

GUIDANCE NOTE ON DIVIDEND



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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CONTENTS

	Pg. No.
INTRODUCTION	1
SCOPE	2
DEFINITIONS	2
GUIDANCE ON THE PROVISIONS OF SS-3	
1. Ascertainment of amount available for payment/ distribution as Dividend.	3
2. Declaration of Dividend	15
3. Entitlement to Dividend	20
4. Dividend in Abeyance	23
5. Payment of Dividend	24
6. Unpaid Dividend	36
7. Revocation of Dividend	46
8. Preservation of Dividend Cheques, Warrants and Dividend Registers	46
9. Disclosure	46
10. Additional Compliances for Listed Company	47
ANNEXURES	
<i>Annexure-'A'</i> Additional compliances applicable to Listed Companies	48
<i>Annexure-I</i> Specimen of Board Resolution recommending payment of Dividend on equity shares out of profits	50
<i>Annexure-II</i> Specimen Resolution for Declaration of Dividend by Members at an AGM	51

	Pg. No.
<i>Annexure-III</i> Model Dividend Distribution Policy	52
<i>Annexure-IV</i> Specimen of Board Resolution for Declaration of Interim Dividend on equity shares	56
<i>Annexure-V</i> Declaration for issue of Duplicate Dividend Warrant	57

GUIDANCE NOTE ON DIVIDEND

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 1st January 2018. Adherence to SS-3 is recommendatory.

This Guidance Note sets out the explanations, procedures and practical aspects in respect of the provisions contained in SS-3 to facilitate compliance thereof by the stakeholders.

INTRODUCTION

Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest.

In commercial usage, the term “Dividend” refers to the share of profits of a company that is distributed amongst its Members.

The term “Dividend” has been inclusively defined in the Act to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between Interim and Final Dividend.

For the purposes of SS-3, capitalization of profits in the form of bonus shares is not Dividend.

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 and for the purposes of this Guidance Note.

Companies licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof are prohibited by their constitution from paying any Dividend to its Members.

SCOPE

SS-3 prescribes a set of principles in relation to the declaration and payment of Dividend and matters related thereto. These are equally applicable to Final as well as Interim Dividend unless otherwise stated.

The principles set out in SS-3 relate to declaration and payment of Dividend on equity as well as preference share capital in accordance with the provisions of the Act and are in respect of Dividend as it relates to a going concern.

Distribution of any amount of profits or assets by the liquidator during winding up or liquidation will not be construed as Dividend.

The principles enunciated in SS-3 are in conformity with the provisions of the 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.

DEFINITIONS

The following terms are used in this Guidance Note with the meaning specified:

“Act” means the Companies Act, 2013 (Act No. 18 of 2013) or any previous enactment thereof, or any statutory modification thereto or re-enactment thereof and includes any Rules and Regulations framed thereunder.

“Dividend” means a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose.

“Final Dividend” means the Dividend recommended by the Board of Directors and declared by the Members at an Annual General Meeting.

“Interim Dividend” means the Dividend declared by the Board of Directors.

“Free Reserves” means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as Dividend. However, the following amount shall not be treated as free reserves:

- (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as 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.

"Member", in relation to a company, means –

- (i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members
- (ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
- (iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;

"Preference Shareholder" means a holder of such shares which carry a preferential right, in respect of payment of Dividend, of a fixed amount or an amount calculated at a fixed rate and in respect of capital, to repayment of capital.

"Shareholder" means a Member as defined above and, where the context requires or admits, includes a Preference Shareholder.

"Listing Regulations" means the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

Words and expressions used and not defined herein shall have the meaning respectively assigned to them under the Act or other applicable laws.

GUIDANCE ON THE PROVISIONS OF SS-3

1. Ascertainment of amount available for payment/distribution as Dividend.

1.1 Out of profits

- 1.1.1 Dividend shall be paid out of the profits of the financial year for which such Dividend is sought to be declared and/or out of profits for any previous financial year(s) which remains undistributed after providing for depreciation in accordance with the provisions of the Act. Dividend may also be declared**

out of money provided by the Central Government or a State Government in pursuance of a guarantee given by such Government for this purpose.

No Dividend shall be declared or paid by a company for any financial year except –

- (a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of Schedule II to the Act, or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both;*

Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or

- (b) out of money provided by the Central Government or a State Government for the payment of Dividend by the company in pursuance of a guarantee given by that Government. [sub-section (1) of Section 123 of the Act]*

This is to clarify that the declaration of Dividend out of profits for previous years which are disclosed under the head 'Surplus' in the Financial Statements will not tantamount to declaration of Dividend out of reserves and accordingly will not attract the statutory requirements relating to declaration of Dividend out of reserves.

Dividend shall not be declared unless carried over previous losses and depreciation not provided in the previous year(s) are set off against the profit of the company for the current year. The company may, before declaration of Dividend, transfer such percentage of profits for that financial year, as it may consider appropriate, to its reserves.

In line with the requirements of Fourth Proviso to sub-section (1) of Section 123 of the Act, this Standard provides that 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.

In addition, the First 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.

Dividend, being a portion of the profits of the company, is distributable amongst the Members of the company in accordance with the provisions of the Act. The Act requires a company to prepare a statement of profit and loss, which should give a true and fair view of the profit or loss of the company for a financial year. The terms 'profit' and 'true and fair' have not been defined by the Act. Therefore, these terms should be understood in their natural and proper sense.

The Act 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".

Profit means the net proceeds of the company after deducting the necessary expenses without which those proceeds could not be earned [Bharat Insurance Co. Ltd., Lahore v. Commissioner of Income Tax (1931) 1 Comp. Cases 192 (Lah)].

The statement of profit and loss shall be prepared in accordance with the generally accepted accounting principles, applicable accounting standards and presented in conformity with the requirements set out in the Act or other applicable laws.

Depreciation, as computed in accordance with Schedule II to the Act, shall be provided in the books of account of the company.

Sub-section (2) of Section 123 of the Act provides that the depreciation shall be provided in accordance with the provisions of Schedule II.

Depreciation is a measure of the loss of value of a depreciable asset arising from use, efflux of time or obsolescence through technological and market changes. Depreciation is allocated so as to charge a fair proportion of the

depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is pre-determined.

The Act lays down the useful life of various assets. The depreciation rate is thus based on the useful life of an asset. Where the management estimates that the useful life of an asset is shorter than that envisaged under the provisions of the relevant statute, the depreciation provision is appropriately computed by applying a higher rate. However, if the management estimates that the useful life of the asset is longer than that envisaged under the statute, a rate lower than that envisaged in the statute can be applied only in accordance with the requirements of the statute.

Illustration

The useful life of building with RCC frame work is 60 years as per the schedule. Residual value as per Schedule II has to be taken at maximum 5%. A company which intends to apply the straight line method, can easily ascertain the same by dividing the amount of cost less residual value by 60 years. On the said basis the rate for straight line method would be 1.58%. However, to ascertain the rate of depreciation as per the written down value method, the following formula may be used instead of computing manually:

$$R = \left\{ 1 - \sqrt[n]{\frac{S}{C}} \right\} \times 100$$

WDV Method :

"R" Rate of Depreciation

"S" Scrap Value @ 0% to 5% (rounded-off) of Original Cost

"C" Cost remaining to be (further) depreciated

"n" Number of years

1.1.2 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.

