PART XVIII

DIVIDEND

Chapter 1

Declaration of Dividend

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Dividend means the portion of the profit received by the shareholders from the company's net profit, which is legally available for distribution among the members. Therefore, dividend is a return on the share capital subscribed for and paid to its shareholders by a company. Dividend defined under section 2(14A) of the Companies Act, 1956, includes any interim dividend.

1. Basic difference between dividend and interest

Dividend is paid on the company's paid up share capital including equity and preference shares whereas interest is generally paid on debentures, loans and borrowings. Dividend is an appropriation of profit whereas interest is considered charge against profit.

2. Types of dividend

There may be two types of dividend:—

(*a*) Interim dividend, and

(*b*) Final dividend.

3. Meaning of Interim dividend

Dividend is said to be an interim dividend, if it is declared by the Board of directors between two annual general meetings of the company. However, all the provisions relating to the payment of dividend shall be applicable on interim dividend also.

4. Meaning of Final dividend

Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the company.

5. Payment of dividend

5.1. Payment of dividend in proportion to the time and amount paid

Section 93 of the Act, states that a company may, if so authorised by its articles, pay dividend in proportion to the amount paid up and time of receipt, on each share where a larger amount is paid on some shares than on others. Therefore, if the articles of the company does not authorise payment of dividend in proportion to the amount paid up on each share, the payment of dividend will have to be made only in proportion to the called up amount on the nominal value of the share capital of the company.

5.2. Dividend has to be paid to all the shareholders in the same ratio, irrespective of time factor

In case of a listed company, as per the directions of the SEBI and listing conditions, the company has to make dividend to all the shareholders on *pari passu*, with the existing shareholders of the company, irrespective of the time an amount paid by them. It means even if the company has made allotment of new shares on 28th March, 2006, the new shareholders shall be eligible to participate and receive the dividend for whole of the year, irrespective that they have bring the capital only on 28th March, 2006. Further that if the company has issued shares after closing of the financial year, but before book closure date for payment of dividend, say on 25th June, 2006 these share capital, even were not in exist on the closing of the financial year 31st March, 2006, will also be eligible to participate for dividend for whole of the year 2005-06, because the shares were in existence on the record date/book closure. It may be noted that the SEBI rules and regulations supersede the provisions of the Companies Act.

6. Compulsory requirement for making provisions for depreciation before payment of dividend

In terms of the provisions of section 205 of the Act, no company can pay dividend in any year without charging depreciation in the profit and loss account for the current year and that there is no balance of un provided depreciation of any earlier year or years.

However, the Central Government has power to allow any company in the public interest to pay dividend for any financial year out of the profits for that year or any previous financial year without providing for depreciation. [Section 205(1)(*c*)] (See Appendix 4 for e-Form of application). The application is required to be filed to the Central Government electronically.

6.1. Guidelines for providing depreciation before payment of dividend

1. Provision for depreciation as per section 205(2), is a condition precedent for declaration or payment of dividend.
2. Depreciation can be provided in any of the following ways:
   (*a*) To the extent specified in section 350; or
   (*b*) In respect of each item of depreciable asset;
   $$\text{Depreciation} = \frac{\text{95\% of original cost of asset}}{\text{Period of life of the asset}}$$
   (*c*) Any other basis approved by the Central Government which has the effect of writing off by way of depreciation 95% of the original cost to the company of a depreciable asset on the expiry of the specified period; or
   (*d*) Any other basis approved by the Central government incase where no rate of depreciation been prescribed in respect of any asset under Schedule XIV of the Companies Act, 1956 or rules thereunder.
3. The original cost is only for the purpose of determining the quantum of annual installment of depreciation under the straight-line method and determination of the specified period in accordance with section 205(*a*).

4. Specified period in respect of any depreciable asset means the number of years at the end of which 95% of the original cost of the asset will have been provided for by way of depreciation, if depreciation were to be provided in accordance with the provision of section 350.
5. Specified period is determined at the time of purchase of an asset in accordance with the procedures laid down in section 205(5) read with section 350 with reference to the rate of depreciation.
6. Specified period once determined may not be re-computed.
7. If a company has provided for depreciation on any asset in the manner mentioned in section 205(2)(*b*) or (*c*), and such asset is sold, discarded, demolished or destroyed, then the written value of such asset at the end of the financial year in which it is sold, discarded, demolished or destroyed, shall be written off in accordance with the proviso of section 350.
8. According to the proviso of section 350, if there is any excess of the written down value of such asset over its sale proceeds or its scrap value, such excess value shall be written-off in the financial year in which the asset is sold, discarded, demolished or destroyed.
9. The Central Government may, if it thinks necessary to do so in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year(s) without providing for depreciation.
10. If a company has not provided for depreciation for any previous financial year(s) then the company shall before declaring or paying dividend for any financial year, provide for such depreciation.
11. Arrears of depreciation, if any, for any previous year(s) must also be provided for, before declaring any dividend.

7. Payment of dividend in case where the company has incurred loss in a previous year

Section 205(1)(*b*) provides that if a company has incurred loss in any previous year or years, then the amount of loss or an amount which equal to the amount provided for depreciation for the year or those years whichever is less shall be set off against the profit of the company for the year for which dividend is proposed to be declared or paid. Therefore, it cannot pay dividend in the latter year unless the company has adjusted the amount of loss against the profits of the year referred to above. The company shall ensure that the previous year's depreciation will be duly provided before paying dividend.

8. Requirement for compulsory transfer of certain percentage of profit to reserves

Every company shall transfer a portion of its net profit of the year to general reserve before deciding to pay dividend. The amount of net profit transferred to reserve shall vary with the rate of dividend proposed to be paid and as per the Companies (Transfer of Profits to Reserves) Rules, 1975. (Appendix 1)

The Department of Company Affairs has considered and also issued clarifications *vide* Circular No. 8/76 [1/1/76-CL-V], dated 18-5-1976 and 12/76 [1/1/76-CL-V), dated 10-6-1976 in that matter on various points raised before it as under:

Q: Whether arrears of depreciation mentioned in sub-section (1) of section 205 should also be provided before arriving at the profits for the purpose of transfer of specified percentage thereof to reserve in terms of rule 2 of the Transfer of Profits to Reserves Rules?

A: Yes, arrears of depreciation mentioned in sub-section (1) should also be provided.

Q: Whether the term "Current Profits" used in rule 2 refers to profits after tax or before tax?

A: It refers to profits after tax.

Q: Whether the profits transferred to development rebate reserve should be excluded in working out current profits for ascertaining the amount to be transferred to reserve under the rules?

A: The current profits mean profits after statutory transfer to the development rebate reserve.

Q: Whether reference to dividend made in the rules is to both equity and preference dividend or to equity dividend alone?

A: The reference is to equity dividend and also to that portion of dividend relating to participating preference shares over and above the fixed rate of preference dividend.

Q: Whether transfer to Development Rebate Reserve; Capital Reserve or Special Reserve will meet the requirement of transfer to reserves under the rules?

A: No.

Q: Whether for the purposes of rule 3(*i*) it is necessary to declare a dividend?

A: Yes.

Q: Whether these rules make the provisions of section 5A of the Companies (Temporary Restrictions on Dividend) Act, 1974 mandatory in certain cases?

A: Since there is no inconsistency with the provisions of the Companies (Temporary Restriction on Dividend) Act, 1974, the provisions of these rules will have to be complied with.

Q: Whether after transfer of 10 per cent of the current profits to reserve, the remaining undistributed profits could be carried forward in the Profit & Loss Account?

A: The rules do not prohibit a company from carrying forward any balance of current Profit & Loss account without transferring them to reserves.

Q: Whether for working out of the average rate of dividends for the purpose of rule 2(1) no dividend years should be excluded?

A: No.

9. Bogus profit to declare dividend

Where the expenses or payments are obviously improperly charged to capital, and so charged simply to swell the apparent profits and to make it appear that dividends may be properly declared, dividends declared and paid under such circumstances, cannot be treated as legitimately paid out of profits. [*Dovery* v *Cory* (1901) AC 477 (HL)].

If directors by manipulating accounts show profits where there are none, and dividends are paid out of capital, directors may be compelled to replace dividend thus paid out. [*Exchange Banking Co., In re* (1882) 21 Ch. D. 519].

In case of a wasting asset, it is not necessary to make provision for its replacement before declaring dividends; in such a case, dividends cannot be said to be paid out of capital. [*Lee* v *Neuchatel Asphalte Co.* (1886-90) All. ER 947 (CA)].

For the purpose of prohibition of payment of dividend out of capital, capital means capital according to the Act and not the goods or things on which capital is laid out. [*Lubbock* v *British Bank of South America* (1892) 2 Ch. 198 (CA)].

10. Restriction on payment of dividend on equity shares without dividend on preferential shares

A company, which has failed to redeem its preference shares as per section 80A, so long as such failure continues, shall not declare any dividend on its equity shares. [Section 205(2B)]

11. Final dividend to be declared at an annual general meeting

Normally a dividend is declared at an annual general meeting where, among other things, the annual accounts are considered and adopted. In that condition, it is beyond the powers of the company to declare a further dividend at a general meeting after the declaration of dividend at the annual general meeting. However, a company, which could not declare a dividend at an annual general meeting, may declare the dividend at a subsequent general meeting.

It has also been clarified by the Department of Company Affairs *vide* Circular No. 22 [7/9/74-CL-II], dated 25-9-1975 that while there is no provision in the Companies Act prohibiting the declaration of dividend at a general meeting other than the annual general meeting of the company (*vide* Regulation 85 of Table A of Schedule I) unless otherwise, provided in the Articles of Association, it is beyond the powers of a company to declare a further dividend after the declaration of dividend at the annual general meeting. In this connection attention is invited of all concerned to the decision of the Calcutta High Court in the matter of *Biswa Nath Pd. Khaitan* v *New Central Jute Mills Ltd*. (1961) 31 Comp Cas 125. Thus, a company, which could not declare a dividend at an annual general meeting, may do so at a subsequent general meeting. On the other hand, where a company has declared a dividend at a general meeting neither the company nor its directors can declare a further dividend for the same year.

12. Declaration of further dividend for second time out of past year's profits is illegal

In case if a public limited company, in its annual general meeting held in 1999, approved the declaration of a dividend at a certain percentage and appropriations were made to various reserves from the surplus profits, if the company sought to convene an extraordinary general meeting and declare dividend in addition to what had already been declared at the annual general meeting, rescinding thereby the appropriations made in the earlier meeting. The Department felt that this would also have enabled those, who become shareholders of the company subsequent to the annual general meeting, to shares in the profits of the past years to which they are not entitled. The legality of this proposal was questioned by several shareholders in a court of law, and such declaration of a further dividend for the second time out of the past years profits was held to be illegal and *ultra vires* of the Articles of Association and the Companies Act by the Calcutta High Court.

13. Declaration of dividend out of previous years profits transferred to the reserves

In case if the current year's net profits are not adequate or not available, a company may draw the required amount from reserves created out of transfer of profit in previous years as per the Companies (Declaration of Dividend out of Reserves) Rules, 1975 (Appendix 2) subject to the following conditions:—

(*i*) The rate of dividend declared shall not exceed the average rate of dividend declared in the five years preceding the current year or 10% of the paid-up capital, whichever is less.

(*ii*) The maximum amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves shall not exceed 10% of the paid-up capital and reserves and the amount so drawn shall be first utilised for writing off losses incurred before declaration of any dividend in respect of preference or equity shares.

(*iii*) The balance remaining in the reserves after such drawal shall not fall below 15% of the paid-up share capital.

However, the above said conditions will not be applicable for utilisation of any profit earned in any previous years and remains as surplus balance of profit in the profit and loss accounts and carried to the balance sheet of the company.

14. Articles must authorise for payment of dividend

Unless there is a suitable provision in the articles for authorisation for payment of dividend, the Board will not be able to recommend dividend for the approval of members. Similarly, unless there is a provision in the articles authorising the Board to approve for payment of interim dividend, the Board cannot take any action in respect of payment of interim dividend.

If the articles do not contain the provisions for authority to pay dividend, it should be suitably amended before taking any decision by the Board of directors of the company.

15. Recommendation of dividend by the Board is compulsory

In the matter of payment of dividend or not in any financial year irrespective of the profit earned by a company in the financial year is left to the discretion of the Board to recommend or not to recommend dividend for any year. If the Board does not recommend any dividend, the company in general meeting cannot consider and approve any dividend for payment. The company in general meeting cannot also increase the rate of dividend recommended by the Board.

16. Board's recommendation can be withdrawn before communication to others

Since the director's recommendation of dividend is only a proposal, it can be withdrawn by the Board before it is included in the notice for the annual general meeting.

17. Dividend becomes unsecured debt against the company after approval in the general meeting

Where a dividend is approved by the shareholders at the annual general meeting, it becomes a debt against the company and it is deemed to be receivable by the members only in the year at which the members declared the dividend and not at the time when the dividend was recommended by the Board. [*Tarajan Tea Co*. (*P*) *Ltd*. v *CIT* (1994) 13 Corp LA 75 (Gau)].

18. Dividend shall be paid to registered shareholders and beneficial owners under CSDL/NSDL

Section 206 provides that no dividend shall be paid by a company in respect of any shares therein except:—

(*a*) to the registered holders of such shares or to his order to his bankers; or

(*b*) in case if the share warrants has been issued in respect of shares u/s 114, to the bearer of such warrants or to his bankers.

In the case of joint holdings, the dividend shall be paid to the person whose name is registered first in the books. It may be noted that the person whose name is named first in the application for shares is entered first in the Register of members. There will be no objection to send the dividend to any other jointholder, if a request is made to the company signed by all the jointholders.

In case if the shares are held in electronic mode, the dividend will be paid to the beneficiaries whose names as may be provided by the CDSL/NSDL to the Company or its registrar on the record date or date of book closure as the case may be.

19. Dividend warrants shall be posted/sent/credited within 30 days from the date of approval

Pursuant to section 207, where a dividend has been declared by a company, it has to be paid or the warrant in respect thereof has to be sent/posted within 30 days from the date of declaration to the shareholders entitled to the same. Dividend warrants in respect of interim dividend shall also be posted within 30 days from the date of approval of the Board of directors of the company.

If the above provision could not be followed for the following reasons, no offence shall be deemed to have been committed by the company:—

(*a*) where the dividend could not be paid due to reason of operation of law;

(*b*) where a shareholder has given directions to the company regarding the payment of dividend and those directions could not be complied with;

(*c*) where there is a dispute regarding the right to receive dividend;

(*d*) where the dividend has been lawfully adjusted by the company against any sum due from the shareholder; or

(*e*) where the delay is not due to default on the part of a company.

Where dividend is not paid or warrant have not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director shall, if he is knowingly a party to the default, be punishable with simple imprisonment up to three years and shall also be liable to a fine up to Rs. 1,000 per day during which the default continues. The company shall also be liable to pay interest at 18% per annum for the period of default.

Once a dividend warrant is posted at the registered address of the shareholder, it is deemed to have been paid within the meaning of section 205A. The section made failure to post the warrant, and not its non-receipt by the shareholder is an offence. The obligation to pay the dividend would be discharged when either is done. In the case of *Keebs Biochemicals Ltd.* v *RoC* (2002) CLC 1564 (AP) it was held that the company had deposited the unpaid dividend into the special dividend account unless the petitioners had got knowledge about non-encashment, the question of transferring that amount to an unpaid dividend account would not arise that amount was already in such an account.

The registered holder may ask the company to send the dividend to his banker or to any other person, which the company is bound to honour. In the case of joint holding if the dividend is payable to a person other than the registered holder, such a request shall be signed by all the holders.

