shares holds the shares as a custodian, or in any manner prescribed thereof. Therefore, the court hereby holds that the writ petition filed by the plaintiff for strict enforcement of the Investor Education and Protection Fund Authority rules is to be dismissed.

**Various Forms of IEPF**

<b>Form Name</b>	<b>Purpose of Filing</b>	<b>Due date of filing E-Form</b>
<b>IEPF-1</b>	Statement of amounts credited to IEPF or transfer of amounts on account of shares transferred to the fund	Within 30 days of such amount becoming due to be credited to the fund
<b>IEPF-1A</b>	Statement of amounts credited to Investor Education and Protection Fund	The time limit as per rule 5(4A) is 60 days from the date of notification of amended rules
<b>IEPF-2</b>	Statement of unclaimed and unpaid amounts and details of Nodal officer	Within a period of 60 days after the holding of AGM or the date on which it should have been held as per the provisions of section 96 of the Act, whichever is earlier and every year thereafter till completion of the 7 years period.  Any change in the Nodal Officer or his details shall be communicated to the Authority through Form No. IEPF-2 within seven days of such change along with board resolution thereof.
<b>IEPF-4</b>	Statement of shares transferred and information of shares & unclaimed or unpaid dividend not transferred to the IEPF	within thirty days of the corporate action taken containing details of such transfer/ within thirty days of transfer of shares under sub-section (9) of section 90 of the Act to the Fund
<b>IEPF-5 Web Form</b>	Application to the Authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund	Any time

### Revocation of Dividend

Dividend once declared becomes a debt to the company and therefore cannot be revoked once declared.

***In Re: Kishinchand Chellaram v. Commissioner of Income Tax [SC] 1980 AIR 211 1981 SCC (1) 720***

**Dividends – Declared dividend credited to the accounts of shareholders, whether company later on reversed the declaration of dividend - Whether dividend declared and credited to the accounts of the shareholders could be reversed**

**Brief facts:** Though this case relate to income tax on dividends at the hands of the shareholders, the crucial and interesting question which arose, to decide the correctness or otherwise of the taxation, was “Whether dividend declared and credited to the account of the shareholders could be reversed by the company by passing a resolution to that effect later on?”

The Appellants Kishinchand Chellaram, Shewakram Kishinchand, Lokumal Kishinchand and Murli Tabilram were the shareholders of the company Chellsons Pvt Ltd at the material time. The company declared dividend for the year 1941-42, 1942-43 and 1943-44 and also credited the dividend amount to the shareholders account.

On December 4, 1947, at an Extraordinary General Meeting another resolution purporting to reverse the earlier resolutions that declared dividends was passed by the company. The ITO considered the dividends as the income of the shareholders and assessed as such. However, the appellants contended that the dividends were not their income as it was reversed by the company. Being unsuccessful they carried their dispute through First appellate authority, Tribunal, High court and ultimately it came before the Supreme Court.

**Decision:** Appeal dismissed.

**Reason:** If dividend is declared and the amount is credited or paid to the share-holders as dividend, so the character of the credit or payment cannot be altered by a subsequent resolution so as to alter the incidence of tax which attaches to that amount.

Dividend when proposed does not become a debt. The right of Members to claim Dividend arises only after the Dividend is declared either by the company in an Annual General Meeting or, in the case of Interim Dividend, by the Directors in a Board Meeting. Until and unless it is so declared, no Member has any claim against the company in respect thereof, even though the company may have sufficient profits [*Bacha F. Guzdar v Commissioner of Income Tax 1955 AIR SC 740*].

Members cannot compel the company by any process of law to declare Dividend [*C.W. Spencer v. ITO, (1957) 27 Comp. Cases 15, 25 (Mad)*].

A Dividend once declared becomes a debt due to the Members and hence cannot be revoked. It gives rise to an enforceable obligation or creates a debt enforceable immediately or in the future.

### Preservation of Dividend Cheques, Warrants and Dividend Registers

Where the company has given an undertaking to the Bank for preservation or safe keeping of paid Dividend cheques or warrants for a specified period, the said instruments shall be preserved for such specified period or eight years from the date of the instrument, whichever is longer.

The Dividend warrants returned to the company by the banks should be preserved by the company for a period of eight years for the purpose of any cross reference on any request for duplicate warrants. Even defaced, torn or decrepit Dividend warrants surrendered to the company should be so preserved.

The Dividend warrants returned to the company undelivered, should also be preserved for a period of eight years.

The Dividend cheques or warrants so preserved shall be destroyed only with the approval of the Board or in accordance with the policy approved by the Board for this purpose.

## Disclosures

### Prior intimation in case of a listed company

As per regulation 29 of SEBI (LODR) Regulations, 2015, the listed entity shall give prior intimation of at least two working days in advance, excluding the date of the intimation and date of the meeting to stock exchange about the meeting of the board of directors in which declaration/ recommendation of dividend is to be considered.

As per regulation 42 of SEBI (LODR) Regulations, 2015, the listed entity shall give notice in advance of at least three working days (excluding the date of intimation and the record date) to stock exchange(s) of record date for the purpose of declaration of dividend.

**Notes to Accounts forming part of the financial statements of the Company** shall disclose the aggregate amount of Dividend proposed to be distributed to equity and Preference Shareholders for the financial year and the related amount of Dividend per share.

Arrears of fixed cumulative Dividend on preference shares shall also be disclosed separately.

The Balance Sheet of the company shall also disclose under the head 'Current Liabilities and Provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any. According to Schedule III to the Act, the disclosure requirement in the Balance Sheet should be as under: (i) In case of

### Disclosure in Board's report

In accordance with clause (k) of sub-section (3) of section 134, the Board of Directors must state in its Report the amount of dividend, if any, which it recommends for declaration. The dividend recommended by the Board of directors in the Board's Report must be declared at the annual general meeting of the company before obligation to pay is constituted. This constitutes an item of ordinary business to be transacted at every annual general meeting.