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.

In line with the requirements of sub-section (6) of Section 123 of the Act, paragraph 1.1.2 restricts declaration of Dividend on equity shares, if there is non-compliance of the provisions relating to the acceptance of deposits under the Act.

The term “any Dividend” used in the subsequent paragraph refers to declaration of Dividend on both equity and preference shares. Accordingly, as a good governance practice, the restrictions in clause (a) to (d) as stated above are equally made applicable to declaration of Dividend on equity as well as preference shares. In such cases, the Board should neither declare nor recommend any Dividend.

The above restrictions also get reference from Section 70 of the Act which prohibits Buy-Back of shares if a default is made by the company, in the repayment of deposits, interest payment thereon, redemption of debentures or preference shares or payment of Dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company.

Default in redemption of debentures/payment of interest thereon

The company shall create a Debenture Redemption Reserve for redemption of debentures, out of the profits of the company available for payment of Dividend. [Rule 18(7)(a) of the Companies (Share Capital and Debentures) Rules, 2014].

As a measure of good corporate governance, the Standard prohibits a company

from declaring any Dividend if it has subsisting default in redemption of debentures or payment of interest thereon.

Where the Debenture Redemption Reserve is required to be created by the company in accordance with the Companies (Share Capital and Debentures) Rules, 2014 and the company has defaulted in creation of such reserve, then the company shall not declare any Dividend.

Default in redemption of preference shares or creation of Capital Redemption Reserve.

Preference shares issued by a company shall be redeemed out of the profits of the company which are available for payment of Dividend or out of proceeds of a fresh issue of shares made for the purposes of such redemption. In case it is proposed to redeem such shares out of the profits of the company, a sum equal to the nominal amount of the shares to be redeemed shall be transferred to a Capital Redemption Reserve account.

Therefore as a measure of good corporate governance, the Standard provides that the company should not declare Dividend if there is a subsisting default with regard to redemption of preference shares or creation of Capital Redemption Reserve. In case the preference shares are redeemed out of proceeds of a fresh issue of shares made for the purposes of such redemption, there is no need to create any Capital Redemption Reserve and in such cases Dividend may be declared without creation of Capital Redemption Reserve.

Default in payment of Dividend declared in the current or previous year(s).

No Dividend should be declared if there is default by company in payment of Dividend of current or previous year(s). Section 127 of the Act deals with penal provisions for the same. However, no specific restriction is placed on declaration of further Dividend. Therefore, as a measure of good corporate governance, the Standard prohibits a company from declaring any further Dividend in such cases.

Default in repayment of any term loan

In keeping with good corporate governance principles, the Standard prohibits a company from declaring any Dividend if it has a subsisting default in repayment of a loan to any bank or financial institution or interest thereon.

Impact of Extension of time by the Tribunal/Court

A company which fails to comply with the provisions of Sections 73 and 74

relating to repayment of deposits shall not, so long as such failure continues, declare any Dividend on its equity shares [sub-section (6) of Section 123 of the Act].

The words "so long as such failure continues" imply that the company cannot declare Dividend, unless it makes good the default by repayment of such deposits. Mere extension of time by the Tribunal/Court does not condone the act of default.

Following the same principle, the Standard prohibits declaring Dividend even during the extension, if any, granted by the Tribunal/Court in the above cases.

1.1.3 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.

No Dividend shall be declared or paid by a company from its reserves other than free reserves [Third Proviso to sub-section (1) of Section 123 of the Act]

Dividend should be declared only out of profits earned by the company. However, profits out of capital transactions, if not realised in cash, shall be excluded for this purpose.

Certain profits do not arise in the normal course of business as they are earned out of capital transactions. These profits are known as capital profits and are not available for distribution as Dividend. However, profit on sale of fixed assets, though capital profit, 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.

Further, any specific reserve created out of the profits of the company on account of any statutory requirement would become available for distribution as Dividend only after the purpose for which such reserve was created is achieved e.g, Debenture Redemption Reserve would be available for distribution as Dividend after the redemption of debentures.

The amount of Revaluation Reserve relating to an item of fixed asset which has been retired from active use and is held for disposal or has been disposed off should be transferred to General Reserve and thereafter becomes available for distribution as Dividend. However, unrealised capital profit such as profit accruing out of revaluation of fixed assets should not be distributed as Dividend since such profit may not be realised.

The expression 'capital reserve' does not include any amount regarded as free for distribution through the profit and loss account.

1.1.4 Interim Dividend shall be declared and paid out of the surplus in the profit & loss account and/or out of profits of the financial year in which such Dividend is sought to be declared.

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.

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 and such Dividend may be declared 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. [Sub-section (3) of Section 123 of the Act]

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)]

Illustration

On 10th July 2018 the Board of Directors of ABC Limited intends to consider and declare Interim Dividend for the following Financial Year (F.Y.):

- (i) 2017-18: Out of the profits earned in the F.Y. 2017-18;*
- (ii) 2018-19: Out of the profits earned during the first quarter of F.Y. 2018-19.*

In case of Sl. No. (i) above, the Board may declare Interim Dividend before the approval of financial statements for the F.Y. 2017-18. If the financial statements are already approved by the Board, then the declaration of Interim Dividend for the F.Y. 2017-18 will not be possible.

Note: *Though sub-section (3) of Section 123 of the Act provides that the Board of Directors of a company may declare Interim Dividend during any financial year or at any time during the period from the closure of the financial year till the holding of the Annual General Meeting. In the given example if the financial statements for F.Y. 2017-18 are already approved by the Board, then*

it is practically not possible to declare any Interim Dividend for the F.Y. 2017-18, as the books of accounts would be closed for that financial year.

However, in case of Sl. No. (ii) above, the Board may declare Interim Dividend out of the profits earned during the first quarter of F.Y. 2018-19.

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.

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.

1.1.5 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.

1.2 Out of Free Reserves

1.2.1 In a year in which the profits are inadequate or there are no profits, the company may declare Dividend out of Free Reserves subject to the fulfilment of the following conditions:

- (a) The rate of Dividend declared by the company shall not exceed the average of the rates at which Dividend was declared by it in the three financial years immediately preceding the financial year of declaration of Dividend. This shall not be applicable where a company has not declared any Dividend in each of the three preceding financial years.
- (b) Total withdrawal from the accumulated profits shall not exceed one tenth of the sum of the paid up share capital and free reserves of the company as per the latest audited financial statements.
- (c) The amount so withdrawn shall first be utilised to set off the losses, if any, incurred in the financial year in which Dividend in respect of equity shares is proposed to be declared.
- (d) The balance of Free Reserves after such withdrawal shall not fall below 15% of the paid up share capital of the company as per the latest audited financial statements.

The above Standard 1.2.1 is in line with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 which provides 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 fulfilment of the following conditions:

- (1) The rate of Dividend declared shall not exceed the average of the rates at which Dividend was declared by it in the three years immediately preceding that year. However, this sub-rule shall not apply to a company, which has not declared any Dividend in each of the three preceding financial year.*

- (2) *The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.*
- (3) *The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which Dividend is declared before any Dividend in respect of equity shares is declared.*
- (4) *The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement.*

Declaration of Dividend out of profits for previous years which are disclosed under the head 'Surplus' in the financial statements will not tantamount to declaration of Dividend out of reserves and accordingly will not attract the requirements prescribed under this Paragraph.