20. Declaration of dividend should be unconditional

It has been advised by the Department of Company Affairs *vide* Circular No. 2/98 [F. No. 2/12/98-CL-VJ], dated 13th April, 1998 that the declaration of dividends by the companies should be unconditional and that they should not declare dividends including interim dividend subject to any conditions as aforesaid.

Company should take prior approval from financial institutions/banks wherever required before declaration of dividends.

This Department has also advised all Registrars of Companies that action should be initiated by them against all such companies who resort to such a practice and delay the payment of dividend to shareholders on such grounds.

21. Burden of proof on non-receipt of dividend

Wherever there is a complaint by the shareholder that, for a particular financial year, the company declared dividend, but he did not receive the dividend pursuant to the declaration, he can only establish (1) that the company declared a dividend for that the financial year, (2) that he was a shareholder who was legally entitled to receive the dividend pursuant to the declaration. The fact that he did not receive the payment cannot be established by the shareholder as it is a negative fact. A shareholder can only make an allegation in that behalf. Logically, the burden of proof that the dividend had in fact been paid to the shareholder or, at any rate, the steps recognised under law for the payment of the dividend due to the shareholder in fact were taken by the company could only be proved by the company and the persons responsible for the management of the company. The best method of proving the actual receipt of the dividend by the shareholder would be to establish by proving the relevant entries in the accounts of the company. It is possible that in a given case notwithstanding the fact that the company did in fact take the steps either by the despatch of the cheque or by dividend warrant for the payment of the dividend to a particular shareholder, the dividend amount might not have been actually received by the shareholder for various reasons like the loss of the instrument in transit or after it reached the shareholder but before its encashment or by virtue of the deliberate negligence on the part of the shareholder to encash the same. In such a case, without troubling itself to establish as to what exactly were the reasons for which the dividend amount was not in fact received by the shareholder, the company can simply absolve itself by establishing the fact that the unclaimed or unpaid dividend amount had in fact been transferred to a special account as required under section 205. Once the company establishes that it had in fact transferred the amount to the unpaid dividend account specially created as required under section 205 the company discharges its responsibility and is no more liable for any punishment. [*Nutech Agros* v *Ch. Mohan Rao* (2000) 26 SCL 447 (AP)].

22. Closure of Register of members

A company may close the Register of members for the purpose of ascertaining who are eligible to receive dividend on the date of declaration of dividend. In case of the annual dividend, the persons who are members as on the date of the annual general meeting will be eligible to receive the dividend as the dividend is approved by the members on the day when annual general meeting is held.

Listed companies are required to inform the Stock Exchange 21 days in advance of closing the Register of members for payment of dividend declared at the annual general meeting for determining the names of shareholders entitled to dividend.

In the case of companies whose shares are in the compulsory demat mode, the notice period for closure of register or keeping record date has been reduced to 15 days.

23. Rights to dividend to be kept in abeyance in respect of pending of registration of transfer of shares lodged with the company

Section 206A provides that where valid transfer deed has been lodged with the company which has not been registered by the company, it shall withhold payment of the dividend on such shares till the shares are registered. This section does not apparently apply to a transfer, which has been refused. But where the rejection is on account of reasons like difference in signature, insufficient stamp, etc., it will be desirable for the company to wait and keep in abeyance the dividend till the irregularity is removed to enable the company to register the transfer and pay the dividend to the transferee.

In *S.V. Nagarajan* v *The Lakshmi Vilas Bank Ltd*. (1997) 26 CLA 308 (CLB), it was held that when a person comes with a petition as an aggrieved person all that is required to be seen is whether he has any such prima facie ground for seeking rectification and so long as he had such prima facie ground, he can come as an aggrieved person.

In such cases, the company shall transfer the dividend to the special account referred in section 205A, unless the company has authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer.

24. Dividend and interest to be rounded off to nearest rupee

The Department of Company Affairs has *vide* Notification GSR 598(E), dated 28-7-1994 inserted a new rule 23 to Companies (Central Government's) General Rules and Forms, 1956 to the effect that dividend and interest may be rounded off to the nearest rupee and paid. Accordingly, fifty paise and more be increased to one rupee and less than fifty paise be disregarded. In view of the above the payment of dividend should be calculated after due consideration of the requirement for rounding off and adequate amount should be deposited into the separate bank account opened for that purpose.

25. Opening of a separate bank account for making payment of dividend and deposit the amount of dividend into the account within a period of 5 days of its declaration

Section 205A state that the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of such declaration. Therefore, a company cannot use the amount even upto the period of thirty days and it is obligatory on the part of the company to keep the entire amount of the dividend into a separate bank account, which shall be exclusively utilised for payment of the dividend.

A company which has declared dividend must open an account in a scheduled bank and transfer the entire net amount of dividend to the above account within 5 days from the date of declaration and simultaneously should dispatch the dividend warrants to the shareholders and should not wait for 37 days to transfer the amount to that account. What the companies generally do is instruct the bank to first open an account styled as "ABC Limited Dividend, 2005 Account" and than the bank further asked that on the 37th day after the date of the annual general meeting (which date may be indicated to the bank) the nomenclature of the said account be changed as "ABC Limited Unpaid Dividend Account-2005".

26. Despatch of dividend warrants by registered post in excess of Rs. 1,500

Dividend Warrants/cheques for an amount exceeding Rs. 1,500 per instrument should be sent by registered post and the dividend warrant/cheques below the said amount be dispatched under certificate of posting. However, the company may also deliver the dividend warrant to the members personally on obtaining a request letter to that effect in writing.

27. Use of Information Technology in cash transaction of listed companies for payment of dividend

The Department of Company Affairs has issued a General Circular No. 5/2002, dated 1st March, 2002 and specified that the Reserve Bank of India has provided the following centers where Electronic Clearing Service (Credit Clearing) is available at present with Reserve Bank of India and State Bank of India. All the listed companies has been advised to encourage their shareholders to send them authorisation to remit dividend to their designated bank accounts by means of electronic transfer as this will result in avoiding delay in remittance of dividends, etc. (A model form for taking information for effecting payment in the electronic mode has been given in Appendix 3).

SEBI has required *vide* Circular No. DCC/FITT/CIR-3/2001, dated 15-10-2001 that all listed companies to utilize ECS facility, wherever available, for distributing dividend to shareholders. In the absence of availability of ECS facility, the companies may use warrants for distributing the dividends.

27.1. Reserve Bank of India

1. Ahmedabad	6. Chennai	11. Mumbai
2. Bangalore	7. Guwahati	12. Nagpur
3. Bhubaneswar	8. Hyderabad	13. New Delhi
4. Kolkata	9. Jaipur	14. Patna
5. Chandigarh	10. Kanpur	15. Thiruvanathapuram

27.2. State Bank of India

1.	Agra	11.	Ghaziabad	21.	Pune
2.	Allahabad	12.	Hubli	22.	Rajkot
3.	Amritsar	13.	Jamshedpur	23.	Shimla
4.	Baroda	14.	Kolhapur	24.	Siliguri
5.	Bhopal	15.	Lucknow	25.	Surat
6.	Cochin	16.	Ludhiana	26.	Trichy
7.	Coimbatore	17.	Madurai	27.	Trichur
8.	Dehradun	18.	Mangalore	28.	Vijayawada
9.	Durgapur	19.	Nashik	29.	Visakapatnam
10.	Faridabad	20.	Panaji	30.	Varanasi

28. Authority to keep the unpaid/unclaimed dividend amount in a fixed deposit account with a bank

The Reserve Bank of India (RBI) had allowed banks for opening of fixed deposit accounts for the purpose of maintaining the unpaid/unclaimed dividend amount of a company and to pay interest thereon. The above said arrangements may be made by a company to earn interest on the amount of unpaid dividend.

It may be desirable that the fixed deposit account should be made for different amount for different maturity period and an appropriate amount of unpaid dividend should be kept in the form of current account so that all the revalidated or duplicate dividend warrants may be encashed by the bank on presentation.

The fixed deposit account should also be opened under the style as "Fixed Deposit Account ABC Limited Unpaid Dividend Account-2007" and the amount of deposit and interest earned on such amount shall not be credited to the company's other business account.

However, it should be noted that any interest accrued/earned on the unpaid dividend account during the period of 7 years, has to be transferred to the Investors Education and Protection Fund of the Central Government

29. Payment of interest out of capital and interest to be added to capital cost

Section 208 state that where a company has issued shares for the purpose of raising money for meeting the cost of construction of any work or building, or for the provision of any plant which cannot be made profitable for a lengthy period, the company may, with the prior approval of the Central Government, pay interest on the paid-up value of shares so issued subject to the following conditions:—

(*i*) No such payment shall be made unless it is authorised by the articles or by a special resolution passed by the members in a general meeting.

(*ii*) The company shall obtain the previous approval of the Central Government.

(*iii*) The rate of interest shall, in no case, exceed 4% p.a. or such rate as the Central Government may, by notification in the Official Gazette, declare.

(*iv*) The payment of interest shall be for such period as may be sanctioned by the Central Government and that period shall in no case exceed beyond the close of the half-year after the half-year during which the work or building has been completed or the plant provided.

(*v*) The payment of interest shall not operate as a reduction of the share capital.

(*vi*) The amount of interest paid will be added to the cost of construction or plant and capitalised accordingly.

Although there have been several applications to the government for approval of payment of interest out of capital, so far the government had not agreed to any such proposal, except in the case of M/s. New Tirupur Area Development Corporation Limited for payment of interest not exceeding 10% per annum (subject to certain conditions) on share capital.

INCOME-TAX PROVISIONS OF DIVIDEND

30. TDS not required to be deducted on dividend

With effect from 1st April, 2003, no deduction of tax will be made by an Indian company on dividend paid by it to resident shareholders who are individuals or Indian companies.

31. Payment of Dividend tax by company

During the financial year 2003-2004, as per section 115-O of the Income-tax Act, 1961, dividend other than deemed dividend under section 2(22)(*e*) will be subject to payment of tax by the companies declaring dividend @ 12.5% *plus* surcharge of 0.3125.

32. Intimation for details of unclaimed dividend to shareholders alongwith notice of general meeting

The company in which any unpaid or unclaimed amount of dividend which is payable upto a period of seven years, should intimate to the shareholders concerned, individually, alongwith the notice of annual general meeting every year, the amount of unclaimed dividend due and payable to him and the period in respect of which it is payable.

33. Transfer of unpaid/unclaimed dividend amount to the Investor Education and Protection Fund

Section 205A(5) of the Companies Act, 1956 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 transfer shall be transferred by the company to Investor Education and Protection Fund.

In terms of the provisions of section 205C(2)(*e*) of the Act, the interest accrued on the amount of unpaid dividend shall also be credited to the Investor Education and Protection Fund and no amount of the fund shall become due for payment.

PAYMENT OF DIVIDEND TO NON-RESIDENT INDIANS AND OTHER FOREIGN COLLABORATORS

The Reserve Bank of India (RBI) had *vide* its Circular AD (M.A. Series) No. 9, dated 10-4-1993 simplified the procedure for the payment of dividend to foreign shareholders. The power has been delegated to the authorised dealer (AD) concerned. The company is required to approach its authorised dealer with the following documents duly completed:—

(*i*) Form A2 in duplicate duly filled up and signed by the applicant.

(*ii*) Certified copy of the company's audited balance sheet and profit and loss account statement for the year/period to which the dividend relates.

(*iii*) Certified copy of the resolution passed at the annual general meeting of the company declaring the dividend.

(*iv*) Certified copies of Reserve Bank's approvals obtained for issue/purchase/holding of the shares on which dividend is to be remitted abroad.

On receipt of the abovesaid documents, the authorised dealer should confirm on Form A2 that they have verified the Reserve Bank's approval for purchase/holding/issue of the shares held by the non-resident beneficiary and it does not prohibit the remittance of dividend. Authorised dealer should also separately intimate the office of Reserve Bank within whose jurisdiction the Registered Office of the company is situated.

Dividend paid to NRIs/OCBs may be either repatriable outside India or may be kept in India in NRI rupee accounts. In the first case the company shall apply to an AD for remitting the dividend overseas or crediting the same to the NRI account with a bank in India. In the latter case the dividend may be paid to the bank in India for credit in the NRI rupee account.

SECRETARIAL STANDARDS ON DIVIDEND

The Institute of Company Secretaries of India has issued SS-3 namely Secretarial Standards on dividend, which apply to interim as well as final dividend of a company. Text of the same has been given in Appendix 5

Appendix 1

Companies (Transfer of Profits to Reserves) Rules, 1975[1]

[*Notification No. GSR 426*(*E*)*, dated July 24, 1975*][2]

In exercise of the powers conferred by sub-section (2A) of section 205, read with clause (*a*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following Rules, namely:—

1. Short title.—These Rules may be called the Companies (Transfer of Profits to Reserves) Rules, 1975.

2. Percentage of profits to be transferred to reserves.—No dividend shall be declared or paid by a company for any financial year 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) of section 205 of the Act, except after the transfer to the reserves of the company of a percentage of its profits for that year as specified below.—

(*i*) where the dividend proposed exceeds 10 per cent but not 12.5 per cent of the paid up capital, the amount to be transferred to the reserves shall not be less than 2.5 per cent of the current profits;

(*ii*) where the dividend proposed exceeds 12.5 per cent, but does no exceed 15 per cent of the paid up capital, the amount to be transferred to the reserves shall not be less than 5 per cent of the current profits;

(*iii*) where the dividend proposed exceeds 15 per cent, but does not exceed 20 per cent of the paid up capital, the amount to be transferred to the reserves shall not be less than 7.5 per cent of the current profits; and

(*iv*) where the dividend proposed exceeds 20 per cent of the paid up capital the amount to be transferred to reserves shall not be less than 10 per cent of the current profits.

3. Conditions governing voluntary transfer of a higher percentage.—Nothing in rule 2 shall be deemed to prohibit the voluntary transfer by a company of a percentage higher than 10 per cent of its profits to its reserves for any financial year, so however that.—

(*i*) Where a dividend is declared,—

(*a*) a minimum distribution sufficient for the maintenance of dividends to shareholders at a rate equal to the average of the rates at which dividends declared by it over the three years immediately preceding the financial year; or

(*b*) in a case where bonus shares have been issued in the financial year in which the dividend is declared or in the three years immediately preceding the financial year, a minimum distribution sufficient for the maintenance of dividends to shareholders at an amount equal to the average amount (quantum) of dividend declared over the three years immediately preceding the financial year, is ensured:

Provided that in a case where the net profits after tax are lower by 20 per cent, or more than the average net profits after tax of the two financial years immediately preceding, it shall not be necessary to ensure such minimum distribution.

(*ii*) Where no dividend is declared, the amount proposed to be transferred to its reserves from the current profits shall be lower than the average amount of the dividends to the shareholders declared by it over the three years immediately preceding the financial year.

4. Penalty.—If a company fails to comply with any of the provisions contained in these Rules, the company and every officer of the company in default shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues.

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1 **See** section 205(2A) of the Companies Act, 1956.