The amount of Interim Dividend, if any, paid during the financial year and final Dividend recommended by the Board of directors shall be disclosed in the Board's Report.

The Annual Report of the company shall disclose the total amount lying in the Unpaid Dividend Account of the company in respect of the last seven years and when such unpaid Dividend is due for transfer to the Fund. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year shall also be disclosed.

### Test Yourself:

- 1) In case a company declares dividend, what shall be the last date of payment of dividend?
- 2) Can a company which has inadequate profits or has incurred loss in the immediately preceding financial year declare final dividend out of the accumulated profits of the previous financial years? Also, is there any restriction on the rate of dividend?
- 3) Can dividend be declared to certain class of shareholders only?
- 4) Whether shareholder can give right to director of the Company to pay his dividend to any third person?

- 5) In case of Transfer of shares, shares are still not registered on the name of the transferee then who will be entitled to receive the dividend on the point of view of the Company?
- 6) In case of shares held in electronic mode, who will be entitled to receive dividend?
- 7) Whether Company can declare dividend in EGM instead of AGM?
- 8) Whether dividend will be payable on call money paid in advance?
- 9) Whether Company has to open the Demat A/c of the IEPF Authority or the Authority would open it?
- 10) Whether the underlying shares of unpaid or unclaimed dividends are required to be transferred to IEPF when the amount of unpaid or unclaimed dividend is being transferred?
- 11) Whether it is mandatory to transfer the unclaimed or unpaid dividend amount and the underlying shares for the same on the same day to the IEPF?
- 12) What are the consequences in case a company defaults in transferring the unpaid/unclaimed dividend amount to the Unpaid Dividend Account?
- 13) Does the shareholder ceases to be owner once the shares are transferred to the IEPF?
- 14) Can claimant file more than one consolidated claim in respect of a company in a financial year?
- 15) What will happen if online verification report for IEPF-5 is not sent by the company within thirty days of filing of claim?
- 16) What details should be published in newspaper to be published 3 months prior to transfer of shares?
- 17) What are the consequences in case a company defaults in transferring the unpaid/unclaimed dividend amount to the Unpaid Dividend Account?
- 18) Up to what time the records mentioned under rule 5 (6) (c) of the IEPF Rules, 2016 are to be maintained and kept by the Companies?
- 19) Whether the shares will be transferred in case the pledge is revoked?
- 20) What is the purpose of e-Form IEPF-5?
- 21) Who is a Nodal officer (IEPF)?

### **RIGHT TO DIVIDEND, RIGHTS SHARES AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES (SECTION 126)**

Section 126 of the Companies Act, 2013 provides that where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act,—

- (a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- (b) keep in abeyance in relation to such shares, any offer of rights shares under clause (a) of sub-section (1) of section 62 and any issue of fully paid-up bonus shares in pursuance of first proviso to sub-section (5) of section 123.

**PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS (SECTION 127)**

<b>Default</b>	when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration.
<b>Punishment</b>	<ul style="list-style-type: none"> <li>● every director of the company (if he is knowingly a party to the default), be punishable with imprisonment which may extend to two years and with fine which shall not be less than Rs.1000 for every day during which such default continues; and</li> <li>● the company shall be liable to pay simple interest at the rate of 18 % per annum during the period for which such default continues.</li> </ul>
<b>Circumstances under which no offences under this section is deemed to be committed</b>	<p>No offence under this section shall be deemed to have been committed:–</p> <ol style="list-style-type: none"> <li>(a) where the dividend could not be paid by reason of the operation of any law;</li> <li>(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;</li> <li>(c) where there is a dispute regarding the right to receive the dividend;</li> <li>(d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or</li> <li>(e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.</li> </ol>
<b>In case of Nidhi Company</b>	Section 127 shall apply, subject to the modification that where the dividend payable to a member is one hundred rupees or less, it shall be sufficient compliance of the provisions of the section, if the declaration of dividend 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 Nidhis for at least three months. – <i>Notification dated 5th June, 2015.</i>

**Illustration:**

**Board of directors of Charming Entertainment Ltd. in its meeting held on 16th August, 2022 declared an interim dividend on its paid-up equity share capital. Now, the Board wants to revoke the said declaration in its next Board meeting scheduled on 3rd November, 2022. You as a Company Secretary of the company, advise the Board with the relevant provisions of the Companies Act, 2013, whether the Board of directors can do so ?**

Dividend which includes interim dividend as per Section 2 (35) of Companies Act, 2013, is a due from the company once it is properly declared. Interim dividend is declared by the Board of Directors and once it is declared, it thus becomes due from the company. Section 123(4) further 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. If the articles of the company do not authorize so, it has to be amended accordingly.

Section 127 of the Companies Act, 2013 provides for penalty to directors for any default in not paying dividend within 30 days from the date of declaration. However, no offence under this section shall be deemed to have been committed:

- Where the dividend could not be paid by reason of the operation of any law;
- 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;
- Where there is a dispute regarding the right to receive the dividend;
- Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this Section was not due to any default on the part of the company.

In the given case, interim dividend has to be paid and cannot be revoked once it is declared as the exceptions given above do not apply in the given case.