The above conditions 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.

Effect of exemption notification

The above conditions prescribed pursuant to second proviso to sub-section (1) of Section 123 of the Act 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. [MCA exemption notification G.S.R. 463(E) dated 5th June 2015]

Illustration

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. 2017-18 are inadequate and considering the different scenarios the declaration of dividend may be as under :

Financial Year	Dividend paid during the year		
	Case-1	Case- 2	Case-3
2014-15	10%	NIL	NIL
2015-16	NIL	NIL	12%
2016-17	5%	NIL	NIL
Maximum rate of Dividend for the year 2017-18	Average rate of dividend $15/3= 5\%$ [The company can declare	* The stipulation regarding average rate of Dividend is not applicable, as no Dividend is	Average rate of Dividend $12/3= 4\%$ [The company can declare

<i>(in case of loss or inadequacy of profits)</i>	<i>Dividend upto 5% subject to the compliance of other conditions prescribed under the Rules.</i>	<i>declared in any of the three preceding financial years. Accordingly, the Dividend for 2017-18 may be declared at any rate, subject to the compliance of other conditions prescribed under the Rules.</i> <i>(*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.)</i>	<i>Dividend upto 4% subject to the compliance of other conditions prescribed under the Rules.</i>
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1.2.2 Interim Dividend shall not be declared out of Free Reserves.

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. However, Final Dividend may be declared / paid out of Free Reserves subject to the conditions set out in paragraph 1.2.1 above.

2. Declaration of Dividend

2.1 Dividend shall be declared only on the recommendation of the Board, made at a meeting of the Board.

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.

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]

*Specimen Resolutions for recommendation of Dividend by the Board and declaration of Dividend at the Annual General Meeting are placed at **Annexure-I & II** respectively.*

Dividend 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.

The Securities and Exchange Board of India (SEBI), vide its notification dated 8th July 2016, inserted Regulation 43A to the Listing Regulations making it mandatory for the top 500 companies to formulate a "Dividend Distribution Policy".

Regulation 43A of the SEBI Listing Regulations provides as under:

- (1) The top five hundred listed entities based on market capitalisation (calculated as on March 31 of every financial year) shall formulate a Dividend Distribution Policy which shall be disclosed in their annual reports and on their websites.*
- (2) 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 utilised; and*
 - (e) parameters that shall be adopted with regard to various classes of shares:*

Provided that 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.

- (3) The listed entities other than the top five hundred listed entities based on market capitalisation may disclose their Dividend Distribution Policies on a voluntary basis in their annual reports and on their websites.*

*Considering the above, a Model Dividend Distribution Policy is placed at **Annexure-III.***

2.2 Dividend shall be declared only at an Annual General Meeting.

Dividend shall be declared only at an Annual General Meeting of the Company and not at an Extra-ordinary General Meeting or by way of a postal ballot.

The cumulative effect of all the provisions of the Act is that the declaration of Dividend should be made at the Annual General Meeting of the Company. [Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd., (1964) 34 Comp. Cases 570 (Cal.)]

Dividend shall relate to a financial year and shall be declared by the Members at the Annual General Meeting of the company after adoption of the financial statements of the company. Members may declare a lower rate of Dividend than the rate recommended by the Board but have no power to increase the amount or rate of Dividend recommended by the Board.

The company in general meeting may declare Dividends, but no Dividend shall exceed the amount recommended by the Board. [Regulation 80 of Table F of Schedule I to the Act].

It is well established and the law is quite clear that Dividend can only be declared by the Members of the company. [Kantilal v. Commissioner of Income Tax (1956) 26 Comp. Cases 357 (Bom.)] Dividend should be declared by the Members after consideration of the annual accounts at the Annual General Meeting of the company and should relate to a financial year. Members may vote for a lower rate of Dividend than what is recommended by the Board.

The Members may also decide not to declare the Dividend recommended by the Board. The Dividend, if declared, should be disclosed on per share basis.

The disclosure of Dividend on per share basis is applicable to listed companies only; however, as a good governance practice and to promote uniformity, the Standard requires the said disclosure to be made by all companies.

2.3 No Dividend shall be declared on equity shares for previous years in respect of which annual financial statements have already been adopted at the respective Annual General Meetings.

Arrears of Dividend on cumulative preference shares for previous years may, however, be declared and paid.

If, after the adoption of the accounts at the Annual General Meeting, no Dividend is declared for the period, no Dividend can be declared later with retrospective effect, in respect of that period. [Raghunandan Neotia v. Swadeshi Cloth Dealers Ltd. (1964) 34 Comp. Cases 570(Cal.)].

Once a Final Dividend is declared at an Annual General Meeting no further Dividend can be declared at an Extra-Ordinary General Meeting [Biswanath Prasad Khaitan v. New Central Jute Mills Co. Ltd., (1961). 31 Comp. Cases 125 (Cal.)].

The erstwhile Department of Company Affairs (now Ministry of Corporate Affairs) has also clarified that declaration of a further Dividend out of the profits of past years is illegal and ultra vires the Articles and the Act. [Source: Extract from Fourth Annual Report on Working and Administration of Companies Act, 1956-Year ended 31st March 1960]

2.4 Interim Dividend shall be declared at a meeting of the Board.

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.

Once an Interim Dividend is declared by the Board, its noting, approval, confirmation or ratification in a general meeting is not required. However, the Board's Report should mention the amount of Interim Dividend paid by the company.

Any resolution passed by the company in general meeting requiring the Directors to declare an Interim Dividend is inoperative. Before declaring an Interim Dividend, the Board should carefully consider the interim financial statements of the company made up to the last possible period of the financial year in respect of which Interim Dividend is proposed to be declared in line with the Dividend Policy of the company.

The Board should satisfy itself that the outflow on account of payment of the Interim Dividend will not jeopardize the ability of the company to meet the other requirements such as paying Dividend at the contracted rate on preference shares. The Board should also ensure that all arrears of preference Dividend are paid before declaring any Interim Dividend.

*Specimen Resolution for declaration of Interim Dividend is placed at **Annexure-IV**.*

2.5 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.

2.6 A company is prohibited to issue Bonus shares in lieu of Dividend.

Sub-section(3) of Section 63 of the Act provides that the Bonus shares shall not be issued in lieu of Dividend.

Issue of Bonus shares does not result in release of assets to the shareholders but the accumulated profits merely get converted into the share capital of the company. Hence it is not considered as Dividend.

3. Entitlement to Dividend

3.1 Dividend to be paid only to the registered holders of shares entitled to Dividend or to their order or to their bankers.

Dividend shall be paid (i) in respect of shares held in electronic form, to those Members whose names appear as beneficial owners in the statement of beneficial ownership furnished by the Depository(ies) as on the record date fixed by the company for this purpose; (ii) in respect of shares held in physical form, to those Members whose names appear in the company's Register of Members after giving effect to all valid share transfers in physical form lodged with the company before the date of book closure or as on the record date, as the case may be.

The Dividend may also be paid to the order of the Member or to his banker.

Sub-section (5) of section 123 of the Act requires that no Dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash.

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 [Chunilal Kuhshaldash Patel v. H.K. Adhyaru, AIR 1956 SC 655].