2 Published in the Gazette of India, Extraordinary, Part II, section 3(*i*), page 1675, dated 26 July, 1975.

Appendix 2

Companies (Declaration of Dividend out of Reserves) Rules, 1975[1]

[*Notification No. GSR 427*(*E*), *dated July 24*, *1975*][2]

In exercise of the powers conferred by sub-section (3) of section 205A, read with clause (*a*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following Rules, namely:—

1. **Short title**.—These Rules may be called the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

2. **Declaration of dividend out of reserves**.—In the event of inadequacy or absence of profits in any year, dividend may be declared by a company for that year out of the accumulated profits earned by it in previous years and transferred by it to the reserves, subject to the conditions that—

(*i*) the rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the five years immediately preceding that year or ten per cent of its paid up capital, whichever is less;

(*ii*) the total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves shall not exceed an amount equal to one-tenth of the sum of its paid up capital and free reserves and the amount so drawn shall first be utilised to set off the losses incurred in the financial year before any dividend in respect of preference or equity shares is declared;

(*iii*) the balance of reserves after such drawal shall not fall below fifteen per cent of its paid up share capital;

[(*iv*) the Forms prescribed in these rules may be filed through electronic media or through any other computer readable media as preferred under section 610A of the Companies Act, 1956;

(*v*) the electronic form shall be authenticated by the authorized signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000);

(*v*) the Forms prescribed in these rules, when filed in physical form, may be authenticated by authorized signatory by affixing his signatures manually.][3]

Explanation.—For the purposes of this rule, "profits earned by a company in previous years and transferred by it to the reserves" shall mean the total amount of net profits after tax, transferred to reserves as at the beginning of the year for which the dividend is to be declared; and in computing the said amount, the appropriations out of the amount transferred from the Development Rebate Reserve at the expiry of the period specified under the Income-tax Act, 1961 (43 of 1961) shall be included and all items of capital reserves including reserves created by revaluation of assets shall be excluded.

SPECIMEN OF FORM OF APPLICATION FOR APPROVAL FOR DECLARATION OF DIVIDEND OUT OF RESERVES

[Pursuant to section 205A (3) of the Companies Act, 1956 and the Companies (Declaration of Dividend out of Reserve) Rules, 1975]

Note.—All fields marked in * are to be mandatorily filled.

1. (*a*)	*Corporate identity number (CIN) of company	XXXXXXXXXXXXXXXXX
(*b*)	Global location number (GLN) of company	
2. (*a*)	Name of the company	ABC INDUSTRIES LIMITED

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1 **See** section 205A(3) of the Companies Act, 1956.
2 Published in the Gazette of India, Extraordinary, Part II, section 3(*i*), page 1877, dated July 26, 1975.
3 Inserted vide Ministry of Company Affairs Notification No. GSR 134(E) dated 03.03.2006].

(*b*) Address of the registered office of the company

4TH FLOOR, SILVER ARK PLAZA,
20A, NEW PALASIYA
INDORE (M.P.)

3. ***** Capital structure (rupees in thousand)

(*i*) *Paid-up capital: 50000

(*ii*) Reserves and surplus

(*a*) *****Free reserves: 5600

(*b*) *****Other reserves: 1400

4. Indicate the rate and amount of proposed dividend and how it meets the condition(s) mentioned in the rule 2 of the Companies (Declaration of Dividend out of Reserves) Rules, 1975

(*a*) *Proposal of the company

Withdrawal of Rs.30.00 Lacs from the general reserves transferred by the Company in earlier years for making payment of dividend to the share holders for the year 2005-06.

(*b*) *Rate of proposed dividend: 10

(*c*) *Amount of proposed dividend: 50,00,000

(*d*) *Conditions for the non-compliance of which the application is being made

The company proposes to withdraw Rs. 30.00 Lacs from the general reserves, therefore the reducible reserves shall Rs.26.00 Lacs, i.e. less than 10% of the paid up capital of the Company.

5. Justification for the proposal

(*a*) When the company is in loss: N.A.

(*b*) then the profit is inadequate for declaring dividend at the proposed rate

During the year 2005-06, the Company could earn a profit of Rs.26.00 Lacs only, and in view of the consistency of the rate of dividend being pays by the Company, it is proposes to withdraw a sum of RS.30.00 Lacs from the general reserves to make payment of Rs.50.00 Lacs as dividend and 6.00 Lacs as corporate tax on dividend. The inadequate profit in the year 2005-06 is of a temporary nature and the company is hopeful for better profit in the coming years

6. *****Amount of profits for the current year and the amount proposed to be with drawn from the general reserves

(*a*) Amount proposed to be utilized: 26,00,000

(*b*) Amount proposed to be withdrawn: 30,00,000

Attachments

1.	No objection letter from the company's lead financial institution	Attach	
2.	Copy of board of directors resolution in support of the company's proposal.	Attach	
3.	Optional attachment(s), if any.		

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated * 15/04/2006 (DD/MM/YYYY) to sign and submit this application

To be digitally signed by

Managing director or director or manager or secretary of the company ISHAN JAIN

Certificate

It is hereby certified that I have verified the above particulars from the books of accounts and records of M/s. ABC INDUSTRIES LIMITED and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice)

D.K.JAIN

For office use only:

Digital signature of the authorizing officer

This e-Form is hereby approved

This e-Form is hereby registered

Appendix 3

Electronic Clearing Services (ECS) Mandate Format

To

Share Department
XYZ Ltd.
Indore (M.P.)

FORM FOR ELECTRONIC CLEARING SERVICES FOR PAYMENT OF DIVIDEND

Dear Sirs,

(Please fill in the information in CAPITAL LETTERS in ENGLISH ONLY.
Please TICK (✓) wherever is applicable.)

For shares held in physical form

……. For Office use Only …
ECS Ref. No.:

Master Folio No.
For shares held in electronic form
DP ID
Client ID

Name of First Holder	
Bank Name	
Branch Name	
Branch Code	(9 Digits Code Number appearing on the MICR Band of the cheque supplied by the Bank). Please attach a xerox copy of a cheque or a blank cheque of your bank duly cancelled for ensuring accuracy of the banks name, branch and code number.

Account Type	Savings		Current		Cash Credit	

Ledger No./Ledger Folio No.	
A/c No. (as appearing in the cheque book)	
Effective date of this mandate	

I, hereby, declare that the particulars given above are correct and complete. If any transaction is delayed or not effected at all for reasons of incompleteness or incorrectness of information supplied as above, GIL Ltd. will not be held responsible. I agree to avail the ECS facility provided by RBI, as and when implemented by RBI/GIL Ltd.

I further undertake to inform the company any change in my Bank/Branch and account number, if any.

Place: ……………….................

Date: (Signature of First Holder)

Name of First Holder:

Appendix 4

Specimen of E-Form 23AAC

Application to Central Government for not providing depreciation

[Pursuant to section 205(2)(*c*) of the Companies Act, 1956]

Note.—All fields marked in * are to be mandatorily filled.

1. (*a*) *Corporate identity number (CIN) of company

   (*b*) Global location number (GLN) of company

2. (*a*) Name of the company: TAR INFRASTRUCTURE LIMITED

   (*b*) Address of the registered office of the company: 76, MALL ROAD, MHOW, DIST. INDORE 452161 (M.P.)

3. *Year for which permission is sought for

From	01/04/2005	(DD/MM/YY)	To	(DD/MM/YY)	31/03/2006

4. *Detailed reasons and justification in respect of the proposal

The company is engaged in the infrastructure projects, having long gestation period, therefore, it is necessary to pay dividend to the members without provide depreciation as required under the provisions of the Act.

5. If the company is a Government company whether the concurrence of administrative ministry is sought Yes √

6. (*a*) *State whether permission is sought on the ground to declare dividend. If yes,

   Yes No √

   (*b*) Rate of dividend: 5%

   (*c*) Amount of dividend: 500000

7. (*a*) *Was the company defaulting in its payments to creditors or bankers or has any plan to re-schedule its payments Yes No √

   (*b*) If yes, details of the same

8. (*a*) *Whether the company has made any application for payment of managerial remuneration higher than the limits prescribed under section XIII of the Companies Act.

Yes ◯ ◯ √

(*b*) If yes, please enter the service request number(s) [SRN] of the same

(*i*) SRN 1

(*ii*) SRN 2

9. *How is the interest of the stakeholders other than shareholders going to be affected by current share prices

Shares of the company are not listed at any stock exchange. The book value of the shares of Rs.10 each is Rs.11.50 per share. Therefore, the interest of any stack holders shall not be affected.

10. *Are there any special circumstances under which the permission is sought. The reasons could be acts of God or change in technology or general, pertaining to the economy or a sector as a whole or pertaining to business activities of the company alone. Supporting facts or figures or literature may be supplied

Due to mega infrastructure projects, the company has acquired heavy machineries, which requires to make heavy provisions for depreciation in the initial years, these realities are always with the infrastructure companies

11. *Detailed justification of public interest involved in the proposal

There is no interest of the general public in the company, therefore, if the permission granted by the government, it shall not adversely effect the interest of the general public in any manner.

12. *Amount of depreciation that is proposed not to be provided of (in Rs.) 8,00,000

13. *Number of years in which the deferred depreciation is proposed to be provided for indicating the specific years of its commencement

The company proposes to seek approval for deferred the depreciation for a period of two years and proposes to provide depreciation from the year 2008-09.

14. *How the company is going to make up for non provision of depreciation at the time when replacement of plant and machinery etc. become due.

The machineries are having long serviceable life, where as the company has sought exemption for a period of two years only. The company shall have adequate internal resources to meet out replacement thereof at the relevant point of time.

Attachments

1.	Certificate from company secretary or director certifying that no relevant facts material to the proposal have been concealed or misrepresented.	Attach	
2.	An undertaking that the company will not come up with any public issue or invite any fresh deposits in the next 18 months.	Attach	
3.	Copy of the Board of director's resolution in support of the company's proposal.	Attach	
4.	Shareholding pattern of promoters and their relatives.	Attach	
5.	Optional attachment(s) –if any.		

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete. 28/02/2006

I have been authorised by the Board of directors' resolution dated *
(DD/MM/YYYY) to sign and submit this application

To be digitally signed by

Managing director or director or manager or secretary of the company

Puneet Agrawal

For office use only:

Digital signature of the authorizing officer

This e-Form is hereby approved

This e-Form is hereby registered

Annexure 1 to Appendix 4

SPECIMEN OF CERTIFICATE FROM DIRECTOR THIS IS TO CERTIFY that the Company has furnished all the relevant information and given complete disclosures in the prescribed application in e-Form 23AAC and no relevant facts material to the proposal has been concealed or misrepresented by the Company.

Annexure 2 to Appendix 4

SPECIMEN OF UNDERTAKING I PUNEETA AGRAWAL S/o Late Shri Prakash Chandra Agrawal, R/o 76, Mall Road, Mhow, being the Director of M/s Tar Infrastructure Limited having its Registered Office at 76, Mall Road Mhow, do hereby under take that the company will not come up with any public issue or invite general public for fresh deposits within a period of the next 18 months from the date of this undertaking.

Annexure 3 to Appendix 4

SPECIMEN OF BOARD RESOLUTION

RESOLVED THAT the consent of the Board of Directors of the Company and is hereby granted to seek permission under section 205(2)(*c*) of the Companies Act, 1956 for non providing depreciation for a period from 2005-06 to 2007-08 and Shri Puneet Agrawal, Director of the Company be and is hereby authorised to give the certificate, undertaking and to sign and submit the application in the prescribed Form 23AAC to the Central Government for seeking permission for and on behalf of the company.

Appendix 5

Secretarial Standard on Dividend

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

In the initial period, adherence by a company to this Secretarial Standard will be recommendatory.

In this Secretarial Standard, the Standard portions have been set in bold type. These should be read in the context of the background material, which has been set in normal type, and in the context of the 'Preface to the Secretarial Standards'.

INTRODUCTION

This Standard seeks to prescribe a set of principles in relation to the declaration and payment of Dividend and matters incidental thereto or connected therewith.

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

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

The term "Dividend" has been inclusively defined in the Companies Act, 1956, ("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.

SCOPE

The principles enunciated in this Standard for Dividend relate to Dividend under the Act and are governed by the provisions of sections 205, 205A, 205B, 205C, 206, 206A, 207 of the Act and also by the Companies (Transfer of Profits to Reserves) Rules, 1975, the Companies (Declaration of Dividend out of Reserves) Rules, 1975 and the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. The provisions of Section 27 of the Securities Contracts (Regulation) Act, 1956 are also applicable as are, in the case of listed companies, the requirements of the Listing Agreement. Any specific provision relating to Dividend in the Income-tax Act, 1961, and any other statute would, in addition, be applicable as set out in that statute/legislation.

The principles set out herein relate to both equity as well as preference share capital in accordance with the provisions of sections 85 and 86 of the Act. While the principles generally relate to Final Dividend, certain principles also apply to Interim Dividend declared by the Board of Directors, as stated hereinafter. Further, the principles set out herein are in respect of Dividend as it relates to a going concern. This Standard does not deal with Dividend of companies under liquidation, for which reference has been made in the Guidance Note on the subject**.**

DEFINITIONS

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

"Act" means the Companies Act, 1956 (1 of 1956), or any statutory modification or re-enactment thereof and includes any Rules and Regulations framed thereunder.

"Articles" means the Articles of Association of a company, as originally framed or as altered from time to time, including, where they apply, the Regulations contained in the Tables in Schedule I to the Act.

"Board" or "Board of Directors" means the Board of Directors of a company.

"Dividend" means a distribution of any sums to Members out of profits or reserves available for the purpose and, in the context of this Standard, refers to Dividend recommended by the Board and declared by Members, *i.e.* 'final' Dividend.

"Free Reserves" means reserves the utilisation of which is not restricted in any manner.

"Interim Dividend" means the Dividend declared in a Meeting of the Board of directors.

"Member" means any person who agrees, either by subscribing to the Memorandum of Association of the company or by applying in writing, to become a Member of the company and whose name is entered either in the Register of Members of the company or in the records of the depository as a beneficial owner in respect of the shares of the company held by him.

"Preference Shareholder" means a holder of such shares as carry a preferential right, in respect of Dividend, to a fixed amount or an amount 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 Preference Shareholder.

Words and expressions used but not defined herein shall have the meaning respectively assigned to them under the Act.

References herein to Sections and Regulations relate, respectively, to Sections of the Act and Regulations of Table A of the Act, unless otherwise stated.

SECRETARIAL STANDARDS

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

1.1 Out of profits

1.1.1 Dividend should be paid out of the profit of the company for the financial year or out of profit(s) for the previous financial year(s) which have not been transferred to reserves, or out of both, only after providing for depreciation for the year and arrears of depreciation, if any.

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 profit and loss account which should give a true and fair view of the profit or loss of the company for a financial year. The Act does not define the word 'profit' or the expression 'true and fair'. These words and expressions should therefore be understood in their natural and proper sense. This would imply that the profit and loss account should be prepared and presented in conformity with the requirements set out in the Act and the generally accepted principles of accounting, which should be consistently applied.

In order to arrive at a true and fair view and to ascertain such profit, depreciation should be calculated in accordance with the provisions of the Act. While the Act specifies the minimum rates of depreciation, companies may provide higher depreciation based on a technological evaluation of the life of the asset on which depreciation is to be provided.

Dividend may, however, be paid without providing for depreciation for the current year or previous year(s) with the prior permission of the Central Government.

1.1.2 Before declaring Dividend out of profit for the year, any loss for the previous year(s) or the amount of depreciation for the previous year(s), whichever is less, should be set off against such profit.

The Act provides that in case a company has incurred loss in any previous financial year or years, the amount of loss or an amount which is equal to the amount provided for depreciation for that previous financial year or those previous financial years, whichever is less, shall be set off against the profit of the company for the year for which Dividend is proposed to be declared or paid. In either case, such profit is to be arrived at after providing for depreciation in accordance with the provisions contained in the Act.

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

Dividend should be declared only out of profits, Free Reserves or out of moneys provided by the Central Government or State Government for this purpose in pursuance of a guarantee given by such Government. The Act does not permit payment of Dividend out of the Securities Premium Account. Revaluation Reserve and Amalgamation Reserve are not profits of the business nor are they created out of such profits, and hence cannot be applied in the payment of Dividend. Profit prior to incorporation is in the nature of capital reserve and hence is not available for distribution.

1.1.4 No Dividend should be declared unless the prescribed percentage of profit is transferred to reserves in accordance with the Companies (Transfer of Profits to Reserves) Rules, 1975.