### PROCEDURE FOR DECLARATION AND PAYMENT OF INTERIM DIVIDEND

<b>Verification from company's Articles of Association</b>	The Articles must provide power to pay Interim dividend and Board must be authorized to declare Interim dividend; if not, then alter the Articles of Association accordingly.
<b>Notice of Board Meeting</b>	Issue not less than 7 days notice or a shorter notice in case of urgent business for holding a meeting of the Board of Directors of the company to consider the matter.  It must state time, date and venue of the meeting and details of the business to be transacted there at and be sent to all the directors for the time being in India and to all other directors, at their usual address in India.
<b>Prior intimation to Stock Exchange in case of listed companies</b>	Notify Stock exchange(s) where the securities of the company are listed, at least 2 working days (excluding the date of intimation and date of the meeting) in advance of the date of the meeting of its Board of Directors at which the recommendation of interim dividend is to be considered. [ <i>Regulation 29 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015</i> ].
<b>Matters with regard to the declaration and payment of an interim dividend to be discussed in Board Meeting</b>	The Board of Directors considers in detail all the matters with regard to the declaration and payment of an interim dividend including: <ul style="list-style-type: none"> <li>(a) Before declaring an interim dividend, the directors must satisfy themselves that the financial position of the company allows the payment of such a dividend out of profits available for distribution.</li> <li>(b) The company must have earned adequate profits to pay interim dividend after providing for depreciation for the full year.</li> <li>(c) In case, a company is incurring loss as per financials of latest quarter, interim dividend shall not be higher than average dividend declared by the company during last three financial years.</li> </ul>

	<ul style="list-style-type: none"> <li>(d) quantum of dividend,</li> <li>(e) entitlement,</li> <li>(f) publication of notice in newspaper for closure of share transfer register and register of members of company at least 7 days before the proposed closure (applicable for listed companies),</li> <li>(g) closure of register of members for the purpose of payment of interim dividend or fixation of record date,</li> <li>(h) opening of a separate bank account,</li> <li>(i) printing of dividend warrants,</li> <li>(j) authority for signing the dividend warrants and pass appropriate resolutions covering all these aspects of the matter,</li> <li>(k) posting of the dividend warrants,</li> <li>(l) pass a suitable resolution for declaration and payment of interim dividend on equity shares of the company, and</li> <li>(m) Interim dividend on preference shares: Generally, dividend on preference shares is paid annually.</li> </ul> <p>However, the dividend at a fixed rate on the preference shares can be paid more than once during a year, in proportion to the period of completion of current financial period over the whole financial year, by declaring it as interim dividend, in the Board Meeting by the Board of Directors. A suitable resolution should be passed to the effect that the dividend will be paid to the registered preference shareholders whose names appear in the register of preference shareholders as on the date of commencement of closure of share transfer books.</p>
<b>Disclosures to stock exchange</b>	<p>In case of a listed company, immediately within 30 minutes of the conclusion of the Board meeting, but only after the close of the market hours, intimate the stock exchanges with regard to the Board's decision about declaration and payment of interim dividend with the prescribed financial information is also required to be given to the concerned stock exchange(s) [<i>Regulation 30 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015</i>].</p>
<b>Compliances for the Listed Company</b>	<p>In case of listed company:</p> <ul style="list-style-type: none"> <li>(i) Publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.</li> <li>(ii) To give notice in advance of at least 3 working days (excluding the date of intimation and the record date) or as many days as the stock exchange may prescribe, before the closure of transfer books or record date, specifying the purpose of Record Date.</li> </ul>

	<p>(iii) Time gap between two book closures and record date would be at least 5 working days.</p> <p>(iv) To declare and disclose the dividend on per share basis only.</p>
<b>Closure of Register of Members</b>	Close the register of members and the share transfer register of the company.
<b>Board Meeting for registration of Transfer/ Transmission of shares</b>	Hold a Board/committee meeting for approving registration of transfer/transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and dispatch the share certificates to the transferees after endorsing the shares in their names.
<b>Separate Bank Account</b>	Open the "Interim Dividend Account of. Ltd." with the bank as resolved by the Board and deposit the amount of dividend payable in the account with in 5 days of declaration and give a copy of the Board resolution containing instructions regarding opening of the account and give the authority to Bank to honour the dividend warrants when presented.
<b>Mode of Payment of Dividend</b>	<p>If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI &amp; STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS)/ RECS (Regional ECS)/NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc. In order to enable usage of electronic payment instruments, the company (or its RTI &amp; STA) shall maintain requisite bank details of its investors as under-</p> <p>(a) For investors that hold securities in Demat mode, company or its RTI &amp; STA shall seek relevant bank details from the depositories. To this end, vide circular SEBI/MRD/DEP/Cir-3/06 dated February 21, 2006 and letter MRD/DEP/PP/123624/2008 dated April 23, 2008, depositories have been advised to ensure that correct account particulars of investors are available in the database of depositories.</p> <p>(b) For investors that hold physical share/debenture certificates, company or its RTI &amp; STA shall take necessary steps to maintain updated bank details of the investors at its end.</p> <p>(c) In cases where either the bank details such as MICR (Magnetic Ink Character Recognition), IFSC (Indian Financial System Code), etc. that are required for making electronic payment are not available or the electronic payment instructions have failed or have been rejected by the bank, company or its RTI &amp; STA may use physical payment instruments for making cash payments to the investors. Company shall mandatorily print the bank account details of the investors on such payment instruments.</p> <p>(d) Depositories are directed to provide to companies (or to their RTI &amp; STA) updated bank details of their investors. [Refer SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013].</p>

<b>Taxability of Dividend</b>	W.e.f. Assessment year 2021-22, the domestic company isn't required to pay dividend distribution tax on any amount declared, distributed or paid by such company by way of dividend. Dividend received from domestic company is taxable in hands of shareholders.
<b>Dividend Warrants</b>	Make arrangements with the bank and in collaboration with other banks if required, for payment of the Dividend Warrants at par at the centers as determined by the Stock Exchanges in case of listed company.
<b>Statement of Dividend</b>	Prepare a statement of dividend in respect of each share-holder containing the following details:  (a) Name and address of the shareholder with ledger folio No.;
	(b) No. of shares held;
	(c) Dividend payable.
<b>Printing of Dividend Warrants</b>	To have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. To get approval of RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorized by the Board.  Where an instrument of transfer has been received by company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" opened unless the registered holder of these shares authorizes company in writing to pay dividend to the transferee specified in the said instrument of transfer.
<b>Dispatch of Dividend Warrants</b>	Dispatch dividend warrants within thirty days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.  Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank for circulation to the branches where the dividend warrants will be payable at par.  Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.
<b>Publication of Notice</b>	Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).  Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.