Further, the transfer of shares on cum-Dividend basis does not entitle the transferee to receive from the company any Dividend declared before such transfer. [Hariprasad v. A.C. Traders (P) Ltd. AIR 1964 Mad. 519].

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.

Dividend payment to the mandatee

If a Member has given a mandate, Dividend should be paid to the person in whose favour the mandate has been given.

Dividend payment to the Nominee

In the event of the death of a Member, the company will issue the Dividend warrant in the name of the nominee on production of death certificate or such evidence as may be required.

Rule 19 (8) of the Companies (Share Capital and Debentures) Rules, 2014 provides that a person, being a nominee, becoming entitled to any securities by reason of the death of the holder, shall be entitled to the same dividends or interests and other advantages to which he would have been entitled to if he were the registered holder of the securities except that he shall not, before being registered as a holder in respect of such securities, be entitled in respect of these securities to exercise any right conferred by the membership in relation to meetings of the company.

It further provides that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the securities, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends or interests, bonuses or other moneys payable in respect of the securities, as the case may be, until the requirements of the notice have been complied with.

3.2 Preference Shareholders shall be paid Dividend before Dividend is paid to the equity Shareholders of the company.

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.

3.3 Arrears of Dividend on cumulative preference shares shall be paid before payment of any Dividend on equity shares.

Preference shares may be cumulative or non-cumulative. Dividend in arrears on cumulative preference shares can be paid in a later year where there are profits to justify such payment. In the case of non-cumulative preference shares, if no Dividend is paid in a year, there is no right to receive the same in future years.

After paying the Dividend on preference shares and any arrears of Dividend on cumulative preference shares, residual profit may be utilised for payment of Dividend to equity Shareholders. However, where participating preference shares have been issued, the holders thereof also have the right to participate in such residual profit, subject to the terms of issue of such shares.

Where cumulative preference shares have been redeemed but the Dividend on such shares is in arrears, such arrears of Dividend should be paid unless the same has been waived by the shareholders.

Preference shares may also be participating or non-participating. Participating preference shares are those shares which are entitled to a fixed preferential Dividend and are, in addition, entitled to participate in the surplus profits along with equity Shareholders after Dividend at the said fixed rate has been paid on the preference shares.

The rights of Preference Shareholders are usually contained in the Articles of

Association of the company or the terms of issue of such shares approved by the shareholders of the company.

3.4 Dividend on equity shares shall be paid in accordance with the rights of the respective classes, if any, of such shares.

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].

4. Dividend in Abeyance

4.1 The amount of Dividend in respect of shares for which an instrument of transfer has been delivered to the company but which have not been registered for a valid reason shall be transferred to the Unpaid Dividend Account.

Members may authorise the company in writing to pay the Dividend to the transferee specified in the instrument of transfer and the company shall act upon such authorisation. However, where such instrument is not valid for any reason, the company shall not act upon such authorisation and intimate the concerned Member accordingly.

In case of shares which have not been transferred because the ownership thereof is in dispute, or where specific prohibitory orders have been passed by a court or statutory authority, Dividend should be kept in abeyance and be transferred to the Unpaid Dividend Account, as and when it becomes due.

Section 126 of the Act 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-

- (a) transfer the Dividend in relation to such shares to the Unpaid Dividend Account 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 and any issue of fully paid-up bonus shares.

Where the company had refused the transfer on valid grounds, the registration was not pending at the time of issue of bonus/right shares and on no account was the transferee eligible to such bonus/rights shares. [In S. V. Nagarajan v. The Lakshmi Vilas Bank Ltd. and another(1997)4 Comp LJ 112 (CLB)]

Where the company had not registered the shares in favour of the transferee on the advice of the solicitors, the transferee was entitled not only to the Dividend for all the years during which it was kept in abeyance but also to the interest accrued thereon.[In G.R. Desai and others v. ROC and others (1998) 4 Comp L J 463 (AP)]

5. Payment of Dividend

5.1 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.

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 five days from the date of declaration of such Dividend. The Standard clarifies that the intervening holidays, if any, falling during the said period of 5 days, shall be included.

Illustration

If the Board of Directors of XYZ Ltd. declared an Interim Dividend on 13th August 2018, 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 2018 irrespective of the intervening holidays.

The amount deposited in such bank account shall be utilised only for the payment of Dividend or for transfer to Unpaid Dividend Account/Investor Education and Protection Fund and for no other purpose.

Separate Bank Account for the payment of Dividend

Every company is required to open a separate bank account for transfer of the amount of Dividend declared and the Dividend should be paid out of such bank account only. Any amount which remains unpaid or unclaimed after the period of thirty days shall be transferred to the Unpaid Dividend Account to be opened by the company.

Therefore, a company is required to open two bank accounts as under:

(i) Within five days of declaration of Dividend: This separate bank account is required to be opened within five days of declaration of Dividend and the entire amount of Dividend should be transferred to this separate bank account for payment of Dividend to the members within thirty days of declaration of Dividend;

(ii) Unpaid Dividend Account: In case of any amount remaining as unpaid/unclaimed in the above separate bank account, Unpaid Dividend Account needs to be opened within seven days after the expiry of thirty days from the date of declaration of Dividend.

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.

The requirement of deposit of Dividend amount in a separate bank account within five days from the date of its declaration, 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.

Effect of exemption notification

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.

Payment of Dividend to be rounded off to the nearest rupee

The amount of Dividend payable should be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise, it shall be ignored. [Reference taken from erstwhile Rule 23 of Companies (Central Government's) General Rules and Forms, 1956].

Dividend Mandate

Members who desire that their Dividends be credited directly to their bank account may request the company to do so by giving a 'Dividend Mandate'. This authorises the company to pay Dividend directly to the bank account of the Member. Where a Member gives a mandate to the company for payment of Dividend to an intermediary, the company should act accordingly.

In respect of shares held in dematerialised form, the Members should provide mandates for this purpose to their Depository Participants.

Regulation 12 of the Listing Regulations provides that a listed company shall use any of the electronic mode of payment facility approved by the Reserve Bank of India for the payment of Dividend. However, where it is not possible to use the electronic mode of payment, 'payable-at-par' warrants or cheques may be issued.

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 an authorised dealer along with the documents as may be required by the authorised dealer for this purpose.

The authorised dealer may allow the remittance of Dividend in accordance with the procedure prescribed by the RBI.

5.2 Taxes as applicable on distribution of Dividend shall be paid by the company within the prescribed time.

Where income tax is applicable on the payment or distribution of Dividend, the company should ensure compliance with the requisite provisions of the Income-tax Act, 1961.

5.3 Dividend shall be paid in cash and not in kind.

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.

Second Proviso to sub-section (5) of Section 123 of the Act provides that any Dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the Dividend.

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.

Any Dividend, interest or other monies payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct. [Regulation 85(i) of Table F of Schedule I to the Act].

A company should not take notice of any private arrangement between the vendor and the purchaser of shares for receipt of Dividend payable on the shares. [S.A.C. Works Ltd. v. Sukhdeo, TLR (1945) All ER 15]

The word 'payment' implies the act of posting of Dividend warrants or cheques as provided under the law irrespective of whether the Member concerned has received it or not. Once a Dividend warrant is posted by the company to the address of the registered Member, Dividend is deemed to have been paid within the meaning of Section 206 of the Companies Act, 1956 (corresponding to Section 123(5) of the Companies Act, 2013). [Hanuman Prasad Gupta v. Hiralal (1970) 40 Comp. Cases 1058 (S.C)].