In case Dividend is paid out of the opening balance in the profit and loss account, the company should make the prescribed transfer to reserves as if the Companies (Transfer of Profits to Reserves) Rules, 1975 are applicable. However, the company would not, in such a case, be required to comply with the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

The Companies (Transfer of Profits to Reserves) Rules, 1975 only apply to equity Dividend and to that portion of Dividend relating to participating preference shares which is in excess of the fixed rate of preference Dividend.

The Companies (Transfer of Profits to Reserves) Rules, 1975 are given at Annexure 'A'.

1.1.5 Interim Dividend, if declared, is payable out of estimated profit for the period for which Interim Dividend is to be declared, after taking into account depreciation for the full year and arrears of depreciation, Dividend at the contracted rate on preference shares, if any, appropriations and transfers to statutory reserves, taxation, and the provisions of the Companies (Transfer of Profits to Reserves) Rules, 1975.

Interim Dividend may be declared after the Board has considered the interim financial statements for the period for which Interim Dividend is to be declared and is satisfied that the financial position of the company justifies and can support such declaration. The interim financial statements so prepared should take into account depreciation for the full year, taxation including deferred tax and other anticipated losses for the year. The interim financial statements should also take into account the Dividend that would have to be paid at the contracted rate on preference shares.

The Board should also take into account the specified percentage required to be transferred to reserves before declaration of Interim Dividend. Such transfer should be affected while preparing final accounts for the year.

1.1.6 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 directors should ensure that the profit as shown in the interim financial statements is adequate to meet the Dividend that would have to be paid on the other classes of equity shares apart from the depreciation for the full year and arrears of depreciation, taxation including deferred tax, transfer to reserves, Dividend on preference shares issued, if any, and other anticipated losses for the year.

Where a company has issued equity shares with differential rights as to voting, no differentiation should be made in the declaration of Interim Dividend on equity shares.

Standards 1.1.1, 1.1.2 and 1.1.3 shall also apply to Interim Dividend.

1.2 Out of Reserves.

1.2.1 In a year in which the profits are inadequate or there are no profits, the company may declare and pay Dividend out of Free Reserves after making provision for depreciation and subject to the provisions of the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

The Companies (Declaration of Dividend out of Reserves) Rules, 1975, specify the maximum amount, which can be paid out of Free Reserves as Dividend on equity shares. The Act provides that if a company intends to declare a Dividend, which is not in accordance with the aforesaid Rules, the company should seek prior approval of the Central Government.

The maximum rate of Dividend that may be declared from reserves in terms of the Companies (Declaration of Dividend out of Reserves) Rules, 1975, is ten per cent of paid-up capital while the Companies (Transfer of Profits to Reserves) Rules, 1975 become applicable only in respect of declaration of Dividend at a rate exceeding ten per cent. Hence, any company, which draws from its reserves to pay Dividend, will not be required to make any appropriation to reserves in terms of the Companies (Transfer of Profits to Reserves) Rules, 1975 since the Dividend declared by it from reserves cannot exceed ten per cent.

The Companies (Declaration of Dividend out of Reserves) Rules, 1975 are given at Annexure 'B'.

1.2.2 Interim Dividend should not be declared out of reserves.

While Final Dividend may be paid out of Free Reserves, no Interim Dividend should be paid, in the event of a loss or inadequacy of profits, by transfers out of any reserves.

2. Declaration of Dividend

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

The recommendation for declaration of Dividend should not be made by a Committee of the Board nor by way of a Resolution passed by circulation.

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

Where a company has an Audit Committee, this Committee should consider the financial statements before submission to the Board. Dividend should be recommended by the Board after consideration and approval of the financial statements. All requisite approvals should be obtained before declaration of Dividend. Dividend should 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.

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

Dividend should relate to a financial year and should be declared by the Members at the Annual General Meeting of the company after consideration of the balance sheet and profit and loss account. Members may declare a lower rate of Dividend than what is recommended by the Board but have no power to increase the amount or rate of Dividend recommended by the Board.

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

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

2.4 Interim Dividend should be declared by the Board, at a meeting of the Board.

Declaration of Interim Dividend should not be made by a Committee of the Board nor by way of a Resolution passed by Circulation.

While Final Dividend is recommended by the Board and declared by Members, approval of Members is not required for declaration of Interim Dividend. Where a company has an Audit Committee, this Committee should consider the interim financial statements, which should then be submitted to the Board for consideration and declaration of Interim Dividend.

2.5 If redeemable preference shares have not been redeemed on the due date, no Dividend should be declared on equity shares until such preference shares are redeemed.

While the Act now does not permit the issue of irredeemable preference shares, where a company had issued redeemable preference shares but has failed to redeem them on the due date, no Dividend should be declared on equity shares until such failure has been remedied.

Standard 2.5 shall also apply to Interim Dividend.

3. Entitlement to Dividend.

3.1 Only the registered holders of shares are entitled to Dividend.

Dividend should be paid (*i*) in respect of shares held in electronic form, to those persons whose names appear as beneficial owners in the statement(s) furnished by the Depository(ies) as on the close of the market day prior to book closure or, in the case of Interim Dividend, on the record date; (*ii*) in respect of shares held in physical form, to those Shareholders whose names appear on 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, in the case of Interim Dividend, on the record date; and (*iii*) in respect of share warrants, to the holders of such warrants.

3.2 Preference Shareholders should 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 and the Articles. However, this right is subject to the availability of distributable profits.

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. If the terms of issue are silent, Dividend should 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 set aside such sum as would be necessary to pay Dividend to Preference Shareholders at the contracted rate.

3.3 Arrears of Dividend on cumulative preference shares should 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 can be paid in a year, there is no right to receive it in future years.

After paying the preference Dividend and any arrears of Dividend on cumulative preference shares, residual profit may be utilized 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.

3.4 Dividend on equity shares should 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 will govern the rights of each such class of holders as to receipt of Dividend.

Standards 3.1, 3.3 and 3.4 shall also apply to Interim Dividend.

4. Dividend in Abeyance

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

If a Member authorizes the company in writing to pay the Dividend to the transferee specified in the instrument of transfer, the company should act upon such authorization. However, in the case of shares, which have not been transferred because the ownership thereof is in dispute, or where attachment/prohibitory orders have been passed by a court or statutory authority, Dividend should be held in abeyance by transferring to the Unpaid Dividend Account.

Standard 4.1 shall also apply Interim Dividend.

5. Payment of Dividend.

5.1 Dividend should be paid within thirty days of declaration.

The amount of Dividend after deducting tax at source, if applicable, should be deposited in a separate bank account within five days from the date of declaration of Dividend.

Dividend should be paid out of such bank account within thirty days of declaration.

5.2 Dividend should be paid in cash, not in kind.

Dividend payable in cash may be paid by cheque or warrant or demand draft or pay order or may be credited to the bank account of the Member in terms of a mandate given by the Member.

The cheque or warrant or demand draft or pay order should be sent to the registered address of the Member and, in the case of joint holders, to the registered address of the person 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.

5.3 Initial validity of the Dividend warrant should be for three months.

A cheque or warrant for payment of Dividend should be valid for three months from the date thereof and, where such cheque or warrant remains unpaid after this initial period of validity, it should be revalidated for not more than three months or a fresh instrument should be issued which should have a validity of three months.

The company should revalidate the Dividend warrant or issue a fresh Dividend warrant or a demand draft or pay order in lieu thereof, within fifteen days of the receipt of a request for revalidation.

Particulars of every revalidated Dividend warrant should be entered in a Register of Revalidated Dividend Warrants indicating the name of the person to whom the Dividend warrant is issued, the number and amount of the Dividend warrant and the date of revalidation.

5.4 A duplicate Dividend warrant should be issued only after the expiry of the validity of the Dividend warrant and the reconciliation of the paid amounts thereof. In case the original instrument is not tendered to the company, a duplicate warrant should be issued only after obtaining requisite indemnity/declaration from the Shareholder.

In the case of defaced, torn or decrepit Dividend warrants, a duplicate warrant may be issued before the expiry of the validity period of the Dividend warrant on surrender to the company of such defaced, torn or decrepit warrant.

Particulars of every Dividend warrant issued as aforesaid should be entered in a Register of Duplicate Dividend Warrants, indicating the name of the person to whom the Dividend warrant is issued, the number and amount of the Dividend warrant in lieu of which the duplicate warrant is issued and the date of issue of such duplicate warrant.

5.5 The Dividend warrant must be accompanied by a statement in writing showing the amount of Dividend paid and the amount of tax deducted at source, if any.

Where a tax on distribution of Dividend is not levied on the company but income tax is required to be deducted at source from Dividend payable to Members, a tax deduction certificate, in the prescribed form, should be issued to the Members to whom Dividend has been paid after deduction of income tax at source at the applicable rates.

Even where payment of Dividend is made by electronic mode directly to the credit of the bank account of the Member, the company should send to the Member a statement in writing showing the amount of Dividend paid and the amount of tax deducted at source, if any.

5.6 Dividend should be paid proportionately on the paid-up value of shares.

Unless the Articles provide otherwise, Dividend should 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 on terms providing that they shall rank for Dividend as from a particular date, Dividend on such shares should be paid accordingly.

5.7 Calls in arrears and any other sum due from a Member 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 the capacity of a Member may be adjusted against the Dividend payable to him after giving such notice, as may be required. In the case of other companies, unless the Articles provide otherwise, 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.

Standards 5.1 to 5.7 shall also apply to Interim Dividend.

6. Unpaid Dividend

6.1 The amount of Dividend which remains unpaid or unclaimed after thirty days from the date of declaration should be transferred to a special Dividend account, to be called 'Unpaid Dividend Account' of the company, within seven days from the date of expiry of the thirty days period provided for payment of Dividend.

The company should maintain the details of unpaid or unclaimed Dividend and reconcile the amounts thereof with the concerned bankers, periodically.

6.2 Any amount in the Unpaid Dividend Account of the company which remains unclaimed and unpaid for a period of seven years from the date of transfer of such amount to the Unpaid Dividend Account should be transferred to the Investor Education and Protection Fund.

Any transfer to the Investor Education and Protection Fund should be made within thirty days of the expiry of seven years from the date of transfer to the Unpaid/Unclaimed Dividend Account.

6.3 Before transferring any amount to the Investor Education and Protection Fund, the company should give individual intimation to the Members in respect of whose unclaimed Dividend the amount is being transferred, at least six months before the due date of such transfer.

After the expiry of the period of seven years from the date from which unclaimed and unpaid Dividends were transferred to the Unpaid Dividend Account, no claims shall lie against the Fund or the company in respect of any such amounts. Hence, the company should intimate the concerned members individually of the amount of Dividend remaining unclaimed which is liable to be transferred to the Investor Education and Protection Fund and advising the Member to claim such amount of Dividend from the company before such transfer.

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

Standards 6.1 to 6.4 shall also apply to Interim Dividend.

7. Revocation of Dividend

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

Standard 7.1 shall also apply to Interim Dividend.

8. Preservation of Dividend Warrants and Dividend Registers

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

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

Standard 8. 1 shall also apply to Interim Dividend.

9. Disclosure

9.1 The Balance Sheet of the company should disclose under the head 'current liabilities and provisions', the amount lying in the Unpaid Dividend Account together with interest accrued thereon, if any.

9.2 The Annual Report of the company should disclose the total amount lying in the Unpaid Dividend Account of the company in respect of the last seven years. The amount of Dividend, if any, transferred by the company to the Investor Education and Protection Fund during the year should also be disclosed.

The amounts lying in the Unpaid Dividend Account and the amounts transferred to the Investor Education and Protection Fund should be disclosed in the Directors' Report.

9.3 The Annual Return of the company should mention that the amount of Dividend remaining unpaid or unclaimed for a period of seven years from the date such Dividend became payable by the company, together with interest accrued thereon, if any, has been credited to the Investor Education and Protection Fund.

Standards 9.1 to 9.3 shall also apply to Interim Dividend.

EFFECTIVE DATE

This Standard shall come into effect from 22nd May 2003.

Chapter 2

Interim Dividend

Synopsis

1 Interim dividend
2. The Articles must provide power to pay Interim dividend
3. Interim dividend should be declared by the Board at the meeting
4. Dividend to be rounded off to nearest rupee
5. Declaration of Interim dividend should be unconditional
6. Amount of Interim dividend must be transferred to a separate bank account and payment must be paid within 5 days
7. Mode of payment of Interim dividend
8. Opening of unpaid Interim dividend account
9. Transfer of unpaid/unclaimed Interim dividend to the Investor Education and Protection Fund
10. Revocation of Interim dividend cannot be made
11. Procedure for payment of Interim dividend to non-residents
12. Approval of members at the general meeting for Interim dividend
13. Payment of Interim dividend in a company having equity and preference shares
14. Declaration of Record date for payment of interim dividend
15. Publication of notice of record date

Appendix 1 Specimen of the resolutions
Appendix 2 Specimen of notice of interim dividend to be published in newspaper

1. Interim dividend

Dividend includes any interim dividend. Before declaration of interim dividend, it is legal obligation on the Board of directors of the company to satisfy that the financial position of the company is sound enough for declaration of dividend out of net profit of the company available for distribution after providing for depreciation and making the mandatory transfer of profits to reserves.

2. The Articles must provide power to pay Interim dividend

The Articles of the company must authorise the Board to declare interim dividend. Regulation 86 of Table 'A' provides that the Board may from time to time pay to the members such Interim dividend as appear it to be justified by the profit of the company.

Where there is no power in the articles authorising the Board to pay interim dividend, the only way open to the company is to pay dividend after the same is declared at the annual general meeting. Even in respect of the latter the Articles must contain the provision therefor.

3. Interim dividend should be declared by the Board at the meeting

A Board meeting should be called and rate at which dividend payable must be specifically stated in the resolution passed for declaration of interim dividend. (Appendix 1)

Declaration of interim dividend by directors does not create a debt; but declaration of dividend at a general meeting of company does.

4. Dividend to be rounded off to nearest rupee

The payment of interim dividend to the shareholders involving fraction of 50 paise and above be rounded off to the rupee and the fraction of less than 50 paise may be ignored.

5. Declaration of Interim dividend should be unconditional

The Board should obtain prior approval from the financial institutions/banks wherever required before declaration of interim dividends and it should be unconditional.

6. Amount of Interim dividend must be transferred to a separate bank account and payment must be paid within 5 days

Interim dividend declared by the Board of directors of the company shall be transferred to the separate bank account within 5 days of such declaration and the amount so transferred shall not be utilised for any other purpose. The Interim dividend shall also be paid within thirty days from the date of its declaration by the Board.

7. Mode of payment of Interim dividend

Interim dividend shall be payable in cash and may be paid by cheque or warrant sent through the post direct to the registered address of the shareholder entitled to the payment of Interim dividend, or in the case of joint shareholders, to the registered address of that one of the joint shareholders who is first named on the register of members, or to such person and to such address as the shareholders or the joint shareholders may in writing direct.

8. Opening of unpaid Interim dividend account

Where an Interim dividend is declared by the Board of directors, which had not been paid or claimed within 30 days from the date of the declaration, the company shall transfer the unpaid or unclaimed Interim dividend to special account opened called "Unpaid Interim Dividend Account of XYZ Limited within seven days from the date of expiry of the said 30 days.

9. Transfer of unpaid/unclaimed Interim dividend to the Investor Education and Protection Fund

The provisions of sections 205A and 205C shall also apply to the Interim dividend which provides that any amount of unpaid or unclaimed dividend shall be transferred after 7 years to the Investor Education and Protection Fund established by the Central Government as dividend includes Interim dividend, the company will have to comply with the provision of said sections in respect of Interim dividend.

10. Revocation of Interim dividend cannot be made

Section 2(14A) provides that the dividend includes interim dividend, therefore, once it has been declared and communicated, it shall become a debt for a company and cannot be revoked by the Board of directors after its declaration.