<b>Unpaid/Unclaimed Dividend</b>	Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend A/c within 7 days after expiry of the period of 30 days of declaration of final dividend.
<b>Confirmation at AGM</b>	Confirm the interim dividend in the next Annual General Meeting.

### PROCEDURE FOR DECLARATION AND PAYMENT OF FINAL DIVIDEND

The following steps are required to be taken by a company in respect of declaration and payment of final dividend:

<b>Notice of Board Meeting</b>	Issue notice for holding a meeting of the Board of directors of the company to consider the matter. It must contain time, date and venue of the meeting and details of the business to be transacted there at and must be sent to all the directors for the time being in India and to all other directors, at their usual address in India.
<b>Prior intimation to Stock Exchange</b>	In case of listed companies notify stock exchange(s) where the securities of the company are listed, at least 2 working days in advance of the date of the meeting of its Board of Directors at which the recommendation of final dividend is to be considered. [Regulation 29 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015].
<b>Conduct of Board Meeting</b>	<p>Hold Board meeting for the purpose of passing the following resolutions:</p> <ul style="list-style-type: none"> <li>(a) approving the annual accounts (balance sheet and profit and loss account of the company for the year ended on 31st March.);</li> <li>(b) recommending the quantum of final dividend to be declared at the next annual general meeting and the source of funds for the payment there of, i.e.: <ul style="list-style-type: none"> <li>(i) out of profits of the company after providing for depreciation for the current financial year and also for earlier years, if not already provided and amount to be transferred from the current profits to reserves; or</li> <li>(ii) out of reserves in accordance with the provisions of Rule 3 of the Companies (Declaration and Payment of Dividend), Rules, 2014.</li> </ul> </li> <li>(c) fixing time, date and venue for holding the next annual general meeting of the company, <i>inter alia</i>, for declaration of dividend recommended by the Board;</li> <li>(d) approving notice for the annual general meeting and authorizing the company secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.</li> <li>(e) determining the date of closure of the register of members and the share transfer register of the company as per requirements of Section 91 of the Companies Act and SEBI (LODR) Regulations, 2015 (in the case of listed companies) signed by the company with the stock exchanges where the</li> </ul>

	<p>securities of the company are listed. In the case of listed companies, the date of commencement of closure of the transfer books should not be on a day following a holiday. The dates so fixed should also not clash with the clearance programme in the stock exchanges. It is advisable to consult in advance the regional stock exchange and then fix the dates for closure of books.</p>
<b>Transfer to Reserve</b>	The company may transfer to reserves such percentage as it consider appropriate of the current profits.
<b>Disclosures to Stock Exchange after Conclusion of Board Meeting</b>	In case of a listed company, immediately within 30 minutes of the conclusion of the Board meeting, intimate the stock exchanges with regard to the Board's decision about declaration and payment of dividend and the amounts appropriated from reserves, capital profits, accumulated profits of past years or other special source to provide wholly or partly for the dividend [ <i>Regulations 29 and 30 of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015</i> ]
<b>Notice of Book Closure</b>	<p>Publish notice of book closure in a newspaper circulating in the district in which the registered office of the company is situated at least seven days before the date of commencement of book closure.</p> <p>In case of listed companies:</p> <ul style="list-style-type: none"> <li>(i) To give notice in advance of at least 3 working days (excluding the date of intimation and the record date), before the closure of transfer books or record date, specifying the purpose of Record Date [<i>Regulation 42 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015</i>].</li> <li>(ii) Time gap between two book closures would be at least 5 working days [<i>Regulation 42(4) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015</i>].</li> </ul>
<b>Declaration of Dividend</b>	To declare and disclose the dividend on per share basis only. The listed entity shall not forfeit unclaimed dividends before the claim becomes barred by law and such forfeiture of effected, shall be annulled in appropriate cases. ( <i>Regulation 43 of Listing Regulations read with section 51 of Companies Act, 2013</i> ).
<b>Closure Register of Members</b>	Close the register of members and the share transfer register of the company.
<b>Disclosure in Board Report</b>	The amount of dividend as recommended by the Board of directors shall be shown in the Directors' Report as appropriation of profits for the financial year to which the Report relates. The same amount is shown in the Balance Sheet as at the end of the related financial year as "Proposed Dividend" under the head "Current Liabilities & Provisions", Sub-head "Provisions".

<b>Board/Committee Meeting for Approving Registration of Transfer/ Transmission of the Shares</b>	Hold a Board/committee meeting for approving registration of transfer/transmission of the shares of the company, which have been lodged with the company prior to the commencement of book closure. In compliance with the Board resolution, register transfer/transmission of shares lodged with the company prior to the date of commencement of the closure of the register of members and mail the share certificates to the transferees after endorsing the shares in their names.
<b>Declaration of Dividend at AGM</b>	<p>Hold the annual general meeting and pass an ordinary resolution declaring the payment of dividend to the shareholders of the company as per recommendation of the Board. The shareholders cannot declare the final dividend at a rate higher than the one recommended by the Board. However, they may declare the final dividend at a rate lower than the one recommended by the Board. The following should be noted in this regard:</p> <p>(a) Once a company has declared a dividend for a financial year at an annual general meeting, it cannot declare further dividend at an extraordinary general meeting in relation to the same financial year; it is beyond the powers of the company to do so, although the Companies Act does not prohibit the declaration of a dividend at a general meeting other than an annual general meeting.</p> <p>(b) In the case of preference shares, dividend is always paid at a fixed rate. However, in the case of equity shares, a dividend must be declared and paid according to the amounts paid or credited as paid on the shares, i.e., according to the paid-up value of the shares.</p> <p>(c) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly. [Schedule I, Table F, Article 83(3)].</p>
<b>Statement of Dividend</b>	<p>Prepare a statement of dividend in respect of each shareholder containing the following details:</p> <p>(a) Name and address of the shareholder with ledger folio no.</p> <p>(b) No. of shares held.</p> <p>(c) Dividend payable.</p>
<b>Separate Bank Account</b>	Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within 5 days of declaration of dividend.
<b>Mode of Payment</b>	If the company is listed, then for payment of dividend it has to mandatorily use, either directly or through its Registrars to an Issue and Share Transfer Agent (RTI & STA), any RBI (Reserve Bank of India) approved electronic mode of payment such as Electronic Clearing Services (ECS) [LECS (Local ECS)/ RECS (Regional ECS)/ NECS (National ECS)], National Electronic Fund Transfer (NEFT), etc.

