

Chapter 10 - Audit of Dividend

SEC. 123 – DECLARATION OF DIVIDEND

Sec. 123(1)	<p>Sources of Dividend:</p> <ul style="list-style-type: none"> • CY Profits after providing dep. • Profits of previous FYs after providing dep. • Money provided by CG/SG. <p>Transfer to Reserves: Company may transfer appropriate %age of profits to reserves. (Optional)</p> <p>Set off of Previous Losses: Dividend cannot be declared unless carried over losses & dep. not provided in earlier years are set-off against profit of CY.</p>
123(2)	Dep. shall be provided in accordance with Sec. 123(2).
123(3) – Interim Dividend	<ul style="list-style-type: none"> • BOD may declare Interim dividend during any FY out of Surplus in P & L A/c or CY profits. • It cannot be higher than avg dividend of preceding 3FYs, if company has incurred losses in current FY upto the end of quarter immediately preceding the declaration of interim dividend.
123(4)	Dividend including interim dividend shall be deposited within 5 days of declaration in a separate Bank Account.
123(5)	Dividend shall be paid in cash only and to the registered shareholder or his order or his banker.
123(6)	Company which fails to comply with Secs. 73 & 74 shall not so long as failure continues declare any dividend on its equity shares.

Declaration of dividend out of Reserves

Proviso to Sec. 123(1):

- Dividend out of reserves shall be made in accordance with Rules.
- Dividend can be declared only out of free reserves.

Rules 3 of Companies Declaration and Payment of Dividend Rules, 2014

Dividend out of reserves is subject to following conditions:

1. Rate of Dividend \leq Average rate of preceding 3 years.
2. Amount withdrawn from reserves \leq 10% of PUC & free reserves.
3. Balance of Reserves after withdrawal \geq 15% of PUC.
4. Amount withdrawn from reserves shall be first utilised to set off the losses of Current FY.

SEC. 124 – UNPAID DIVIDEND ACCOUNT

124(1)	Dividend declared but not paid or claimed within 30 days from date of declaration, shall be transferred to unpaid dividend account within 7 days from the expiry of 30 days.
124(2)	With 90 days from transfer of unpaid dividend to unpaid dividend account, company shall prepare a statement containing name, address and unpaid dividend and place it on website of the company and on other website as approved by CG in prescribed manner.
124(2)	Any default in transferring the amount to unpaid dividend account will attract interest @ 12% p.a. to be paid to members in proportion to amount remaining unpaid.
124(4)	Any person entitled for money transferred to unpaid dividend account may apply to company for payment of money claimed.
124(5)	Money transferred to unpaid dividend account remaining unclaimed for 7 years shall be transferred to IEPF.
124(6)	<ul style="list-style-type: none"> • All shares in respect of which dividend has not been paid for 7 consecutive years or more shall be transferred to IEPF. • Claimant of shares shall be entitled to claim the transfer of shares from IEPF.
124(6)	For non-compliance, company is punishable with fine ranging from Rs. 5 Lacs to Rs. 25 Lacs. Officer in default – Rs. 1 Lac to Rs. 5 Lac.

SEC. 125 – IEPF

Amount to be credited to IEPF

- (a) Amount given by C.G. by way of grants;
- (b) Donations given by C.G., S.G., companies or any other institution;
- (c) Amount in the Unpaid Dividend Account;
- (d) Amount in the general revenue account of the C.G.;
- (e) Amount lying in the IEPF u/s 205C of the Companies Act, 1956;
- (f) the interest or other income received out of investments made from the Fund;
- (g) the amount received u/s 38(4);
- (h) the application money received by companies and due for refund;**
- (i) matured deposits with companies;**
- (j) matured debentures with companies;**
- (k) interest accrued on amounts referred to in clauses (h) to (j);
- (l) sale proceeds of fractional shares arising out of issue of bonus shares, merger & amalgamation;
- (m) redemption amount of preference shares remaining unpaid for 7 or more years; &
- (n) such other amount as prescribed.

Utilisation of IEPF

- (a) Refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged amount among eligible applicants;
- (d) reimbursement of legal expenses incurred in class suits u/ss 37 and 245;
- (e) any other purpose incidental thereto.

Audit of Dividend

Steps for Verification

1. Examine MOA & AOA to ascertain dividend rights of different classes of shares.
2. Confirm that the dividend is made out of distributable profits having regard to the provisions of Sec. 123.
3. If the dividend is made out of reserves, examine the compliance of conditions as set out in the rules.
4. Inspect the shareholders' Minute Book to verify the amount of dividend declared.
5. Examine whether the amount of dividend payable has been deposited in a separate bank account within five days of declaration of dividend.
6. Check the particulars of members as are entered in the Dividend List by reference to the Register of Members.
7. Check the amount of dividend paid with the dividend warrants surrendered.
8. Verify whether dividend which is unclaimed or unpaid within 30 days of date of declaration has been transferred to "Unpaid Dividend Account" within 7 days from the date of expiry of 30 days.
9. Verify whether unpaid dividend amount which remain unpaid or unclaimed for a period of 7 years from the date of such transfer transferred to IEPF.

Miscellaneous Provisions

Sec. 127	<p>Penalty for failure to pay dividend within 30 days:</p> <ul style="list-style-type: none"> • Company – Simple Interest @18% p.a. • Directors – Imprisonment up to 2 years and fine which shall not be less than Rs. 1,000 per day of default.
Sec. 126	<p>Right of dividend to be kept in Abeyance</p> <p>Where any instrument of transfer has been delivered to the company, but transfer not yet registered, the company shall transfer the dividend in unpaid dividend account unless the registered holder authorises the company to pay such dividend to transferee</p>
Revocation of Dividend	<ul style="list-style-type: none"> • Regulation 80 of Table F of Schedule I - Company in general meeting may declare dividends, but it shall not exceed amount recommended by Board. • Sec. 127-Dividend has to be paid within 30 days from date of declaration. • Dividend once declared, becomes a debt against the company and cannot be revoked except in certain situations. <p>Note: Final Dividend once declared in the AGM cannot be revoked by BOD. However, before declaration of dividend in the AGM, dividend recommended by BOD may be revoked for just and proper reasons.</p>
Disclosure requirements for proposed dividend	<ul style="list-style-type: none"> • Schedule III - Amount of dividend proposed to be distributed to equity and preference shareholders for the period and the related amount per share to be disclosed separately. It also requires separate disclosure of the arrears of fixed cumulative dividends on preference shares. • AS-4, "Contingencies and Events Occurring after the Balance Sheet Date" - if an enterprise declares dividends to shareholders after the balance sheet date, the enterprise should not recognise those dividends as a liability at the balance sheet date unless a statute requires otherwise. Such dividends should be disclosed in notes.