11. Procedure for payment of Interim dividend to non-residents

The company should approach authorised dealer (A.D.) by letter enclosing Form RCD 2, Form A2 and certified copy of resolutions of the Board (all in duplicate). The A.D. will after verification remit the dividend to non-residents and send the duplicate copy of forms to the RBI regional office.

12. Approval of members at the general meeting for Interim dividend

If the Interim dividend is approved by the Board of directors, the amount of Interim dividend shall be included in the profit and loss account for the year and also in the directors' report alongwith the final dividend, if any, proposed for the approval of the members at the forthcoming annual general meeting. When the audited accounts and directors' report are placed at the annual general meeting and adopted by the members, the interim dividend is deemed to have been approved by the company in general meeting. (Appendix 1)

Approval of dividend is the privilege of the general meeting and the Board can pay interim dividend if so authorised by the Articles of Association subject to the regularisation of the interim dividend by the company in general meeting. The general meeting for this purpose shall be an annual general meeting only, for the profit for the financial year would not otherwise be known. [Letter No. 8/13/(205)/79-CL-V, dated 18-7-1981].

13. Payment of Interim dividend in a company having equity and preference shares

Section 85 provides, *inter alia*, that preference shares shall carry a preferential right to receive dividend. Where a company has issued equity and preference shares, the holders of the preference shares are entitled to the fixed rate of dividend. Where a company makes profits, the dividend due on the preference shares shall be met first and if there remains a balance then only the Board will decide whether or not to recommend a dividend on the equity shares.

Where the Articles authorise the payment of Interim dividend on the shares of the company without making any distinction between equity and preference shares, it appears to be in order for the Board to pay Interim dividend on equity and preference shares subject to the precaution that the rate of Interim dividend on the preference shares shall be the whole of the fixed rate stated at the time of issue of the preference shares as the said fixed rate of dividend on the preference shares cannot be paid in installments. As a matter of fact, it is stated to be a condition of private placement of preference shares to financial institutions that where interim dividend is paid by the company to equity shares, Interim dividend at the full fixed rate will also be paid to the preference shareholders.

Further that, all the conditions for mode and time-limit for payment of dividend to the equity shareholders shall also be applicable to dividend payable to the preference shareholders.

14. Declaration of Record date for payment of interim dividend

A company shall declare record date for the purpose of ascertaining who are eligible to receive the interim dividend on the date of declaration of dividend to pay the interim dividend to the persons who are members as on the record date will be eligible to receive the dividend as the dividend is approved by the Board of directors of the company.

Listed companies are required to inform the NSDL/CDSL and Stock Exchange 21 days in advance of record date for payment of dividend declared by the Board for determining the names of shareholders and/or beneficiary owners entitled to interim dividend.

15. Publication of notice of record date

The company is required to publish notice in newspaper at least 7 days in advance once in English and other local language newspaper as required under section 154 of the companies Act, 1956. (Appendix 2)

Appendix 1

Specimen of the resolutions

I. Board meeting resolution for payment of interim dividend

RESOLVED THAT an interim dividend of 20% (Rs 2.00 per share) amounting to Rs 30,00,000 be paid out of the profits of the Company for the year 2005-06 on the equity shares to those share holders whose names appear in the Register of Members of the Company on 20th June, 2006.

RESOLVED FURTHER THAT the Board of directors of the Company be and hereby declare the Record date as 20th Jan., 2006 to ascertain the eligibility of members to receive the interim dividend and that a notice in newspaper be published as required u/s 154 of the Companies Act, 1956.

RESOLVED FURTHER THAT a Bank Account Styled FL LIMITED (INTERIM DIVIDEND) ACCOUNT 2005-06 be opened with State Bank of Indore and a sum of Rs.30,00,000 being the entire amount of interim dividend, be transferred to the aforesaid account on or before fifth day of the approval by the Board for payment of interim dividend.

RESOLVED FURTHER THAT the dividend warrants be printed with the facsimile signature of Shri Ashok Jain, Managing Director and that the Bank be and is hereby instructed to honour all dividend warrants presented for payment, containing the facsimile signature.

RESOLVED FURTHER THAT dividend warrants be posted to the eligible shareholders within 30 days hereof.

RESOLVED FURTHER THAT the amounts remaining unpaid on the dividend account be transferred to UNPAID INTERIM DIVIDEND ACCOUNT 2005-06 on the expiry of 37 days from the date of declaration by the Board.

RESOLVED FURTHER THAT Ms. Abha Jaiswal, Company Secretary be and is hereby instructed to comply with all other formalities in this regard.

II. Board meeting resolution for closing of interim dividend account

The Chairman appraised that in terms of the provisions of section 205(1A) the Company has opened a separate bank account in the name and style of FL LIMITED (INTERIM DIVIDEND) ACCOUNT 2005-06 with State Bank of Indore (M.P.). He informed that since the payment of interim dividend has been made, there is no use to continue the said bank account. The Board considered and passed the following resolution unanimously:

> **RESOLVED THAT** the bank account in the name and style of `Interim Dividend Payment Account of FL LIMITED 2005-06 with State Bank of Indore (M.P.) be and is hereby closed and Shri Ashok Jain, Managing Director of the Company be and is hereby authorised to take action for closing of the Bank account and to get the balance amount in the said account by Bankers Cheque in the name of the Company.
>
> **RESOLVED FURTHER THAT** a certified copy of the resolution be submitted to the Bank by Ms. Abha Jaiswal, Company Secretary of the Company to act upon it.

III. General meeting resolution for approval of dividend

The Chairman appraised that the Company has made payment of interim divided @ 20% to the Equity Shareholders of the Company during the year 2005-06. The Board has recommended to the members that looking into the profitability and future business prospects, the members of the Company should consider the interim dividend as the total final dividend @ 20% for the year 2005-06. A member moved the following motion for approval as an Ordinary Resolution:

> **RESOLVED THAT** the dividend @ 20% (including the Interim Dividend) per Equity Share as recommended by the Board of directors for the year ended on 31st March, 2006 be and is hereby approved and confirmed the interim dividend declared and paid by the Company to its members.

Appendix 2

Specimen of notice of interim dividend to be published in newspaper

Notice pursuant to the provisions of section 154 of the Companies Act, 1956 is hereby given that at a meeting of Board of directors held on 3rd June, 2006, the directors have approved for payment of an Interim Dividend on equity shares @ 20% *i.e.* Rs. 2 per share for the year 2005-06. The dividend will be paid to those shareholders whose name appear on the Register of members as on 20th January, 2006 on the Record date decided by the Board of directors of the Company.

Alternate Specimen of Notice

NOTICE is hereby given that a meeting of the Board of Directors held on …………., the Directors have announced an Interim Dividend on equity shares @ …% i.e. Rs. …per share in view of the working results for the half year ended ……….. The dividend will be paid by …… to those shareholders whose name appear on the Register of members as on ………….. or their mandatees.

Notice is also given that the Register of Members and share transfer books of the Company will be closed from …….. to …….. both day inclusive.

For ABC Co. Ltd.

Dated .... 20....

By Order of the Board,
Company Secretary

Chapter 3

Final Dividend

Synopsis

Final dividend simply means the dividend, which is recommended by the Board of directors of a company and later approved by the shareholders in annual general meeting. Declaration of a dividend is one of the four ordinary businesses that are transacted at annual general meeting of a company.

1. Declaration of dividend is an ordinary business

Section 173(1)(*a*)(*ii*) provides that the declaration of a dividend is an ordinary business to be transacted at an annual general meeting.

2. Declaration of dividend when it is a special business

Section 173(1)(*b*) provides that all the business to be transacted at any meeting other than the annual general meeting shall be deemed to be special business. Therefore, at an extraordinary general meeting, every business to be transacted thereat is a special business. The business of declaration of a dividend, if transacted at an extraordinary general meeting, would be deemed to be special and consequently explanatory statement will have to be annexed to notice in respect thereto.

3. Declaration of dividend at an extraordinary general meeting — whether permissible

Regulation 85 of Table A specifically provides that the company in general meeting may declare dividend, but no dividend shall exceed the amount recommended by the Board. If the Articles provide that dividend can only be declared at an annual general meeting then obviously no dividend cannot be declared at an extraordinary general meeting. Dividend may be declared at an extraordinary general meeting when the Articles do not prohibit such declaration.

If the Articles of a company permits the declaration of dividend at an extraordinary general meeting, it will not be considered *ultra vires*. A company which could not declare a dividend at an annual general meeting can declare dividend at the ensuing general meeting. But if a company had declared final dividend at an annual general meeting, the company cannot declare further dividend for the same year.

The Company Law Board, *vide* its Circular No. 22 (7/9/74-C-11), dated 22-9-1975, has also given its opinion that there is no provision in the Companies Act, 1956 prohibiting the declaration of dividend at a general meeting other than an Annual General Meeting of the company [*vide* regulation 85 of Table A of Schedule 1] unless otherwise provided in the Articles of Association. Thus, a company, which could not declare a dividend at an annual general meeting may do so at a subsequent general meeting.

4. Declaration of further dividend after declaring final dividend at the annual general meeting is not permissible

The Department has clarified *vide* its Circular No. 22/75, dated 5-10-1975, it is beyond the powers of a company to declare a further dividend after the declaration of the dividend at the annual general meeting. Thus, a company, which could not declare a dividend at an AGM may do so at a subsequent general meeting. But where company has declared a final dividend at a general meeting neither a company nor its directors can declare a further dividend for the same year.

5. Declaration of dividend for previous years is not permissible

A company cannot declare dividend for the past years or with retrospective effect after closing of the respective year's accounts and adoption by members in annual general meeting for that year.

6. Recommendation of dividend by the Board

The Board of directors of a company shall recommend in the directors' report the rate of dividend and the amount, if any, which should be paid by way of dividend. [Section 217(1)(*c*)]

Regulation 85 of Table A specifically provides that the company in general meeting may declare dividend, but no dividend shall exceed the amount recommended by the Board. However, they may reduce the rate of dividend recommended by the Board. (*See* Appendix 1 & 2 for Board and General meeting resolutions).

It is worthwhile to note that Table A applies automatically to companies limited by shares to the extent regulations contained therein are not excluded or modified by the company's Articles of Association. [Section 28(2)]

7. Enhancement of rate of dividend recommended by the Board

If Articles of a company excludes regulation 85, there is no prohibition on general meeting to enhance the recommended rate of dividend. If a company wishes to enhance the recommended rate of dividend, it would be necessary to adjourn the annual general meeting and a Board meeting should be convened and held and a suitable resolution shall be passed for increasing the recommended rate of dividend and adoption of revised accounts.

Thereafter, adjourned annual general meeting should be held and dividend shall be declared which will be higher than the rate of dividend which was initially recommended by the Board.

8. Withdrawal of recommendation of dividend

The recommendation of dividend by directors is merely a proposal and it can be rescinded before it is included in the notice of annual general meeting sent to members of the company. Recommendation of dividend by Board of directors for declaration at the ensuing annual general meeting of the company is not a debt enforceable against the company.

Dividend once declared at an annual general meeting becomes a debt due and enforceable against the company. It has been laid down in the case of *Tarajan Tea Co*. (*P*) *Ltd.* v *CIT* (1994) 13 Corp LA 75 (Gau), that a dividend declared by the shareholders at an annual general meeting is a debt against the company and is recoverable by the members only after declaration by shareholders and not at the time of recommendation made by the Board of directors.

If the amount of dividend is not paid within thirty days of the date of its declaration, the right of shareholders to sue the company will come into play giving a cause of action against the company.

9. Revocation of final dividend declared by the members at a general meeting

Since, the declaration of dividend at a general meeting creates a debt enforceable against the company, it cannot be revoked even with the consent of the shareholders.

However, if a dividend has been illegally declared or where the circumstances, which crop up after declaration of dividend make it inevitable to revoke the dividend, the Board of directors will be correct in its decision to revoke the dividend. In specific circumstances such as outbreak of a war, destruction of company's property, colossal wastage of property in fire incident, etc., may justify revocation of declared dividend.

10. Requirement for disclosure of the amount of dividend in financial statements

Section 211(2) provides that every profit and loss account of a company shall give a true and fair view of the profit or loss of the company for the financial year and shall comply with the requirements of Part II of Schedule VI subject to the cases where the Central Government has approved some other form either generally or in any particular case.

Clause 3(*xiv*) to Part II of Schedule VI to the Companies Act, 1956 provides that the profit and loss account shall set out in respect of period covered by the account, the aggregate amount of the dividend paid and proposed and stating whether such amounts are subject to corporate tax or not.

11. Financial resources for payment of dividend

Section 205(1) provides that no dividend shall be declared or paid by a company for any financial year except out of any of the following sources:—

(*i*) Profits of the company for that financial year arrived at after providing for depreciation under section 205(2);

(*ii*) Profits of the company for any previous financial year or years arrived at after providing for depreciation under section 205(2) and remaining undistributed;

(*iii*) Both (*i*) and (*ii*), above;

(*iv*) Moneys provided by the Central Government or a State Government for the payment of dividend in pursuance of a guarantee given by that Government;

(*v*) Out of reserves as stated under section 205A(3).

Section 205(1)(*c*) however, deals with a case where dividend can be declared or paid without providing for depreciation.

12. Requirement for providing depreciation before payment of dividend

As per provisions of section 205(2) it is a condition precedent for declaration or payment of dividend. The required depreciation can be provided in any of the following ways:—

(*i*) To the extent specified in section 350; or

(*ii*) In respect of each item of depreciable asset;

$$\text{Depreciation} = \frac{\text{95\% of original cost of asset}}{\text{Period of life of the asset}}$$

or

(*iii*) Any other basis approved by the Central Government; or

(*iv*) Any other basis approved by the Central Government in case where no rate of depreciation been prescribed in respect of any asset under Schedule IX of the Companies Act, 1956 or rules made thereunder.

13. Approval of the Central Government for declaration or payment of dividend without providing depreciation

Section 205(1)(*c*) provides that the Central Government may, if it thinks necessary to do so in the public interest, allow any company to declare or pay dividend for any financial year out of the profits of the company for that year or any previous financial year or years without providing for depreciation on the application of the Company to the Central Government, electronically in e-Form 23AAC as prescribed *vide* Notification No. GSR 56(E) dated 10th Feb., 2006. See appendix 4 of Chaper 1 of Part 18 for application.

14. Basic conditions to be fulfilled for declaration or payment of dividend

Following are the conditions as to declaration or payment of dividend by a company:—

(*i*) If the company has not provided for depreciation for any previous year or years, then it shall before declaring or paying dividend for any financial year, provide for such depreciation (earlier not provided for). Such depreciation shall be provided for out of the profits of financial year for which dividend is being declared or paid, or out of the profits of any other previous financial year or years. [Section 205(1)(*a*)]

(*ii*) If the company has incurred any loss in any previous financial year or years then amount of the loss or amount of depreciation provided for in that previous financial year whichever is lower, shall be set off against either of the following:—

(*a*) profits after depreciation under section 205(2) for the year for which dividend is proposed to be declared or paid; or

(*b*) profits after depreciation under section 205(2) for any previous financial year or years;

(*c*) against both (*a*) and (*b*) above. [Section 205(1)(*b*)]

(*iii*) The Board shall pass an appropriate resolution recommending the rate and amount of dividend for declaration by shareholders at an annual general meeting of the company.

(*iv*) Compulsory transfer of profits as per the Companies (Transfer of Profits to Reserves) Rules, 1975 shall be done.

(*v*) The shareholders in an annual general meeting may either approve the recommended rate of dividend or lower the same.

(*vi*) Dividend should be declared and paid out of sources legally available for distribution as dividend.

(*vii*) Provisions of sections 205 to 207 shall be observed strictly.

(*viii*) The company has not contravened section 80A. A company, which committed default in redemption of irredeemable preference shares, etc. shall not, so long as such failure continues, declare any dividend on its equity shares.