	In order to enable usage of electronic payment instruments, the company (or its RTI & STA) shall maintain requisite bank details of its investors as per SEBI Circular No. CIR/MRD/DP/10/2013 dated March 21, 2013 in the manner as stated aforesaid under the procedure for declaration and payment of interim dividend.
<b>Taxability Of Dividend</b>	W.e.f. Assessment year 2021-22, the domestic company isn't required to pay dividend distribution tax on any amount declared, distributed or paid by such company by way of dividend. Dividend received from domestic company is taxable in hands of shareholders.
<b>Printing of Dividend Warrants</b>	To have sufficient number of dividend warrants printed in consultation with the company's banker appointed for the purpose of dividend. To get approval of the RBI for printing the warrants with MICR facility. Get the dividend warrants filled in and signed by the persons authorized by the Board.
	No RBI approval required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.
	Prepare two copies of the list of members with names and addresses only for mailing purposes—one to cut and paste on envelopes which could even be printed on self sticking labels and the other for securing receipt from the Post Office.
	Where an instrument of transfer has been received by company prior to book closure but transfer of such shares has not been registered when the dividend warrants were posted, then keep the amount of dividend in special A/c called "Unpaid Dividend Account" unless the registered holder of these shares, authorizes company in writing to pay dividend to the transferee specified in the said instrument of transfer. (Section 126 of Companies Act, 2013)
<b>Dispatch of Dividend Warrants</b>	Dispatch dividend warrants within 30 days of the declaration of dividend. In case of joint shareholders, dispatch the dividend warrant to the first named shareholder.
	Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank or circulation to the branches where the dividend warrants will be payable at par.
<b>Instructions to all the Specified Branches of the Bank</b>	Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank.
<b>Notice In Newspaper</b>	Publish a Company notice in a newspaper circulating in the district in which the registered office of the company is situated to the effect that dividend warrants have been posted and advising those members of the company who do not receive them within a period of fifteen days, to get in touch with the company for appropriate action (in the case of listed companies, as a good practice).
	Issue bank drafts and/or cheques to those members who inform that they received the dividend warrants after the expiry of their currency period or their dividend warrants were lost in transit after satisfying that the same have not been encashed.
<b>Unpaid or Unclaimed Dividend</b>	Arrange for transfer of unpaid or unclaimed dividend to a special account named "Unpaid dividend A/c" within 7 days after expiry of the period of 30 days of declaration of final dividend.

## PROCEDURE FOR DECLARATION OF DIVIDEND OUT OF RESERVES

The procedure is as follows:

- (1) Give notice to all the directors of the company for holding a Board meeting. In the meeting, take decision to declare dividend out of company's reserves because of inadequacy or absence of profits and also fix the date, time and place of the Annual General Meeting. Authorise the Company Secretary or any competent person if company does not have a company secretary to issue the notice of the AGM on behalf of the Board of directors of the company to all the members, directors and auditors of the company and other persons entitled to receive the same.
- (2) Ensure that the Companies (Declaration and Payment of Dividend), Rules 2014 are complied with.
- (3) While calculating the profits of the previous years, take only the net profit after tax.
- (4) Ensure that while computing the amount of profits, the amount transferred from the Development Rebate Reserve is included and all items of capital reserves including reserves created by revaluation of assets are excluded.
- (5) In the case of listed companies, inform the Stock Exchange with which the shares of the company are listed within 30 minutes of closure of Board meeting about decision to recommend declaration of dividend out of Company's Reserves. [Regulation 30 of SEBI (LODR) Regulations, 2015].
- (6) Issue notices in writing at least 21 days before the date of the Annual General Meeting and hold the meeting and pass the necessary resolution.
- (7) In the case of listed companies, forward copies of the notice and a copy of the proceeding of the general meeting to the Stock Exchange.
- (8) Open a separate bank account for making dividend payment and credit the said bank account with the total amount of dividend payable within five days of declaration of dividend.
- (9) Issue dividend warrants within 30 days from the date of declaration of dividend. Rest of the procedural steps are same as in case of payment of final dividend.

### Secretarial Standard on Dividend (SS-3)

The "Secretarial Standard on Dividend" (SS-3), formulated by the Secretarial Standards Board (SSB) of the Institute of Company Secretaries of India (ICSI) and issued by the Council of the ICSI, has been effective from 1<sup>st</sup> January 2018. Adherence to SS-3 is recommendatory.

SS-3 prescribes a set of principles in relation to the declaration and payment of Dividend and matters related thereto on equity as well as preference share capital in accordance with the provisions of the Companies Act, 2013 and are in respect of Dividend as it relates to a going concern. These are equally applicable to Final as well as Interim Dividend unless otherwise stated.

The principles enunciated in this Standard are in conformity with the provisions of the Companies Act, 2013 (Act). In addition, the provisions of the Securities Contracts (Regulation) Act, 1956 and the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 are applicable to listed companies. Any specific provision relating to Dividend in the Income tax Act, 1961 or under any other statute shall also be applicable. If due to subsequent changes in the Act or other applicable laws, a particular Standard or any part thereof becomes inconsistent with the Act or other applicable laws, the provisions of the Act or such applicable laws shall prevail.

SS-3 shall not apply to a company limited by guarantee not having share capital and does not deal with Dividend, if any, declared by companies under liquidation.