Where a company posts the Dividend warrant to the registered address of the Member as furnished by him, the post office becomes the agent of the Member and the loss of the Dividend warrant during transit thereafter is at the risk of the Member. As the obligation to post the warrant arises at the registered office of the company, failure to discharge this obligation also arises at that office and the Court having jurisdiction over that place alone can have jurisdiction to

entertain any complaint regarding non-receipt of the Dividend warrant. [Hanuman Prasad Gupta v. Hiralal (1970) 40 Comp. Cases 1058 (S.C.); H.V. Jayaram v. Industrial Credit and Investment Corporation of India Ltd. and others (2000) 99 Comp. Cases 341 (SC)]

Before the Dividend warrants are posted, the company must ensure that all designated bank branches have been informed and furnished with the specimen Dividend warrant. The net amount of Dividend payable should be deposited in the bank account so that funds are available with the bank when the Dividend warrants are presented for payment.

To curb the practices of fraudulent encashment of Dividend, the company shall endeavour to pay Dividend directly to the bank accounts of the Members through any one of the electronic modes specified by the Reserve Bank of India viz. electronic clearing services (local, regional or national), direct credit, real time gross settlement, national electronic funds transfer etc. Where Dividend is remitted through electronic mode, the company shall send to the Member, a statement in writing showing the amount of Dividend paid.

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.

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 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.

A listed company should, while ascertaining the bank account details from the Member, advise him to submit an original cancelled cheque pertaining to his bank account bearing his name thereon, failing which he need to submit copy of bank passbook/ statement attested by his Bank. [SEBI Circular SEBI/HO/MIRSD/DOPI/CIR/P/2018/73 dated April 20, 2018]

The Listing Regulations provide that a listed company shall mandatorily print the bank account details of the shareholders on Dividend warrants and in

cases where the bank details of shareholders are not available, it shall mandatorily print the address of the shareholder on such payment instructions.

In addition, a listed company should ensure that the Dividend Master file (i.e. the file containing detailed list of shareholders entitled for Dividend) includes the Company Name, Folio No., DP ID / Client ID, Name of the first holder, Dividend payment date, Dividend amount, Payee details, Bank name, Bank account, Bank branch of the shareholder, MICR number, Dividend warrant number, details of payment made through electronic modes such as RTGS / NEFT. [SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/73 dated April 20, 2018]

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 despatch such Dividend warrant or cheque either by speed post or registered post to the concerned Member at his registered address.

The requirement for despatch of Dividend warrant or cheque of more than one thousand and five hundred rupees, by speed post, is applicable only to listed companies. However being a good practice, the Standard recommends that this practice should be observed by all companies.

Regulation 12 of Listing Regulations provides that the listed company shall use any of the electronic modes of payment approved by the Reserve Bank of India for the payment of Dividend. However, where it is not possible to use electronic mode of payment, 'payable-at-par' warrants or cheques may be issued.

It further provides that if the amount payable as Dividend exceeds one thousand and five hundred rupees, the 'payable-at-par' warrants or cheques shall be sent by speed post.

In case of a Nidhi company, where the Dividend payable to a Member is one hundred rupees or less, it shall be sufficient compliance 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.

Effect of exemption notification

By virtue of MCA exemption notification G.S.R.465(E) dated 5th June 2015 in case of Nidhi company Section 127 of the Act 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.

5.4 Initial validity of the Dividend cheque or warrant shall be for three months.

A cheque or warrant for payment of Dividend shall be valid for a period of three months from the date of issue.

In exercise of the powers conferred by Section 35A of the Banking Regulation Act, 1949, the Reserve Bank of India has directed that the cheques/drafts/pay orders/banker's cheques issued on or after 1st April 2012, should not be paid by the Banks if they are presented beyond the period of three months from the date of such instrument. [RBI Circular DBOD.AML BC.No.47/14.01.001/2011-12]

Where such cheque or warrant remains unpaid after the initial period of validity, a fresh instrument shall be issued in lieu thereof, within fifteen days of the receipt of a valid request in this regard and such instrument shall also have a validity of three months from the date of its issue.

Companies should ensure that the Dividend warrant is payable at par and that the initial validity of the Dividend warrant is three months, as it generally takes time for the Members to encash Dividend warrants. Further, if the cheque or warrant is revalidated, its validity should be for a period of three months.

Particulars of every fresh cheque or warrant issued by the company shall be entered in a Register of Dividend Warrants kept for the purpose indicating the name of the person to whom the instrument is issued, the number and amount of such instrument and the date of issue.

5.5 A duplicate Dividend cheque or warrant shall be issued only after obtaining requisite indemnity/ declaration from the concerned Member and after ascertaining the encashment status of the original Dividend cheque or warrant.

In case of defaced, torn or decrepit Dividend cheque or warrant, a duplicate instrument may be issued on surrender of such defaced, torn or decrepit instrument to the company.

If a company receives a request for revalidation of a Dividend warrant, it should credit the proceeds of such Dividend to the bank account of the Member through electronic mode if requisite bank details for such electronic remittance are made available by the Member. If electronic remittance is not possible, the

company should either revalidate the warrant or issue a fresh warrant or a demand draft in lieu thereof.

In case of non-receipt of Dividend warrant by the Shareholder and if the same is not returned undelivered to the company, a duplicate warrant may be issued by the company after verifying the encashment status.

Particulars of every duplicate Dividend cheque or warrant issued as aforesaid shall be entered in a Register of Duplicate Dividend Warrants kept for the purpose, indicating the name of the person to whom the instrument is issued, the number and amount of the instrument in lieu of which the duplicate instrument is issued and the number & date of issue of such duplicate instrument.

The company should issue a duplicate Dividend warrant on receipt of a request in this regard in writing from the Member.

Where the Dividend warrant has been lost in transit or misplaced by the Member, the electronic remittance of such Dividend or a duplicate Dividend warrant should be issued after the expiry of the validity period of the original Dividend warrant and after ascertaining the payment status by reconciliation of the bank account.

However, the company may issue a duplicate Dividend warrant even before the expiry of the validity period of the original Dividend warrant that has been lost or misplaced, subject to compliance of the following:

- (i) The Member has submitted requisite declaration/ indemnity/affidavit to the company along with the request for issue of duplicate Dividend warrant.*
- (ii) The company has ascertained the payment status of original Dividend warrant by reconciliation of the bank account.*
- (iii) The necessary instructions for stop payment of original Dividend warrant has been issued to the Dividend banker.*

Initially, the company should credit the proceeds of such unpaid Dividend directly to the bank account of the Member through electronic mode if requisite bank details for such electronic remittance are made available by the Member. If electronic remittance is not possible, the company should issue a fresh warrant or a demand draft in lieu thereof.

*A specimen of declaration for issue of duplicate Dividend warrant is placed at **Annexure-V**.*

5.6 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.

5.7 Dividend shall be paid proportionately on the paid-up value of shares.

Unless the Articles provide otherwise, Dividend shall be paid in proportion to the amount paid-up on the shares and for the portion of the period of the financial year in respect of which it is paid. If any shares are issued in between the financial year on the terms that they shall rank for Dividend from a particular date, Dividend on such shares shall be paid accordingly.