15. Payment of dividend out of reserves

Section 205A(3) of the Companies Act, 1956 read with the Companies (Declaration of Dividend out of Reserves) Rules, 1975 deals with the power of a company to declare dividend out of reserves.

In case of inadequacy or in the absence of profits in any year, if any company proposes to declare dividend out of the accumulated profits earned by the company in any previous years and transferred by it to the reserves, such declaration or dividend shall be made in accordance with the Companies (Declaration of Dividend out of Reserves) Rules, 1975. The company must observe the following conditions in such case:—

(*i*) There is either absence or inadequacy of profits in the year for which dividend is proposed to be declared.

(*ii*) The rate of the dividend declared shall not exceed the average of the rates at which dividend was declared by it in the five years immediately preceding that year or 10% of its paid-up capital, whichever is less.

(*iii*) The total amount to be drawn from the accumulated profits earned in previous years and transferred to the reserves shall not exceed an amount equal to 1/10th of the sum of its paid up capital and free reserves and the amount so drawn shall first be utilised to set off the losses incurred in the financial year before any dividend in respect of preference or equity shares are declared.

(*iv*) The balance of reserves after such drawal shall not fall below 15% of its paid-up share capital.

"Profits earned by a company in previous years and transferred by it to the reserves" shall mean the total amount of net profits after tax, transferred to reserves as at the beginning of the year for which the dividend is to be declared. In computation of the said amount, the appropriations out of the amount transferred from the Development Rebate Reserve at the expiry of the period specified under the Income-tax Act, 1961 shall be included and all items of Capital Reserves including reserves created by revaluation of assets shall be excluded.

Where, the declaration of dividend out of reserves is not in accordance with the Companies (Declaration of Dividend out of Reserves) Rules, 1975, previous approval of the Central Government has to be obtained by the company. (See Chapter 1 of Part 18 for specimen of application and relevant Rules)

Section 205A(8) of the Companies Act contains penalty provisions in case of failure to comply with any of the requirements of section 205A. Accordingly, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

16. Requirement for compulsory transfer of certain percentage of profit to reserves for declaring dividend

A company may declare or pay dividend for any financial year out of the profits of the company for that financial year arrived at after providing depreciation as per section 205(2) provided it transfers to its reserves prescribed percentage (not exceeding 10%) of the profits.

Compulsory transfer rates are:

Sl. No.	*Rate of dividend*	*% of profits to be transferred to reserves*
1.	Up to 10%	Nil
2.	Exceeding 10% but up to 12.5% of the paid up capital	2.5%
3.	Exceeding 12.5% but up to 15% of the paid up capital	5%
4.	Exceeding 15% but up to 20% of the paid up capital	7.5%
5	Exceeding 20% of the paid up capital	10%

The rates of compulsory transfer of profits to reserves have been furnished in rule 2 of the Companies (Transfer of Profits to Reserves) Rules, 1975.

17. Transfer of profit to the reserve from the current years profit

Where the Profit and Loss Appropriation Account which carries forward considerable amount of profit from previous year, the amount to be transferred to the general reserves would be worked out in respect of the profits of the year in question and without bringing in the profits of the past years. (Department Letter No. 8/2 (Misc.) 75-CL-V, dated 6-6-1995).

18. Transfer of profits to reserves at higher rates

Rule 3 of the Companies (Transfer of Profits to Reserves) Rules, 1975 contains conditions governing voluntary transfer of a higher percentage of profits to reserves. Therefore, a higher percentage (exceeding 10% of profits) may be transferred to the reserves in accordance with the Companies (Transfer of Profits to Reserve) Rules, 1975 depending upon the following different situations:

18.1. Where a dividend is declared by the company in earlier years

In such case any one of the following conditions must be satisfied:—

(*a*) A minimum rate of distribution of dividend for the maintenance of dividends to shareholders at a rate equal to the average of the rates at which dividends declared by it over the three years immediately preceding the financial year; or

(*b*) in a case where bonus shares have been issued in the financial year in which the dividend is declared or in the three years immediately preceding the financial year, a minimum distribution sufficient for the maintenance of dividends to shareholders at an amount equal to the average amount (quantum) of dividend declared over the three years immediately preceding the financial year.

However, in a case where the net profits after tax are lower by 20% or more than the average net profits after tax of the two financial years immediately preceding, it shall not be necessary to ensure such minimum distribution. [Proviso to rule 3]

18.2. Where no dividend is declared by the company in earlier year

The proposed amount to be transferred to the reserves from the current profits shall be lower than the average amount of the dividends to the shareholders declared by it over the three years immediately preceding the financial years.

In case of failure to comply with the provisions of these Rules than the company and every officer of the company, who is in default, shall be punishable with fine which may extend to five hundred rupees, and, where the contravention is a continuing one, with a further fine which may extend to fifty rupees for every day, after the first day, during which such contravention continues. [Rule 4]

19. Prohibition on declaration of dividend in case of failure to redemption of preference shares

A company, which fails to adhere to provisions of section 80A relating to redemption of irredeemable preference shares, etc., shall not declare any dividend on its equity shares so long as the default continues. [Section 205(2B)]

20. Payment of dividend only in cash/dividend warrant/demand draft/cheques

Section 205(3) specifically states that no dividend shall be payable except, in cash. However the dividend payable in cash may be paid by cheque or warrant/Demand Draft sent through the post directed to the registered address of the shareholder/beneficiaries entitled to the payment of the dividend or in the case of joint shareholders, to the registered address of that one of the joint shareholders which is first named on the register of members, or to such person and at such address as the shareholder or the joint shareholders may in writing direct.

In general practice the dividend is being paid by means of sending account payee dividend warrants to the concerned shareholders at the addresses registered by them with the company. Dividend warrant *inter alia* contains particulars such as dividend warrant No., folio No.,/DP ID & Client ID, name of shareholders, amount of dividend, name of the company and address of its registered office, etc.

In case of payment through the dividend warrant the following points should be considered in this regard:—

(*i*) Most of the companies keep their dividend warrants initially valid for three months. The Department's clarification, dated 15-3-1989 advises that the companies should extend the currency of the dividend warrant up to six months to facilitate the shareholders to encash the same.

(*ii*) According to P/B Press Release, dated 23-6-1993 dividend warrants will have to be compulsorily registered under the Post Office Rules with effect from 1-7-1993. This requirement is intended to ensure the security of the contents, which are valuable. However, P/B Press Release, dated 22-7-1993 states that compulsory posting of dividend warrants would take effect from 1-9-1993 and it has been clarified that the registration is compulsory only if these items are enclosed in envelopes with nature of contents superscribed on them or the nature of enclosures are clearly manifest to the post office by the use of "window" envelopes or the like.

21. Payment of dividend to the registered shareholders, etc.

Dividend shall be paid by a company in respect of any shares therein—

(*i*) to registered holder of such share or to his order or to his bankers, or

(*ii*) in case a share warrant has been issued, to the bearer of such warrant or to his bankers.

However, bankers of a registered shareholder are not required to make a separate application to the company for the payment of the dividend. [Section 206(2)]

22. Right to dividend, right shares and bonus shares to be held in abeyance pending

Section 206A 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—

(*i*) transfer the dividend in relation to such shares to the special account under section 205A unless the company is authorised by the registered holder of shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(*ii*) keep in abeyance in relation to such shares any offer of right shares under section 81(l)(*a*) and any issue of fully paid bonus shares under section 205(3).

23. Closure of Register of members

Register of members and share transfer books are to be closed for ascertaining the number of registered shareholders entitled to receive dividend. (Appendix 1 and 3)

23.1. Procedure in the case of a listed company

In the case of a listed company, it is necessary that the company shall advise the stock exchange in which its shares are listed atleast 7 days in advance, about the Board meeting which would consider the annual accounts including proposal to recommend dividend. Such a company is required to give advance notice of 21 days before the Register of members is closed. In the case of dematerialized securities, the notice period was reduced to 15 days. It may also be mentioned here that three copies of the public notice published under section 154 shall be sent to the stock exchange as soon as published in terms of clause 31 of the Listing agreement.

The company on the day of the above Board meeting intimate the Exchange by letter/fax/telegram within 15 minutes of the closure of the Board meeting:

(*a*) all dividends and/or cash bonuses declared or recommended or the decision of the Board to pass any dividend or interest payment;

(*b*) the total turnover, gross profit/loss, provision for depreciation, tax provision and net profit for the year with comparison with the previous year and the amounts appropriated from reserves, capital profits, accumulated profits of past year or other special source to provide wholly or partly, for the dividend even if this calls for qualification that such information is provisional or subject to audit.

TRANSFER OF UNPAID OR UNCLAIMED DIVIDEND

24. Unpaid or unclaimed dividend

Section 205A(1), *inter alia*, provides that where dividend has been declared by a company but has not been paid or unclaimed or which remains unpaid within thirty days from the date of the declaration to any shareholder entitled thereto, such dividend is called unpaid or unclaimed dividend. *Explanation* to section 205A(1) states that the expression "dividend which remains unpaid" means any dividend the warrant in respect thereof has not been encashed or which has otherwise not been paid or claimed. It has been further clarified by the Department that the two expressions 'has not been paid' and 'the warrant in respect thereof has not been posted' used therein are used to denote two separate contingencies and hence the provisions thereof do not apply to a case where company has posted dividend warrant within 30 days from the date of declaration of dividend but the dividend warrant has not been encashed within the period of 7 days after the expiry of the 30 days. [Circular No. 28/76, dated 1-9-1976].

25. Procedure of dealing with uncashed amount of dividend

A question has been raised as to what will happen to the dividend represented by such of the warrants which even though posted within the period of forty-two days (now 30 days) remained uncashed. The question has been examined and the department is advised that by opening special account under section 205A of the Companies Act, 1956 and deposit the unpaid dividend into that account the company is prevented from utilising that money for its day-to-day business purposes. This is on the principle that dividend declared has to be treated as a debt owed by the company to the shareholder and therefore, it is shareholder's money which has to be separately kept to be paid to him/her on demand and under section 205A(5) the company is empowered to make payment to the shareholder if a demand is made within three years (now seven years) and thereafter the amount is to be deposited with the Central Government (now in Investor Education and protection Fund). In the aforesaid premises the amount of dividend which has not been actually claimed for whatever reasons even though the warrant thereof has been posted within the statutory period of forty-two days (30 days) has to be deposited in the special unpaid dividend account of the company. [Circular No. 7/77, dated 4-6-1977].

26. Time-limit for transfer of unpaid dividend to special dividend account

Section 205A(1) provides that the company shall, within seven days of the date of expiry of period of thirty days from the date of declaration of dividend, transfer such unpaid or unclaimed dividend to a special account. The special account will be called as unpaid dividend account of M/s. .... Co. Ltd./Pvt. Ltd. and is to be opened by the company in a scheduled bank. (Appendix 3)

27. Penalty for failure in transferring unpaid dividend to unpaid dividend account

Section 205A(4) contains provisions as to penalty for default in transferring unpaid or unclaimed dividend to unpaid dividend account. Accordingly, the company shall pay interest @ 12% p.a. on so much of amount of unpaid or unclaimed dividend which has not been transferred to unpaid dividend account. Such interest shall be paid from the date of the default and benefit of such interest shall accrue to shareholders in proportion to the amount remaining unpaid to them.

28. Checklist and action to be taken in respect of payment of final dividend

For the purpose of proper payment of final dividend it is advisable to prepare check list and action plan to make payment of dividend within the stipulated time. A model of the check list being given hereinunder:—

1. In the case of a listed company, intimate the stock exchange of the Board meeting called for passing resolution for recommending dividend seven days in advance.
2. Call and hold a Board meeting to consider and recommend the dividend.
3. Inform stock exchange after Board meeting by letter or by telegram or by fax the details of the meeting as prescribed in the listing agreement.

4. Board will recommend rate of dividend and decide the date of annual general meeting and approve the dates of closing of Register of members in connection with the annual general meeting and for preparing the list of members as on the day of annual general meeting by giving 21 days advance notice to the stock exchange. The last day of book closing should confides with the day of annual general meeting.
5. The directors' report shall contain the dividend recommended.
6. Board will also pass a resolution for opening of bank account for payment of dividend and requesting the bank to honour the warrants signed by the authorised person.
7. Issue notice for book closing and send copies to stock exchange.
8. Hold the annual general meeting which will, *inter alia*, pass an ordinary resolution for declaration of dividend.
9. Open a separate Bank account for payment of dividend and deposit entire amount within a period of five days for the approval of dividend.
10. Deposit Corporate Tax on payment of dividend within seven days from the date of approval.
11. Ask the bank to get approval for printing warrants with MICR facility and send to the Bank required copies of specimen cancelled warrants.
12. Compute the dividend list.
13. Bear in mind to the dividend mandates received if any.
14. Inform the stock exchange, CDSL and NSDL atleast 21 days in advance of the date from which the dividend will be payable.
15. Before dispatching dividend warrants open the bank account and deposit the net dividend amount.
16. Where dividend is payable to NRIs and other non-residents, make the application to the company's authorised dealer in the manner outlined.
17. Ensure that the dividend is paid or warrants are posted to the shareholders within 30 days from the date of declaration. [Section 207]
18. Ensure that in case of warrant of amount exceeding Rs. 1,500 have been dispatched by the Registered Post and in other case by Under Certificate of Posting.
19. Maintain a register for returned dividend warrant.
20. Maintain a register for revalidation and issuance of duplicate dividend warrants and keep proper records in a separate file on year wise basis.
21. Make reconciliation of paid and unpaid Prepare

Appendix 1

Specimen of Board resolutions

I. Recommendation of dividend on shares

The Chairman proposed to the Board to recommend to the shareholders a dividend @ Re. 0.20 per share (*i.e.* 2%) on 50,76,966 equity shares of Rs. 10 each fully paid up. The Board discussed the proposal and passed the following resolution:

RESOLVED THAT a dividend @ Re. 0.20 per share (*i.e.* 2%) out of the profits of the financial year ending on 31st March, 2006 on 50,76,966 of Rs.10 each full paid up aggregating to Rs. 10,15,395 be recommended to the shareholders for declaration in the ensuing Annual General Meeting of the Company.

II. Determination of Book closure dates

The Chairman informed the Board that the Company is required to close its register of members and share transfer register for the purpose of Annual General Meeting and declaration of dividend.

He proposed to close those books/registers from 13th September, 2006 to 30th September, 2006 (both days inclusive). The Board discussed the matter and passed the following resolution:

RESOLVED THAT the Register of members and Register of share transfers of the Company be closed from 13th September to 30th September, 2006 (both days inclusive) for the purpose of Annual General Meeting and declaration of dividend pursuant to the Listing Agreement of the Company with the Stock Exchange(s) and as per section 154 of the Companies Act, 1956, and that the book closure dates be published in the news papers and be intimated to the Stock Exchange(s) in compliance of the Listing Agreement.

III. Authority to open a special dividend bank a/c with the Bank

The Chairman informed the Board about the requirement for payment of dividend for the year 2005-06 @ 2%, for which the Company is required to open a Special Bank Account with the Dena Bank, Sitla Mata Bazar Branch, Indore to deposit the entire amount of the dividend payable Rs. 10,15,394 to the equity shareholders of the Company. The Board considered and after due discussion passed the following resolution unanimously:

RESOLVED THAT a Special Principal Account under the name and style of 'NP LTD. DIVIDEND PAYABLE ACCOUNT-2004-05' be opened with the Dena Bank, Sitla Mata Bazar Branch, Indore and a sum of Rs. 10,15,394 (Rs. Ten Lacs Fifteen Thousand Three Hundred and Ninety Four Only) be deposited into the said bank account to make payment of dividend to the equity share holders of the Company for the year 2005-06 and Shri JPA, the Managing Director and/or Shri AS, the Share Executive of the Company be and are hereby severally authorised to sign the necessary forms and documents for the purpose of the opening of the said bank account for and on behalf of the Company.

