

SS -3
SECRETARIAL STANDARD ON
“DIVIDEND”

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The following is the text of the Secretarial Standard-3 (SS-3) on “Dividend”, issued by the Council of the Institute of Company Secretaries of India.

Adherence to this Secretarial Standard is recommendatory.
(In this Secretarial Standard, the Standard portions have been set in bold type. These shall be read in the context of the background material which has been set in normal type. Both the Standard portions and the background material have equal authority).

****EFFECTIVE DATE-1st January, 2018.***

SCOPE OF APPLICABILITY

Chapter VIII Declaration and Payment of Dividend

Section 123-127

123. (1) No dividend shall be declared or paid by a company for any financial year except—

(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of ⁵[both:].

⁶["**Provided** that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or"]

(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:

Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:

³**[Provided further** that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and ⁷**[transferred by the company to the free reserves]**, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:]
In case of Government Company - Second proviso of Section 123(1) shall not apply in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments. - Notification dated 5th june, 2015.

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.

¹**[Provided also** that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.]

(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

(3) ⁸[The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.] Substituted by the Companies (Amendment) Act, 2017

⁴[(4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.]

In case of Government Company Section 123(4) shall not apply in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company. - Notification dated 5th June, 2015.

²[(5) 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:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further 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.]

(6) A company which fails to comply with the provisions of [sections 73](#) and [74](#) shall not, so long as such failure continues, declare any dividend on its equity shares.

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 this Standard, capitalization of profits in the form of bonus shares is not Dividend.

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

This Standard prescribes a set of principles in relation to the declaration and payment of Dividend and matters related thereto.

The principles set out herein 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. These are equally applicable to Final as well as Interim Dividend unless otherwise stated.

The principles enunciated in this Standard are in conformity with the provisions of the 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.

This standard 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 Standard 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 there under.

“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.

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.

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.

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.

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.

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.

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.

1.2.2 Interim Dividend shall not be declared out of Free Reserves.

Declaration of Dividend

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

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

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.

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

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

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

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.

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

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

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

Dividend in Abeyance

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.

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.

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

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

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

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.

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.

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.

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.

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.

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.

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.

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

Revocation of Dividend

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

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.

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.

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.

Additional Compliances for Listed Company

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

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.

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.

THANKING YOU

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