A company may, if so authorised by its articles, pay Dividends in proportion to the amount paid-up on each share. [Section 51 of the Act]

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. [Regulation 83(iii) of Table F of Schedule I to the Act]

5.8 Calls in arrears and any other sum due from a Member in relation to the shares of the company may be adjusted against Dividend payable to the Member.

In the case of listed companies, calls in arrears or any other sum due from a Member in relation to the shares of the company, may be adjusted against the Dividend payable to him after giving such notice, as may be required. In the case of other companies, if the Articles so provide, any other sums due from a Member, in a capacity other than as a Member, may also be adjusted against the Dividend payable to him.

In terms of the proviso to Section 127 of the Act, where Dividend has been lawfully adjusted by the company against any sum due to it from the shareholder, there is no contravention of the said Section.

The expression "lawfully adjusted" is an adjustment in accordance with the law and to ensure this the following conditions need to be satisfied in respect of the calls against which adjustment is sought to be done:

- (a) *the call in respect of which the Dividend is sought to be adjusted should be a valid call;*
- (b) *the power to adjust the Dividend has been exercised bona fide in the interest of the company; and*
- (c) *the Articles do not contain a restriction/ prohibition in this regard.*

Regulation 84 of Table F of Schedule I to the Act enables companies to adjust Dividends against any sum due from the Members 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.

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.

It is to be noted that the power to adjust the amount of Dividend can be exercised irrespective of whether or not the Articles contain a provision similar to Regulation 84 authorising such adjustment.

A listed company may adjust the amount of Dividend against calls in arrears or any other sums due from a Member in the capacity of a Member. In the case of other companies, sums due from a Member in a capacity other than as a Member may also be adjusted against the Dividend payable to the Member if the Articles of the company so provide.

If the amount is to be paid in advance of calls on any shares, a listed company shall stipulate that such amount may carry interest but shall not confer a right to Dividend or to participate in profits. Further, a listed company shall not issue shares in any manner which may confer on any person, superior rights as to voting or Dividend vis-à-vis the rights on equity shares that are already listed. [Regulation 41(2) & (3) of Listing Regulations]

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.*

5.9 No Dividend shall bear interest against the company except in case of default in payment of Dividend or despatch of Dividend warrant/cheque within the prescribed period.

However, no default shall be deemed to have been committed, if –

- (a) the Dividend could not be paid by reason of the operation of any law;
- (b) a Shareholder has given directions to the company regarding the payment of Dividend and those directions cannot be complied with and the same has been communicated to the concerned Shareholder;
- (c) there is a dispute regarding the right to receive the Dividend;

- (d) the Dividend has been lawfully adjusted by the company against any sum due to it from the Shareholder; or
- (e) for any other reason, the failure to pay the Dividend or to post the cheque or warrant within the prescribed period was not due to any default on the part of the company.

No Dividend shall bear interest against the company. [Regulation 88 of Table F of Schedule I to the Act]

Section 127 of the Act provides that where a Dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the Dividend, every director of the company shall, 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 one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues.

However, proviso to Section 127 specified the following exceptions where no offence shall be deemed to have been committed:

- (a) where the Dividend could not be paid by reason of the operation of any law;*
- (b) where a shareholder has given directions to the company regarding the payment of the Dividend and those directions cannot be complied with and the same has been communicated to him;*
- (c) where there is a dispute regarding the right to receive the Dividend;*
- (d) where the Dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or*
- (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.*

The failure to pay Dividend within the time specified is treated as an offence and it will not be open to the Members to waive the provisions of the Section. [C. Hariprasad v. Amalgamated Commercial Traders (P) Ltd AIR 1964 Mad. 519]

6. Unpaid Dividend

6.1 The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of its declaration shall be transferred to a special bank account titled as 'Unpaid Dividend Account' to be opened by the company in that behalf with any scheduled bank. Such transfer shall be made within seven days from the date of expiry of the thirty days period from the date of declaration of Dividend.

Where a Dividend has been declared by a company but has not been paid or claimed within thirty days from the date of its 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. [sub-section (1) of Section 124 of the Act]

Illustration

The Board of Directors of XYZ Ltd. declared an Interim Dividend on 13th August 2018 and the amount of Dividend was deposited in a separate bank account on 18th August 2018.

After a period of 30 days from the date of declaration of Dividend i.e. 12th September 2018, 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 2018.

The company shall within a period of ninety days of transferring such amount to 'Unpaid Dividend Account' prepare a statement containing the names, last known addresses and the amount of Dividend to be paid to each of the Members. Such statement shall be uploaded on the website of the company, if any, and also on the website specified by the Central Government for this purpose.

Sub-section (2) of Section 124 of the Act provides that the company shall, within a period of ninety 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 amount to be paid to each person and place it on the website of the company, if any, and also on any other website approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

Such statement shall remain on the website(s) till such time the unpaid or unclaimed Dividend is transferred to the Investor Education and Protection Fund (the Fund) and be updated by the company at regular intervals.

To ensure uniformity in disclosure requirements, the Standard provides that such statement be updated regularly and placed on the website till such time the unpaid or unclaimed Dividend is transferred to the Fund.

Any person claiming to be entitled to any amount transferred to the Unpaid Dividend Account may apply to the company for payment of such amount.

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. [SEBI Circular SEBI/HO/MIRSD/DOPI/CIR/P/2018/73 dated April 20, 2018]

It is a common corporate practice that companies open a separate Dividend account and transfer the entire quantum of Dividend to such account. After the expiry of 30 days of the declaration of the Dividend, the nomenclature of the account may be changed to "Unpaid Dividend Account" and the unclaimed Dividend continues to be in such account. In these circumstances there is no need for opening another account as Unpaid Dividend Account.

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, [(2003) 116 Comp. Cases 43 (AP)].

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 seven days from the expiry of thirty 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 twelve percent 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.

Effect of exemption notification

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.

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.

6.2 Any amount in the Unpaid Dividend Account of the company which remains unpaid or unclaimed for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account, along with interest accrued, if any, shall be transferred to the Investor Education and Protection Fund.

Any transfer to the Fund shall be made within thirty days from the expiry of seven years from the date of transfer of unpaid or unclaimed Dividend to the Unpaid Dividend Account.

Illustration

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.

Sub-section (5) of Section 124 of the Act provides that 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.

Any amount required to be credited by the company to the Fund, as provided under clauses (a) to (n) of sub-section (2) of Section 125 of the Act, shall be remitted into the specified branches of Punjab National Bank, which is the accredited Bank of the Pay and Accounts Office, Ministry of Corporate Affairs and other authorised banks engaged by the MCA-21 system, within a period of thirty days of such amounts becoming due to be credited to the Fund. [Rule 5(1) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.]

With respect to transfer of unpaid or unclaimed Dividend to the Fund, the company shall ensure compliance with the following requirements:

- (a) It shall send a statement to the Investor Education and Protection Fund (IEPF) Authority in the prescribed form containing the details of transfer of unpaid or unclaimed Dividend to the Fund and obtain a receipt from the IEPF Authority in evidence of such transfer. Such statement shall be furnished within thirty days of transfer of unpaid or unclaimed Dividend to IEPF.

Sub-section (5) of Section 124 of the Act provides that 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 the authority shall issue a receipt to the company as evidence of such transfer.