RESOLVED FURTHER THAT the Bank be instructed to pay the amount of dividend to the shareholders as may be advised by the Company by way of issuance of cheques/Demand Drafts/Pay orders as may be instructed and or signed by severally Shri JPA, the Managing Director and/or Shri AS, the Share Executive of the Company.

RESOLVED FURTHER THAT Shri JPA, the Managing Director and/or Shri AS, the Share Executive of the Company be and are hereby severally authorised to operate the account and to issue cheques and to give any instructions relating to the operation of the above said bank account and their signature(s) shall be the sufficient authority to bind the Company in all transactions between the Bank and the Company including those specifically referred to herein.

RESOLVED FURTHER THAT Shri JPA, the Managing Director of the Company be and is hereby authorised to furnish a certified copy of the above said resolution, Memorandum and Articles of Association of the Company and specimen signatures of the above said signatories for and on behalf of the Company and be informed from time to time by a notice in writing under the hand of the Chairman of any changes which may take place therein and be entitled to act upon such notice until the receipt of further notice under the hand of the Chairman.

Appendix 2

Specimen of General meeting resolution for approval of dividend

The Chairman appraised that the Board has proposed to pay dividend @ 20% (Rs. 2) on the fully paid up Equity Shares of Rs. 10 to the Equity Shareholders of the Company during the year 2005-06.

The Chairman proposed the following motion which was seconded by Shri LND for the approval by way of an Ordinary Resolution:

RESOLVED THAT in terms of the recommendation of the Board of directors of the Company, the approval of the members of the Company be and is hereby granted for payment of dividend @ 20% (Rs. 2) on the fully paid-up Equity Share of Rs. 10 each of the Company for the year 2005-06 and the same be paid to all the members whose names appear in the Register of Members on 30th September, 2006 and in case of the shares held in the electronic mode to those members whose names appears in the records of the Depository participants as on 30th September, 2006.

Appendix 3

Specimen of Board Resolution

I. For recommendation of dividend out of general reserves

The Chairman appraised that the company is not having adequate profit for the year 2005-06, however looking into the previous track record for continuous dividend payment and in view of the availability of adequate amount in the general reserves created out of the distributable profit and surplus amount of profit in the profit and loss account of the company, the Board should draw a sum of Rs.100.00 Lacs from the general reserves as permissible under the Companies (Payment of dividend out of general reserve) Rules 1975 and recommend dividend @ 8% for the year 2005-06. The Board considered and passed the following resolution unanimously.

RESOLVED THAT the consent of the Board of directors of the Company be and is hereby accorde to withdraw a sum of Rs.100.00 Lacs from the general reserves created out of distributable profits of the Company as per the provisions of the Companies (Payment of dividend out of general reserve) Rules 1975 and the same be utiilised for the payment of dividend to the equity share holders of the company for the year 2005-06.

FURTHER RESOLVED THAT the Boar of directors of the company do hereby recommend dividend @ 8% on the equity share capital of the company for the year 2005-06 and the same shall be payable to the members subject to the approval of the members in the next annual general meeting to all the members whose name appears in the register of members on the date of the annual general meeting

II. Approval for transfer of profit to General Reserve

The Chairman informed that the Company is required to transfer profit to the General Reserves in accordance with the Companies (Transfer of Profit to General Reserve) Rules, 1975 before declaration of payment of dividend to the members of the Company. The Board considered that looking into the profit of the year and accumulated profit of the Company it should transfer Rs. 200.00 Lacs to the General Reserves. The Board considered and passed the following resolution unanimously:

RESOLVED THAT the consent of the Board of directors of the Company be and is hereby accorded to transfer a sum of Rs. 200.00 Lacs to the General Reserves from the profit available in the Company for the year 2005-06 in accordance with the provisions for Companies (Transfer of Profit to General Reserve) Rules, 1975.

III. Approval for transfer of profit unpaid dividend to unpaid dividend account

RESOLVED THAT the amount of dividend laying with the State Bank of Indore, Indore in Company's dividend account for the financial year 2005-06 unpaid/unclaimed for more than 30 days since declaration thereof on 30th September, 2005 be transferred to special account titled as Unpaid Dividend Account of FL Limited 2005-06.

RESOLVED FURTHER THAT the Bankers of the Company State Bank of Indore, be requested to change the name of Company's dividend account for the financial year 2005-06 from Dividend Account of FL Limited 2005-06 to Unpaid Dividend Account of FL Limited 2005-06 with effect from 6th November, 2006 and that the bankers be requested to issue demand drafts for the amount of dividend claimed thereafter in favour of the members who are entitled to receive such amount of dividend.

Appendix 4

Specimen of Notice for Book Closure

XYZ LIMITED

REGISTERED OFFICE ....

Pursuant to section 154 of the Companies Act, 1956 members of the above named Company are informed that the register of members of the Company will remain closed from Friday, the 23rd September, 2006 to Friday, the 30th September, 2006 (both days inclusive) in connection with the forthcoming annual general meeting of the Company scheduled to be held on the 30th September, 2006 and for the payment of dividend, if declared, to those members registered in the books of the Company as on the 30th September, 2006 and in case of shares held in the D-mat form to those beneficiaries whose names appears in the records of the CDSL & NSDL on 28th September, 2006.

Dated 14th September, 2006
Indore

By order of the Board

ABHA JAISWAL
Company Secretary

Chapter 4

Transfer of unpaid Dividend to the Investor Education and Protection Fund

Synopsis

1. Transfer of unpaid dividend to Investor Education and Protection Fund

As per sub-section (5) of section 205A any money transferred to unpaid dividend account of a Company which remains unpaid or unclaimed in the said account for a period of seven years from the date of such transfer is required to be transferred by the company to Investor Education and Protection Fund which has been established under section 205C. (*See* Appendix 1 for Board resolution)

Therefore, any shareholder who have not claimed the unpaid dividend may approach the company to issue duplicate dividend warrants and get their dividend within the period of seven years *plus* 37 days only.

2. Furnishing of statement in e-Form 1 while transferring money to the Fund

Section 205A(6) provides that the company shall, when making any transfer under section 205A(5) to the fund any unpaid or unclaimed dividend, shall furnish a statement in the prescribed e-Form 1 under the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2006, as notified by the GSR 135(E) dated 3rd March, 2006 setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the persons entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto, etc. e-Form 1 is required to be certified by the Auditors of the company or the company secretary or a chartered accountant or a cost accountant in practice. (Appendix 2)

3. Transfer of amount to the fund within a period of 30 days

Rule 3(*i*) provides that any amount required to be credited by the companies to the Fund, as provided in the Act shall be remitted into the concerned specified branches of Punjab National Bank or on line payment system, within a period of thirty days of such amounts becoming due to be credited to the Fund alongwith Challan (in triplicate) and the Bank will return two copies duly stamped to the company as token of having received the amount.

4. Filing of e-Form 1 alongwith challan to the Registrar

Every company shall file with the concerned Registrar of Companies statement in e-Form 1 electronically completed and signed alongwith the duplicate copy of the Challan referred to in rule 3(*ii*)(*b*) evidencing deposit of the amount to the Fund.

The Committee on Investor Education and Protection Fund has asked every company to send to the Registrar of Companies concerned at the end of each quarter a certificate signed by company secretary or a chartered accountant in practice on the amounts due and the amount credited to the Fund at the end of each quarter. [Circular No. 5/1/99-IPC, dated 21-6-2002]

5. Requirement to keep records of the amount transfer to the fund for a period of three years

Every company shall keep a record relating to folio number, Certificate Number, etc. in respect of persons to whom the amount of unpaid or unclaimed dividend, application money, matured deposit or debentures, interest accrued or payable, for a period of three years and the committee or sub-committee shall have powers to inspect such records of that period.

6. Receipt for transfer

A company shall be entitled to obtain a receipt from the Registrar under sub-section (4) of section 205C for any money transferred by it to the Fund and such a receipt shall be an effectual discharge of the company in respect thereof.

INVESTOR EDUCATION AND PROTECTION FUND

In terms of the provisions of section 205C of the Act, the Central Government has established the Fund and issued the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001. (See Appendix 3 for Circular)

The following amounts will be credited to the fund as per provisions of section 205C of the Act:—

(*a*) Amounts in the unpaid dividend accounts of companies for seven years;

(*b*) Application moneys received by companies for allotment of any securities and due for refund for seven years after they became due;

(*c*) Matured deposits with companies for seven years after they became due;

(*d*) Matured debentures with companies for seven years after they became due;

(*e*) The interest accrued on the amounts referred to in clauses (*a*) to (*d*);

(*f*) Grants and donations received by the Fund from Central and State Governments and any other institutions for the purpose of the funds;

(*g*) The interest or other income received out of the investments made from the Fund:

Provided that no such amounts referred to in clauses (*a*) to (*d*) shall form part of the Fund unless such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Explanation.—For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

The Fund shall be utilised for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

The Central Government shall, by notification in the Official Gazette, specify an authority or committee, with such members as the Central Government may appoint, to administer the Fund, and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor General of India.

It shall be competent for the authority or committee appointed under sub-section (4) to spend moneys out of the Fund for carrying out the objects for which the Fund has been established.

7. All provisions of the Act apply both to interim and final dividend

In accordance with the change in definition, three sub-sections to section 205 have been inserted as under:—

(1A) The Board of directors may declare Interim dividend and the amount of dividend including Interim dividend shall be deposited in a separate bank account within five days from date of declaration of dividend.

(1B) The amount of dividend including Interim dividend so deposited shall be used for payment of Interim dividend.

(1C) The provisions in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to Interim dividend.

8. Clarifications issued by the Department on sections 205A and 205C

It has been brought to the notice of the Central Government that provisions of section 205C, inserted into the Companies Act on 31-10-1998, is being interpreted by various companies, and other concerned persons, in a number of ways, and this is leading to some confusion.

2. Therefore, in super cession of all earlier letters or clarifications, given either generally or specifically to any company, the correct legal position is clarified as under:—

Unpaid Dividend

3.1 Prior to the amendment of section 205A and the enactment of section 205C by the Companies (Amendment) Act, 1999 with effect from 31st October, 1998, companies were required to transfer to the general revenue account of the Central Government any moneys transferred to the 'unpaid dividend account' which remained unpaid or unclaimed for a period of three years from the date of such transfer.

3.2 Therefore, all amounts transferred to the 'unpaid dividend account' of a company on or before 30th October, 1995 and which had remained unpaid or unclaimed on 30th October, 1998 should have been transferred to the general revenue account of the Central Government.

3.3 With the amendment of section 205A and the enactment of section 205C by the Companies (Amendment) Act, 1999, it is now provided with effect from 31st October, 1998 that any moneys transferred to the 'unpaid dividend account' of the company and remaining unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred to the Investor Education and Protection Fund.

3.4 Therefore, all amounts transferred to the 'unpaid dividend account' of a company on or after 30th October, 1995 or which have remained unpaid or unclaimed for a period of seven years from the date of such transfer should be transferred to the Investor Education and Protection Fund together with interest accrued thereon, unless they have already been transferred to the general revenue account of the Central Government prior to the enactment of the Companies (Amendment) Act, 1999.

Other Unclaimed Amounts

4.1 Section 205C enacted by the Companies (Amendment) Act, 1999 with effect from 31st October, 1998 also requires the following amounts to be credited to the Investor Education and Protection Fund (the Fund):—

(*a*) The application moneys received by companies for allotment of any securities and due for refund;

(*b*) Matured deposits with companies;

(*c*) Matured debentures with companies;

(*d*) The interest accrued on the amounts referred to in clauses (*a*) to (*c*).

4.2 The above amounts have to be transferred to the Fund when they have remained unclaimed or unpaid for a period of seven years from the date they became due for payment.

4.3 Accordingly, all amounts which had remained unclaimed or unpaid as on 30th October, 1991 (irrespective of the number of years they had remained unclaimed or unpaid as on that date) and which remained unclaimed or unpaid as on 31st October, 1998 should be transferred to the Fund unless such amounts have been paid to the parties before the enactment of the Companies (Amendment) Act, 1999.

4.4 In respect of such amounts, which have become due for payment after 30th October, 1991, the amounts should be transferred to the Fund if they remain unclaimed and unpaid for a period of seven years from the dates they first became due for payment.

Operationalisation of the Fund

5.1 Since the Fund became operational only on 1st October, 2001 all amounts due for transfer between 1st November, 1998 and 30th September, 2001 should have been transferred within the grace period of 30 days, *i.e.*, by 31st October, 2001.

5.2 All concerned are advised, that all transfers required to be made in terms of the above clarification, if not already made, should be made immediately.

Source: Circular No. 22/2002 [F. No. 17/63/99-CL.V], dated 23-9-2002

Guidelines for the purpose of financial assistance from the Investor Education and Protection Fund

(*i*) Any organization, entity, person who has a viable project proposal on investors education and protection should be eligible for assistance from the Fund.

(*ii*) The limit for each person, organisation for assistance from the Fund should be subject to 5% of the budget of IEPF during that financial year and not exceeding 50% of the amount to be spent on the proposed programme/activity.

(*iii*) The associations or institutions or organisations already engaged in activities relating to investor awareness, education and protection and proposing to take up investors programmes, organising seminars, symposia etc. shall undertake projects for investor protection including research activities.

(*iv*) The associations or institutions or organisations shall be registered under the Societies Registration Act or formed as Trusts or incorporated companies.

(*v*) Associations or institutions or organisations, shall unless specific exemption has been made in this regard by the Committee on IEPF, be in existence for a minimum period of 2 years prior to its date of application for registration.

(*vi*) Associations or institutions or organisations shall have a minimum of 20 members and a proven record of 2 years.

(*vii*) The association or institution or organisation shall have rules, regulations and/or by-laws for the governance and management of the association or institution or organisation. These rules, regulations and/or by-laws shall be in conformity with the conditions of registration. The association or institution or organisation shall be managed by a governing Board/management committee.

(*viii*) No profit making association or institution or organisation shall be eligible for registration for the purposes of financial assistance from the fund.

(*ix*) Notwithstanding the above the Committee on IEPF can give a project to any organization.

(*x*) The amount of grant assistance given from the Fund shall be subject to an audit by the Department of Company Affairs to ensure its proper utilisation.

(*xi*) While considering the proposals the Committee will take into account the audited accounts and annual reports of the last three years of the organisation seeking assistance from the Fund.

Appendix 1

Specimen of Board resolution to transfer unpaid/unclaimed dividend to the Investor Education and Protection Fund

The Chairman informed the Board that as per the provisions of section 205C of the Companies Act, 1956 (1 of 1956), the Company is required to transfer unpaid/unclaimed Dividend for the year 1998-99 to the Investor Education and Protection Fund of the Central Government, after expiry of seven year from the date of transfer of the said Dividend to the special account created for transfer of unpaid dividend.

He also informed the Board that the Company is required to submit Forms alongwith the Challans for payment of unpaid dividend. The Chairman suggested that looking to the formalities involved the Company should authorise somebody to complete the formalities. The Board considered the matter and after due discussion passed the following resolution unanimously:

RESOLVED THAT Shri VB, the Managing Director and/or Shri MPK, the Manager Finance of the Company be and are hereby authorised to take all the necessary steps for transfer of Unpaid/Unclaimed Dividend of Equity Shareholders for the year 1998-99 to the Investor Education and Protection Fund of the Central Government on the date as prescribed as per the provisions of section 205C of the Companies Act, 1956.

FURTHER RESOLVED THAT Shri VB, the Managing Director of the Company be and is hereby authorised to sign Form 1 on behalf of the Company.