**SPECIMEN RESOLUTION/ANNEXURES****ANNEXURE-I****Specimen Board Resolution for Declaration of Interim Dividend on Equity Shares**

**RESOLVED THAT** an Interim Dividend of Rs. \_\_\_\_\_ (at the rate of \_\_\_ percent) on each fully paid-up equity share of Rs. \_\_\_\_\_ of the Company amounting to Rs. \_\_\_\_\_ be paid out of the profits of the Company for the half year ended \_\_\_\_\_ 2022 to those Members of the Company whose names would appear on the Register of Members of the Company on the \_\_\_\_\_ day of \_\_\_\_\_ 2022 being the Record date for payment of Interim Dividend.

**RESOLVED FURTHER THAT** a separate bank account be opened in the name of the Company with ..... Bank at its Branch at \_\_\_\_\_ and a sum of Rs. \_\_\_\_\_, being the total Interim Dividend amount, be deposited in the said account within five days from the date of declaration.

**RESOLVED FURTHER THAT** Mr. \_\_\_\_\_, Director and Mr. \_\_\_\_\_, Company Secretary be and are hereby jointly authorized to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Interim Dividend within thirty days from the date of declaration.

**RESOLVED FURTHER THAT** Mr. \_\_\_\_\_, Director and Mr. \_\_\_\_\_, Company Secretary of the company, be and are hereby authorised to jointly sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Interim Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

**ANNEXURE-II****Specimen Board Resolution for Declaring Interim Dividend on Preference Shares**

**“RESOLVED THAT** in accordance with the provisions of Section 123 and other applicable provisions, if any, of the Companies Act, 2013 and the Companies (Declaration and Payment of Dividend) Rules, 2014, dividend at the fixed rate of 8 per cent per annum on the (no. of shares) cumulative redeemable preference shares of Rs.100 each of the company, for the six months commencing from July 1, 20\_\_ and ending on December 31, 20\_\_ aggregating Rs. \_\_\_\_\_ [Rupees (in words)], be paid to the registered holders thereof whose names would appear on the register of holders of the said shares on the \_\_\_\_\_ 20\_\_, the date of commencement of the closure of the share transfer books of the company.”

**“RESOLVED FURTHER THAT** a bank account to be designated as “Interim Preference Dividend (20.....) Account of.....Limited” be opened in the name of the company with \_\_\_\_\_ Bank at its Branch at \_\_\_\_\_ and a sum of Rs. [Rupees (in words)], being the total interim dividend amount, be deposited in the said account within five days.”

**“RESOLVED FURTHER THAT** Shri \_\_\_\_\_, Managing Director and the Company Secretary, Shri \_\_\_\_\_ be and is hereby authorized to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents, information etc. and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the interim dividend within 30 days from the date of this resolution.”

**“RESOLVED FURTHER THAT** Shri \_\_\_\_\_, Managing director and Shri \_\_\_\_\_ Company Secretary of the Company for the time being, be and are hereby authorised to jointly sign the dividend warrants to be

issued on the said bank and the said bank be and is hereby authorized to honour the interim dividend warrants jointly signed by the said authorized signatories, as and when presented for encashment.”

Name of Company: \_\_\_\_\_ Registered Office: \_\_\_\_\_

### ANNEXURE-III

#### Specimen of Board Resolution Recommending Payment of Dividend on Equity Shares out of Profits

**RESOLVED THAT** in accordance with the provisions of Section 123 and other applicable provisions of the Companies Act, 2013 and Rules made thereunder, the Board of Directors of the Company hereby recommends a Dividend of Rs \_\_\_\_\_ (at the rate of \_\_\_ percent) per equity share out of the profits of the Company for the year ended on 31st March 20\_\_, on the \_\_\_\_\_ fully paid up equity shares of the Company absorbing Rs. \_\_\_\_\_ out of the profits.

**RESOLVED FURTHER THAT**, subject to declaration by the Members of the Company at the ensuing Annual General Meeting, the Dividend be paid to the registered holders of the equity shares whose names would appear on the Register of Members on \_\_\_\_\_ day of \_\_\_\_\_ being the Record date for payment of Dividend.

**RESOLVED FURTHER THAT**, subject to the declaration by the Members of the Company at the ensuing Annual General Meeting, Mr. \_\_\_\_\_, Director, and Mr. \_\_\_\_\_, Company Secretary be and are hereby jointly authorised to take necessary steps including opening of the bank account with the \_\_\_\_\_ at its Branch at \_\_\_\_\_ by signing the account opening form and by furnishing to the said bank the required papers, documents and information, and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Dividend within thirty days from the date of declaration of Dividend by the members at the Annual General Meeting.

**RESOLVED FURTHER THAT** Mr. \_\_\_\_\_, Director and Mr. \_\_\_\_\_, Company Secretary of the company, be and are hereby authorised to jointly sign the dividend warrants to be issued on the said bank and the said bank be and is hereby authorised to honour the Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment.

### ANNEXURE-IV

#### Model Dividend Distribution Policy

The Board of Directors (“Board”) of \_\_\_\_\_ (name of the Company) at its meeting held on \_\_\_\_\_ has approved and adopted the Dividend Distribution Policy (“Policy”) as required in terms of Regulation 43A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”).

**Effective Date** The Policy shall become effective from the date of its adoption by the Board i.e. \_\_\_\_\_ (DD/MM/YYYY).

**Need and Objective of the Policy** The Securities and Exchange Board of India (“SEBI”), vide its Notification dated 8th July 2016, amended the Listing Regulations by inserting Regulation 43A in order to make it mandatory for the top 1000 listed companies (based on their market capitalization calculated as on the 31st day of March every year) to have the above Policy in place.

Considering the above and recognising the need to lay down a broad framework for deciding the matters pertaining to distribution of Dividend and / or retaining the profits of the Company, the Board of the Company has laid down and adopted this policy.

The Policy reflects the intent of the Company to reward its shareholders by sharing a portion of its profits after retaining sufficient funds for the growth of the Company. The Policy sets out the circumstances and different factors for consideration by the Board at the time of taking such decisions.