The company shall, along with the copy of the challan, furnish a Statement in Form No. IEPF 1 containing details of such transfer to the Authority within thirty days of submission of the challan. [Rule 5 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

- (b) It shall maintain record consisting of name, last known address, amount, Folio no., DP ID / Client ID no., certificate number, beneficiary details etc. of the persons in respect of whom unclaimed or unpaid Dividend is transferred to the Fund.

The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons in respect of whom unpaid or unclaimed amount has remained unpaid or unclaimed for a period of seven years and has been transferred to the Fund and the Authority shall have the powers to inspect such records. [Rule 5(6)(c) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

- (c) It shall not transfer any Dividend to the Fund where there is a specific order of Court or Tribunal or any other statutory authority restraining such transfer. It shall furnish details of such unpaid Dividend to the IEPF Authority in the prescribed form within thirty days from the end of the financial year.

Rule 6 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 deals with the manner of transfer of shares under sub-section (6) of Section 124 of the Act. Rule 6(3)(b) provides that in cases, where there is a specific order of Court or Tribunal or statutory authority restraining any transfer of such shares and payment of dividend, the company shall not transfer such shares to the Fund.

The company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of the financial year.

- (d) It shall file with the IEPF Authority within thirty days of the end of each financial year, a statement in the prescribed format containing the details of the unclaimed or unpaid Dividend due to be transferred to the Fund in the next financial year.
- (e) Within thirty days of closure of financial statements for a financial year, the company shall furnish another statement to the IEPF Authority stating therein reasons for deviation, if any, between the unclaimed or unpaid Dividend detailed in the earlier statement under (d) above and the actual Dividend transferred to the Fund.

Rule 8 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 requires a company to furnish:

(1) a statement to the Authority in Form No. IEPF 6 within thirty days of the end of the financial year stating therein the amounts due to be transferred to the Fund in the next financial year.

(2) a statement to the Authority within thirty days of the closure of its accounts for the financial year stating therein the reasons for deviation, if any, in the amounts detailed in sub-rule (1) above and the actual amounts transferred to the Fund.

Any claimant of unpaid or unclaimed Dividend transferred to the fund, shall be

entitled to apply for refund from the Investor Education and Protection Fund, after following the prescribed procedure.

****Procedure to claim refund from the Investor Education and Protection Fund (IEPF)***

Any person, whose unclaimed / unpaid amount and shares has been transferred by the company to the IEPF may claim refund by following the procedure as under:

- 1. Download Form IEPF-5 from the website of IEPF (<http://www.iepf.gov.in>) for filing the claim for refund.*
- 2. Submit the duly filled IEPF-5. On successful uploading, an acknowledgement will be generated indicating the SRN.*
- 3. Take a printout of the duly filled IEPF-5 and the acknowledgement issued after uploading the form.*
- 4. Submit an indemnity bond in original, copy of acknowledgement and self-attested copy of e-form along with the other documents as mentioned in Form IEPF-5 to the Nodal Officer (IEPF) of the company at its registered office in an envelope marked "Claim for refund from IEPF Authority".*
- 5. Claim forms completed in all aspects will be verified by the concerned company and based on company's verification report, a refund will be released by the IEPF Authority in favour of the claimants' Aadhaar linked bank account through an electronic transfer.*

****(Source: IEPF Website - <http://www.iepf.gov.in/IEPFA/refund.html>)***

The detailed requirements of Rule 7 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 which deals with the procedure for refund to claimants, are as given below:

- (1) 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 under the proviso to sub-section (6) of Section 124 of the Act or apply for refund under clause (a) of sub-section (3) of Section 125 of the Act or under the proviso to sub-section (3) of Section 125 of the Act, as the case may be, to the Authority by submitting an online application*

in Form IEPF-5 available on the website www.iepf.gov.in along with fee specified by the Authority from time to time.

- (2) The claimant shall, after making an application in Form IEPF-5 under rule (1), send the same duly signed by him along with the requisite documents as enumerated in Form IEPF-5 to the concerned company at its registered office for verification of the claim.*
- (2A) Every company which has deposited the amount with the Fund shall nominate a Nodal Officer for the purpose of coordination with the IEPF Authority and communicate the contact details of the Nodal Officer duly indicating his or her designation, postal address, telephone and mobile number and the company's authorised e-mail ID to the IEPF Authority. The company shall display the name of the Nodal Officer and his e-mail ID on its website.*
- (3) The company shall, within fifteen days from the date of receipt of the claim, send a verification report to the Authority in the format specified by the Authority along with all the documents submitted by the claimant.*

In case of non-receipt of documents by the Authority after the expiry of ninety days from the date of filing of Form IEPF-5, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish a response within a period of thirty days.

- (4) After verification of the entitlement of the claimant-
 - (a) 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*
 - (b) 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.**
- (5) The Authority shall, in its records, cause a note to be made of all the payments made under the above sub-rule (4).*
- (6) An application received for refund shall be disposed off by the Authority within sixty days from the date of receipt of the verification report from the concerned company, complete in all respects and any delay beyond sixty 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.

- (7) If the application is incomplete or not approved, a communication shall be sent to the claimant and the concerned company by the Authority detailing deficiencies in the application.*

In case of non-receipt of rectified documents by the Authority after the expiry of ninety days from the date of such communication, the Authority may reject Form IEPF-5, after giving an opportunity to the claimant to furnish response within a period of thirty days.

- (8) If the claimant is a legal heir or successor or administrator or nominee of the registered share holder, he has to ensure that the transmission process is completed by the company before filing any claim with the Authority.*

- (9) If the claimant is a legal heir or successor or administrator or nominee of any other registered security or in cases where the request for transfer or transmission of shares is received after the transfer of shares by the company to the Authority, the company shall verify all the requisite documents required for registering transfer or transmission and shall issue a 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.*

- (10) The claimant shall file only one consolidated claim in respect of a company in a financial year.*

- (11) 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 the company for any liability arising out of any discrepancy in the verification report submitted etc., leading to any litigation or complaint arising thereof.*

6.3 Before transferring any unclaimed or unpaid Dividend to the Investor Education and Protection Fund, the company shall give an individual intimation to the Members in respect of whom such unclaimed Dividend is being transferred, at least three months before the due date of such transfer.

The company shall intimate the concerned Members individually of the amount of Dividend remaining unclaimed or unpaid which is liable to be transferred to the Fund and advise the Members to claim such amount of Dividend from the company before such transfer.

Rule 6(3)(a) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 requires a company to intimate the concerned shareholder at least three months before the due date of transfer of shares to the Investor Education and Protection Fund.

Though the above requirement is in respect of "transfer of shares", being a good corporate governance practice, the Standard extends the same requirement to transfer of unpaid/unclaimed Dividend.

6.4 Any interest earned on the Unpaid Dividend Account shall also be transferred to the Investor Education and Protection Fund.

If the Unpaid Dividend Account is kept as a fixed deposit or in any account on which interest is earned, the interest earned shall also be transferred to the Fund.

6.5 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.

In case any Dividend is paid or claimed for any year during the said period of seven consecutive years, such shares shall not be transferred to the Fund.

Sub-section (6) of Section 124 of the Act provides 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 the Investor Education and Protection Fund.