The Policy shall not apply to determination and declaration of Dividend on preference shares as the same will be as per the terms of issue approved by the shareholders.

### I. GENERAL POLICY ON DIVIDEND

The Board shall determine the Dividend pay-out in a particular year after taking into consideration the operating and financial performance of the Company, the advice of executive management and other relevant factors.

### II. CONSIDERATIONS RELEVANT FOR DECISION ON DIVIDEND

The Board shall consider the following, while taking decisions of a Dividend pay-out during a particular year-

**Statutory requirements** The Company shall observe the relevant statutory requirements including transfer of a certain portion of the profits to any specific reserve(s), as may be applicable to the Company at the time of taking a decision with regard to declaration / recommendation of Dividend or retention of profits.

**Inadequacy of profits** If during any financial year the profits of the Company are inadequate, the Board may decide not to declare Dividends for that financial year.

**Contractual obligations** The decision regarding dividend pay-out shall take into consideration the restrictions and covenants contained in the agreements as may be entered into by the Company with financial institutions / other lenders of the Company from time to time.

**Prudential requirements** The following strategic matters shall also be considered-

- to ascertain the needs for capital conservation and appreciation;
- to build sufficient reserves of retained earnings;
- to augment long term financial strength; and
- to build a pool of internally generated funds to provide long-term resources as well as resource raising potential for the Company.

**Proposals for major capital expenditures, etc.** The Board should also take into consideration the need for replacement of capital assets, expansion and modernization or augmentation of capital stock, including any major capital expenditure proposals and the provision of depreciation on such new assets.

**Expectations of Stakeholders** The Board, while considering the decision of Dividend pay-out or retention of a certain amount or the entire profits of the Company for the year, shall, as far as possible, consider the expectations of the major stakeholders as also the small shareholders of the Company who generally expect a regular Dividend payout.

### III. OTHER PARAMETERS

In addition to above parameters, the decision of Dividend payout or retention of profits shall also be based on the following

**Operating cash flow of the Company** If the Company cannot generate adequate operating cash flow, it may need to rely on outside funding to meet its financial obligations and sometimes to run the day-to-day operations. The Board should consider the same before taking its decision whether to declare Dividend or retain its profits. Taxation and other regulatory concerns

- Dividend distribution tax as may be applicable at the time of declaration of Dividend.

- Any restrictions on payment of Dividends by virtue of any regulation as may be applicable to the Company at the time of declaration of Dividend.

**Macroeconomic conditions** Considering the state of the Country's economy, the policy decisions that may be formulated by the Government and other similar conditions prevailing in the international market which may have a bearing on or affect the business of the Company, the management may consider retaining a larger part of the profits to have sufficient reserves to meet unforeseen circumstances.

#### IV. PARAMETERS FOR VARIOUS CLASSES OF SHARES

- The factors and parameters for declaration of Dividend to different class of shares of the Company shall be the same as stated above.
- The payment of Dividend shall be based on the respective rights attached to each class of shares as per their terms of issue.
- Dividends shall be paid out of the Company's distributable profits and / or free reserves and shall be allocated among the shareholders on a pro-rata basis according to the type and class of shares held.
- Dividend when declared shall be first paid / apportioned to the preference shareholders of the Company as per the terms and conditions of their issue.

#### V. MANNER OF DIVIDEND PAYOUT

The declaration and payment of Dividends will be as per the laws and regulations applicable to the company.

#### VI. DISCLOSURE ON DEVIATION

Declaration of Dividend on the basis of parameters other than those stated in this Policy or resulting in amendment of any element stated in this Policy will be regarded as deviation.

Any such deviation, when deemed to be necessary in the interest of the Company, in extraordinary circumstances, shall be disclosed in the Company's Board's Report along with the rationale thereof.

#### VII. AMENDMENT

The Board of Directors may review the policy to give effect to any statutory amendments or otherwise. The amended Policy shall be placed on the website of the company immediately after its approval from the Board.

#### LESSON ROUND-UP

- Under Section 2(35) of the Companies Act, 2013, 'dividend' includes any interim dividend.
- Dividend is the share of the company's profit distributed among the members.
- The Board may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account at any time between two AGM of the company.
- Final Dividend means a Dividend declared at the Annual General Meeting of the company.
- In case of inadequacy of profits the company can declare the dividend with accordance with the Rule 3 of Companies (Declaration and Payment of Dividend) Rules 2014.
- The amount of dividend shall be deposited in a schedule bank in a separate account within 5 days from the date of declaration.

- Dividend may be paid by cheque or warrant or in any electronic mode to the shareholders entitled to the payment of dividend.
- Where the dividend is not paid or claimed within 30 days, the company shall, within 7 days transfer the amount to Unpaid Dividend Account which shall be opened in a scheduled bank.
- In case of any default in transferring the amount, the company shall be liable to pay interest on the amount as has not been transferred.
- The amount remaining unpaid/unclaimed along with interest accrued thereon for 7 years and the shares shall be transferred to Investor Education and Protection Fund.
- In case any dividend is paid or claimed for any year during the said period of seven consecutive years, the shares shall not be transferred to the Investor Education and Protection Fund.

### GLOSSARY

**Divisible Profit:** Profit or a portion of profit that can be legally distributed as a dividend to the shareholders is known as Divisible Profit.

**Dividend:** A dividend is a distribution of a portion of a company's earnings, decided by the board of directors, to a class of its shareholders.

**Interim Dividend:** Dividend declared in between two Annual General Meetings.

**Final Dividend:** Dividend recommended by the Board of Directors and declared by the members at an Annual General Meeting

**Book Closure:** Register of Members or other security holders are closed for the purpose of dividend distribution (See section 91 of the Companies Act,2013)

**Demat Account:** A Demat Account is an account that allows investors to hold their shares in an electronic form. Stocks in Demat account remain in dematerialized form. Dematerialization is the process of converting physical shares into electronic format.