While effecting such transfer, the company shall send a statement to the Authority in Form No. IEPF 4 containing details of such transfer. [Rule 6(5) Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

Further it is clarified that 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. [Explanation to sub-section (6) of Section 124 of the Act]

Before transfer of such shares to the Fund, the company shall send individual notice to the concerned Members at least three months in advance at his latest

available address registered with the company giving details of the Members and the shares due for transfer to the Fund. Such details shall also be uploaded on the website of the company, if any.

A notice shall also be simultaneously published in leading newspapers in English and regional language having wide circulation in the place where the registered office of the company is situated, informing the concerned Members that the names of such Shareholders whose shares are due for transfer and their folio number or DP ID - Client ID are available on company website duly mentioning the website address.

Rule 6(3)(a) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 provides that the company shall inform the shareholder concerned regarding transfer of shares, at the latest available address, three months before the due date of transfer of shares and also simultaneously publish a notice in a leading newspaper in English and the regional language having wide circulation, informing the concerned shareholders that the names of such shareholders and their folio number or DP ID - Client ID are available on company's website, duly mentioning the website address.

The company shall not transfer any shares or Dividend amount to the Fund, where there is a specific order of Court or Tribunal or any other statutory authority restraining any transfer of shares and payment of Dividend or where such shares are pledged or hypothecated under the provisions of the Depositories Act, 1996.

Rule 6(3)(b) of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 provides that where there is a specific order of a Court or the Tribunal or any other statutory Authority restraining any transfer of such shares and payment of Dividend, the company shall not transfer such shares to the Fund.

Any claimant of shares transferred to the Fund, shall be entitled to claim such shares in accordance with such procedure and on submission of such documents as prescribed.

Proviso to Section 124(6) of the Act provides that any claimant of shares transferred to the fund 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.

The detailed procedure required to be followed is mentioned under Paragraph 6.2.

7. Revocation of Dividend

7.1 Dividend, once declared, becomes a debt and shall not be revoked.

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.

8. Preservation of Dividend Cheques, Warrants and Dividend Registers

8.1 Dividend cheques or warrants returned by the Bank, after payment thereof, and the Dividend Registers shall be preserved by the company for a period of eight years.

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.

9. Disclosure

9.1 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.

9.2 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 Division I (applicable to companies which are not required to comply with Ind AS) - the amount lying in the Unpaid Dividend Account together with interest accrued thereon should be disclosed under the head "Other Current Liabilities".*
- (ii) In case of Division II (applicable to companies which are required to comply with Ind AS) - such amount should be disclosed under the head "Current Liabilities" under sub-head "Other Financial Liabilities".*

9.3 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.

9.4 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.

10. Additional Compliances for Listed Company

In addition to the above, a Listed Company shall ensure compliance with the requirements covered under **Annexure 'A'**.

Annexure 'A'**Additional compliances applicable to Listed Companies**

A Listed Company shall conform to the following:

- (i) The equity shares allotted by the company shall rank *pari passu* with the existing equity shares for the purpose of payment of Dividend, if the same are in existence as on the record date/ book closure.
- (ii) The company shall not issue shares in any manner which may confer on any person, superior rights as to voting or Dividend vis-à-vis the rights on equity shares that are already listed.
- (iii) The company shall give prior intimation to the Stock Exchange(s) about the Board Meeting in which Dividend is proposed to be recommended / declared, atleast two working days in advance excluding the date of the meeting and the date of the intimation.
- (iv) The company shall intimate the Stock Exchange(s), the record date fixed for the purpose of payment of Dividend at least seven working days in advance excluding the date of the intimation and the record date.
- (v) The company shall recommend or declare Dividend at least five working days before the record date fixed for the purpose. The said period of five working days is excluding the date of declaration/recommendation of Dividend and the record date fixed for the purpose.
- (vi) The company shall disclose the outcome of the Board Meeting held to consider the Dividend matters, to the Stock Exchange(s) within 30 minutes of closure of the meeting. In case of recommendation / declaration of Dividend, the intimation shall also include the date on which such Dividend shall be paid or Dividend warrant shall be despatched.
- (vii) 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 despatch such Dividend warrant or cheque by speed post to the concerned Member at the registered address.
- (viii) The company shall declare and disclose Dividend on per share basis only.

- (ix) The company shall not forfeit unclaimed Dividends before the claim becomes barred by law and such forfeiture, if effected, shall be annulled in appropriate cases.
- (x) Top five hundred Listed Companies based on market capitalisation as on 31st March every financial year, shall formulate a Dividend Distribution Policy covering the prescribed parameters by Securities and Exchange Board of India (SEBI). Such policy shall be disclosed in the Annual Report of the company and also be placed on its website.
- (xi) The company shall disclose in its Corporate Governance Report the Dividend payment date under the General Shareholder Information Section.

Annexure-I**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 2018, 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 2018 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 _____ Bank 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-II

Specimen Resolution for Declaration of Dividend by Members at an AGM

RESOLVED THAT a Dividend of Rs. ____/- (at the rate of ... percent) per equity share of Rs. ____/- each fully paid up, of the Company, be and is hereby declared for the financial year ended 31st March and that the same be paid as recommended by the Board of Directors, out of the profits of the Company for the financial year ended 31st March

Annexure-III**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 five hundred listed companies (based on their market capitalization calculated as on the 3rd 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.

Annexure-IV**Specimen of 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 2018 to those Members of the Company whose names would appear on the Register of Members of the Company on the day of, 2018 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 authorised 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-V

**Declaration for Issue of Duplicate Dividend Warrant
(*Applicable for amount of Dividend not exceeding Rs. _____)**

Date: _____

To

**Investor Service Department
(Name of Company)
Address**

Dear Sir,

Sub: Issue of Duplicate Dividend Warrant(s).

I/We, _____, wish to inform you that the original Dividend warrant(s) in respect of financial year _____, mailed to us, have been:

(i) Expired and the original Dividend warrant is enclosed

OR

(ii) Lost in postal transit / otherwise

(I / We confirm that the said Dividend warrant(s) are not encashed through my/our bankers and if the original dividend warrants are found, the same shall be returned to the Company for cancellation.)

I / We hereby request the Company to issue duplicate Dividend warrant(s) of Rs. _____ [in lieu of the original Dividend warrant(s)] for the financial year _____, in respect of the shares covered under Folio No./ DPID / CLIENT ID _____.

I/We hereby undertake to reimburse the Company, all claims / demands / liabilities / expenses which may be incurred by the Company on account of issuing the duplicate Dividend Warrant(s). If it is discovered that the original Dividend Warrant(s) have already been encashed by me / us, I / we shall refund the Company the amount of the original warrant(s) together with interest @ _____ p.a.

** If the amount of dividend exceeds Rs. _____, then the Letter of Undertaking/Indemnity Bond executed on a Non-Judicial stamp paper should be furnished to the Company for issue of duplicate dividend warrant.*

In case of default in such reimbursement / refund, I / we hereby authorise the Company to adjust the said sum from any future payments due to me/us under the above Folio(s).

Yours truly,

<i>(Name(s) of the Applicant(s)</i>	<i>Signature(s)</i>
1. _____	_____
2. _____	_____

Address of the first Applicant: _____

<i>WITNESS - 1:</i> _____	<i>Witness-2:</i> _____
<i>(Name with Signature)</i>	<i>(Name with Signature)</i>

<i>Address:</i> _____	<i>Address</i> _____
_____	_____
_____	_____

Place: _____

Date: _____