**Dividend Warrant:** An order of payment (such as a cheque payable to a shareholder) in which a dividend is paid.

### TEST YOURSELF

*(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation).*

1. Define the term 'Dividend'. State briefly the provisions related to declaration of dividend under the Companies Act 2013.  
  
State the procedure for transfer of unpaid or unclaimed dividend to the Investor Education and Protection Fund. Explain the law relating to declaration and payment of Final Dividend?
2. Distinguish between 'Interim Dividend' and 'Final Dividend'.
3. Write short notes on the following:-
  - (i) Investor Education and Protection Fund (IEPF).
  - (ii) Punishment of failure to distribute dividend.

4. Draft a resolution:
  - (a) to declare the interim dividend on Equity Shares.
  - (b) to declare the interim dividend on Preference Shares.
  - (c) To recommend payment of dividend on Equity Shares out of reserves.
6. The Board of Directors of Peculiar Ltd. proposes to recommend a final dividend of Rs. 25 each to all the equity shareholders of the company. The company seeks your opinion on the following :
  - (1) The company wants to deposit the dividend amount to co-operative bank.
  - (2) The company is a defaulter in the repayment of deposits and proposes to repay its all deposit after the payment of dividend within 10 days.
  - (3) Dividend will be declared out of the capital reserves of the company.
  - (4) The company wants to pay such dividend through the cash counter by way of cash voucher.
7. Nozama International Ltd has a consistent dividend policy in the past 5 years paying 10% dividend, and although during the current year it sustained a loss but it wanted to keep up its reputation and declared 12% dividend to its shareholders. Referring to the provisions of the Companies Act, 2013, advise the company as to how this can be done.
8. An individual deceitfully impersonated himself as the transferee and got the shares transferred in his name. He also received the accruals like bonus, dividend etc. on such shares. After sometime this fraud by the individual was noticed and the Secretary argued that Company law did not have provisions to punish the person but under Criminal Law, a case can be filed to punish the individual. The directors accepted this suggestion. Offer your comments as an expert in Company Law.
9. PQR Ltd. wants to declare interim dividend during the financial year 2019-20. The company incurred losses for the first quarter ended 30th June, 2019 of the current year. Can the company declare interim dividend ? What are the check points you should keep in mind as Secretarial Auditor in respect of declaration of dividend ?
10. Examine the validity of the following :
  - (a) XYZ Ltd wants to declare the dividend out of the current year profit without adjusting the previous year's carry forwarded losses and depreciation.
  - (b) Board of Directors of XYZ Ltd wants to declare interim dividend after the end of financial year.
11. A Ltd. made a public offer of its securities by issuing a prospectus, in which it was stated that the company has a track record of dividend payment without any interruption for the previous ten years. When the facts were verified, it was found that the company had in fact incurred significant losses for a period of two years immediately preceding the previous five years and this fact has not explicitly stated in the prospectus. The dividend was actually paid out of windfall capital profits for those two years. Whether the Managing director who issued the prospectus will incur any liability.
12. Subhash is a debtor as well as a member of JUMBO Ltd., a listed company. The company declares a dividend of Rs. 2500 on the shares owned by Subhash and proposes to adjust the said amount against the debt of Rs.5000 due from him. Is this adjustment valid ? Would your answer differ if JUMBO is a Private limited company ?

13. Rahul has to claim certain shares and unclaimed dividend from Ocean Ltd which has transferred it to Investor Education and Protection Fund (IEPF). Discuss the procedure to be followed by Rahul in terms of relevant rules notified in this regard.
14. Deep Ltd. declared dividend but failed to make payment to shareholders. Advise the company about the consequences for such a default. Please also list out the circumstances under which a company is not deemed to have committed an offence with regard to non-payment of dividend.
15. While adopting accounts for the year, the Board of directors of Prima Ltd. decided to consider the interim dividend @ 12% as final dividend and did not consider transfer of profit to reserves. Explain whether decisions of the Board were justified referring to relevant provisions.
16. Pluto Limited has a paid-up equity share capital of Rs.10 crore comprised of : (a) 80 lakh equity shares of Rs.10 each fully paid up (b) 40 lakh equity shares of Rs.10 each on which only Rs. 5 per share is paid up. The company wants to pay dividend in proportion to the amount paid up, even though the articles of the company is silent on this, Is it tenable ?
17. PTC Ltd., wants to declare final dividend. The company did not earn profits in last three years. Can the final dividend be declared and paid in such a situation? Choose the provisions in this regard:
  - (a) PTC Ltd may declare and pay final dividend out of the free reserve, in accordance with rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014
  - (b) PTC Ltd cannot declare and pay final dividend till it earns profits
  - (c) PTC Ltd may declare and pay final dividend out of the free reserve, in accordance with rule 5 of the Companies (Share Capital and Debentures) Rules, 2014
  - (d) PTC Ltd can declare and pay final dividend after seeking approval from audit committee.
18. Jagat is a debtor as well as a member of SITARA Ltd., a listed company. The company declares a dividend of Rs. 2500 on the shares owned by Subhash and proposes to adjust the said amount against the debt of Rs.5000 due from him. Is this adjustment valid ? Choose the correct line:
  - (a) the amount due from Jagat in the capacity of trade debtor will not be adjusted and the company need to pay dividend amount to Jagat
  - (b) the amount due from Jagat in the capacity of trade debtor will be adjusted and the company need not to pay dividend amount to Jagat
  - (c) the amount due from Jagat in the capacity of trade debtor will be adjusted with the approval of audit committee
  - (d) None of these

#### LIST OF FURTHER READINGS

- Company Law Exploring Procedural Dimensions VOL I / II / III – by ICSI
- Bare Act- The Companies Act, 2013
- Secretarial Standard (SS-3)
- ICSI Guidance note on Dividend

#### OTHER REFERENCES (Including Websites/Video Links)

- <http://www.iepf.gov.in/>
- <https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==>