FURTHER RESOLVED THAT Shri VB, the Managing Director of the Company be and is hereby authorised to give Power of Attorney in favour any consultant for and on behalf of the Company to complete the required formalities as he may consider appropriate in the interest of the Company.

FURTHER RESOLVED THAT Shri VB, the Managing Director and/or Shri MPK, the Manager Finance of the Company be and are hereby severally authorised to submit the necessary forms, declarations and to make any corrections, modification, deletion etc. as may be directed by the Registrar of Companies for the above said purpose.

Appendix 2

Specimen of e-Form 1

Statement of amounts credited to investor education and protection fund

[Pursuant to rule 3 of the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001

Note: All fields marked in * are to be mandatorily filled.

1.	(*a*)	*Corporate identity number (CIN) of company	xxxxxxxxxxxxxxxxxx
	(*b*)	Global location number (GLN) of company	
2.	(*a*)	Name of the company	MCAPS LIMITED
	(*b*)	Address of the registered office of the company	MHOW NEEMUCH ROAD, SECTOR I, PITHAMPUR INDUSTRIAL AREA, PITHAMPUR, DIST. DHAR (M.P.)
3.		*Date of payment of amount to the fund 10/11/2006	(DD/MM/YYYY)

4. *Mode of payment □ Cash □ Demand Draft
5. Details of the amount credited to the fund
   (*a*) Amount in the unpaid dividend accounts of companies (in Rs.) 1,25,000
   (*b*) The application money received by companies for allotment of any securities and due for refund (in Rs.)
   (*c*) Matured deposits with companies (in Rs.)
   (*d*) Matured debentures with companies (in Rs.)
   (*e*) Interest accrued on the amounts referred to in clauses (*a*) to (*d*) above
      (*i*) Unpaid dividend (in Rs.)
      (*ii*) Application money due for refund (in Rs.)
      (*iii*) Matured deposit with companies (in Rs.)
      (*iv*) Matured debentures with companies (in Rs.)
   (*f*) Grants and donation (in Rs.)

6. Financial year(s) to which the amount(s) relates 1998-99
7. Details of filling Form 1 under sections 205A(6) and 205A(7) of the Companies Act, 1956

Transfer of unpaid/unclaimed dividend for the year 1998-99, declared on 30th September, 1999

Attachment

1. Copy of challan evidencing deposit of the amount to the fund. Attach

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I have been authorised by the board of directors' resolution dated* 30/09/20006 (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary of the company R.C.MITTAL

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of M/s. MCAPS LIMITED and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice)
or statutory auditor D.K.JAIN

For office use only

This e-Form is hereby registered
Digital signature of the authorising officer

Appendix 3

Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001

[Notification No. GSR 750 (E), dated 1-10-2001 as amended by Notification No. GSR 135(E) dated 3rd March, 2006]

In exercise of the powers conferred by clauses (*a*) and (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), read with sub-section (3) of section 205C of that Act, the Central Government hereby makes the following rules, namely:—

1. Commencement.—(1) These rules may be called the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001.

(2) They shall come into force on the date of their publication, in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires:—

(*a*) 'Act' means the Companies Act, 1956;

(*b*) 'Fund' means the Investor Education and Protection Fund (IEPF) established under sub-section (1) of 205C of the Companies Act, 1956 (1 of 1956);

(*c*) "Ministry" or "Department" means Ministry or Department of the Central Government dealing the Company Affairs;

(*d*) 'Committee'/'Sub-Committee' means the Committee specified by Central Government under sub-section (4) of section 205C of the Act to administer the Fund;

(*e*) 'Form' means forms prescribed by these rules;

(*f*) Words and expressions used in these rules and not defined herein but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Credits to the Fund

(*i*) Any amount required to be credited by the companies to the Fund, as provided in the Act shall be remitted into the concerned specified branches of Punjab National Bank, within a period of thirty days of such amounts becoming due to be credited to the Fund and the amount so credited shall be accounted for as provided in rule 4 below.

(*ii*) (*a*) The amount shall be tendered by the companies on behalf of the Central Government in such branches of Punjab National Bank along with Challan (in triplicate) and the Bank will return two copies duly stamped to the Company as token of having received the amount.

(*b*) Every Company shall file with the concerned Registrar of Companies one copy of the Challan referred to in (*a*) evidencing deposit of the amount to the Fund. The Company shall fill in the full description and the nature of the amount tendered and its Head of Account.

(*c*) (*i*) Every Company shall, when effecting a credit to the account of the Fund, will separately furnish to the concerned Registrar of Companies a statement in Form 1 duly certified by a Chartered Accountant or a Company Secretary or a Cost Accountant practicing in India or by the statutory auditors of the company. Provided that each Company shall keep a record relating to folio number, Certificate Number, etc. in respect of persons to whom the amount of unpaid or unclaimed dividend, application money, matured deposit or debentures, interest accrued or payable, for a period of three years and the Committee or Sub-Committee shall have powers to inspect such records of that period.

(*ii*) On receipt of this statement, the concerned Registrar of Companies shall enter the details of such receipt in a register and reconcile the amount so remitted and collected, with the concerned Pay and Accounts Officer, on monthly basis.

(*iii*) Each Registrar of Companies shall furnish an abstract of such receipt received during the month to Department of Company Affairs within seven days after the close of the month.

(*iv*) Department of Company Affairs shall maintain a consolidated abstract of receipts and shall reconcile them on a quarterly basis with Principal Pay and Accounts Office of the Department of Company Affairs.

(*d*) The Forms prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under section 610A of the Companies Act, 1956 (1 of 1956).

(*e*) The electronic form shall be authenticated by the authorised signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).

(*f*) The Forms prescribed in these rules, when filed in physical form, may be authenticated by authorised signatory by affixing his signature manually.

4. Manner of Accounting

(*i*) (A) All amounts received shall be accounted for under the following Heads of account, which shall thereafter be transferred to the Fund.

Major Head 0075.—Miscellaneous General Services.

Minor Head 104.—Unclaimed and unpaid dividends, deposits and debentures, etc. of Investors in Companies:—

(*a*) Unpaid dividend.

(*b*) Unpaid application money received by Companies for allotment of securities and due for refund.

(*c*) Unpaid Matured Deposit.

(*d*) Unpaid Matured Debentures.

(*e*) Interest accrued on (*a*) to (*d*).

- (*i*) Interest on unpaid dividend.
- (*ii*) Interest on unpaid application money received by Companies for allotment of securities and due for refund.
- (*iii*) Interest on unpaid matured deposits.
- (*iv*) Interest on unpaid matured debentures.

Note.—(*a*) to (*d*) shall be sub-heads (*e*)(*i*) to (*iv*) shall be detailed heads.

(*i*) (B) Grants and donations given to the Fund by State Governments, Companies or any other Institutions will be credited under a separate Sub-Head under the Minor Head '800 — Other Receipts below the Major Head '0075 — Miscellaneous General Services'.

(*ii*) All expenditure for the purposes of carrying out the objects for which the Fund has been established shall be incurred under the functional Head expenditure head of Department of Company Affairs and equivalent amount will be shown as deduct entry by transfer of amount from the fund.

(*iii*) Surplus amount, if any, from the fund accounts shall not, for the present, be utilised for investment purpose.

5. Expenses of the Committee.—(*a*) The official member of the committee or sub-committee shall be entitled to Traveling Allowance according to the rules regulating their official position.

(*b*) For Journeys performed by a non-official member of the Committee or sub-committee or a special invitee in connection with the work of the committee or a sub-committee shall be entitled for TA/DA as per supplementary Rules of Central Government.

(*c*) Committee shall have powers to recommend appointment/remuneration to any experts in such areas as may be considered necessary.

(*d*) Committee shall have powers to recommend appointment of Auditors and for scrutinizing the accounts of the voluntary agencies registered with it.

6. Audit of Accounts.—The accounts of the Fund shall be audited by internal audit party of the Department of Company Affairs every year and will also be subject to audit by the office of Comptroller and Auditor General of India .

7. Constitution and Functions of the Committee

(*a*) The Committee shall consist of ten members, excluding the Chairperson who is Secretary, to the Department of Company Affairs. The members shall be nominated by Reserve Bank of India, the Securities and Exchange Board of India and or from any other Ministry or Department of Central Government dealing with investor protection activities and experts from the field of investors' education and protection. The non-official members shall hold office for a period of two years. The official members shall hold office for a period of two years or until they occupy their position which ever is earlier. The constitution of the Committee shall be notified in the Official Gazette.

(*b*) Functions of the Committee

(1) The Committee shall recommend the following activities relating to investors' education, awareness and protection:—

- (*a*) Education Programmes through Media;
- (*b*) Organizing Seminars and Symposia;
- (*c*) Proposals for registration of Voluntary Associations or Institution or other Organizations engaged in Investor Education and Protection activities;
- (*d*) Proposals for projects for Investors' Education and Protection including research activities and proposals for financing such projects;
- (*e*) Co-ordinating with institutions engaged in Investor Education, awareness and protection activities;

  The Committee may also be entrusted with such other functions for carrying out the objects for which the Fund has been established.

- (*f*) (*i*) The Committee may appoint one or more sub-committees whenever it considers necessary to facilitate efficient and speedy discharge of its functions.
  - (*ii*) Sub-committee shall be constituted from amongst the members.
  - (*iii*) The chairperson of the Committee may nominate any one of the members of the sub-committee as its convener and where no such nomination has been made, the members of the sub-committee elect a convener amongst themselves.
  - (*iv*) The Committee may have sub-committee to examine the end use of grants and assistance and recommend release of funds.

8. Power to call upon a Company

(*i*) The Committee shall have *suo moto* powers to call upon any company to pay the amount due to the Fund.

(*ii*) Committee shall call upon any company to give estimates of the amounts to be credited to the Fund in Form 2.

9. Report by the Committee.—The Committee shall furnish its activity report for every six months' period to the Central Government.

10. Meetings

(*i*) One third of the total members subject to five members in the case of meeting of committee and three members in case of sub-committee meeting shall constitute a quorum.

(*ii*) The Chairperson of the Committee and the convener of a sub-committee, respectively, shall preside over the meetings of the Committee or the sub-committee as the case may be. In the event of the Chairperson or, as the case may be, the convener being unable to attend the meeting for any reason, the members present may elect one amongst themselves to preside over the meeting.

(*iii*) The Chairperson of the Committee or the convener of a sub-committee may, call meeting of the Committee or a sub-committee:

Provided that the Chairperson or the Convener, as the case may be, shall also call a meeting if a requisition for that purpose is presented to him by at least five members in the case of the Committee and three members in the case of a sub-committee.

(*iv*) At least fourteen clear days' notice indicating the time and place of the meeting shall be sent to the members of the Committee or the Sub-committee as the case may be:

Provided that in case of urgency, a special meeting of the Committee or Sub-committee may be called at any time by the Chairperson or the convener, who shall inform the members at least three clear days in advance of the subject matter for consideration at the meeting and the reasons for which he considers the meeting urgent;

Provided further that no other business shall be transacted at such a meeting.

(*v*) The Chairman or the convener, as the case may be, may invite any person to attend any meeting of the Committee or sub-committee as a special invite but such person shall not be entitled to vote.

11. Agenda

(*i*) At least seven clear days before any meeting of the Committee a sub-committee, except meetings referred to in proviso to sub-rule (*iv*) to rule 10, a list of business proposed to be transacted at the meeting shall be sent to the members of the Committee or of a sub-committee, as the case may be.

(*ii*) No business, not included in the list of business, shall be transacted at a meeting without the permission of the Chairperson presiding over the meeting.

12. Voting

(*i*) Every question brought before any meeting of the Committee or sub-committee, as the case may be, shall be decided by a majority vote of members present and voting at the meeting. No member shall vote by proxy.

(*ii*) In the event of equality of votes, at a meeting, the Chairperson or the convener, as the case may be or in his absence, the person presiding, shall have a second or casting vote.

13. Minutes.—The minutes of the meeting of the Committee or Sub-committee shall be caused to be recorded and circulated among the members.

14. Conditions for Utilization of Funds by the Committee

(*i*) The Committee may register from time to time various Associations or institutions or organisations, engaged in activities relating to investor awareness, education and protection and proposing for Investors programmes; organising seminar, symposia and undertake projects for Investor Protection including research activities.

(*ii*) Application for registration by such organisations referred to in sub-rule (1) be made in Form 3

(*iii*) Application for release of funds for the activities listed in rule 7(1) from the organizations or Institutes registered with the Department of Company Affairs shall be made in Form 4.

(*v*) A copy of the summary or recommendations of the seminar or programme conducted and copy of Accounts for such activity by such organisation *e.g.* registered associations or chambers of commerce or institutes shall be provided to the Committee within ten days of the conclusion of the seminar of programme.

(*v*) The organisation or Associations registered shall be considered for grant of funds as a grant-in-aid either as one time measure or in stages or by way of reimbursement depending upon the nature of the activity proposed.

(*vi*) The Committee shall be entitled to examine the end use of grants and assistance before recommending release of funds.

(*vii*) The Committee shall cause to draw at the end of each Financial Year, a statement of Total Receipts from various sources indicated in section 205C of the Companies Act 1956 and the grants disbursed or the expenditure incurred in connection with the activities organised by the Committee or Sub Committee and other expenditure incurred for holding the meetings.

(*viii*) The Committee shall maintain the necessary records showing amount disbursed, date of disbursal, the name of Organisation or Voluntary agency, the activities of the agency for which such disbursal was made.

Form 1

Statement of amounts credited to Investor Education and Protection Fund

[Pursuant to rule 3 of the Investor Education and Protection Fund (Awareness and Protection of Investors) Rules, 2001]

Note.—All fields marked in * are to be mandatorily filled.

1. (*a*) *Corporate identity number (CIN) of company
   (*b*) Global location number (GLN) of company
2. (*a*) Name of the company
   (*b*) Address of the registered office of the company
3. *Date of payment of amount to the fund (DD/MM/YYYY)
4. *Mode of payment ☐ Cash ☐ Demand Draft
5. Details of the amount credited to the fund
   (*a*) Amount in the unpaid dividend accounts of companies (in Rs.)
   (*b*) The application money received by companies for allotment of any securities and due for refund (in Rs.)
   (*c*) Matured deposits with companies (in Rs.)
   (*d*) Matured debentures with companies (in Rs.)
   (*e*) Interest accrued on the amounts referred to in clauses (*a*) to (*d*) above
      (*i*) Unpaid dividend (in Rs.)
      (*ii*) Application money due for refund (in Rs.)
      (*iii*) Matured deposit with companies (in Rs.)
      (*iv*) Matured debentures with companies (in Rs.)
   (*f*) Grants and donation (in Rs.)
6. Financial year(s) to which the amount(s) relates
7. Details of filing Form 1 under sections 205A(6) and 205A(7) of the Companies Act, 1956

Attachments

1. Copy of challan evidencing deposit of the amount to the fund. Attach
2. Optional Attachments, if any Attach

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete. I have been authorised by the board of directors' resolution dated* (DD/MM/YYYY) to sign and submit this form.

To be digitally signed by

Managing director or director or manager or secretary of the company

Certificate

It is hereby certified that I have verified the above particulars from the books of account and records of M/s. and found them to be true and correct.

Chartered accountant or cost accountant or company secretary (in whole-time practice) or statutory auditor

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Form No. 2

(*See* rule 8)

Company Registration No.

Authorised Capital

Statement of Amounts falling due for crediting to Investor Education and Protection Fund set up under section 205C(2) during the year.....

1. Name of the Company.
2. Registered Office
3. Financial Year
4. Total amount due as on 31st March of the relevant financial year
5. Details of amount credited to Investor Education and Protection Fund during the year
6. Details of amounts

   State the details of amounts remaining unclaimed for six years since becoming due for payment for the following:—

   (*a*) Unpaid dividend;

   (*b*) Unclaimed share application money;

   (*c*) Unclaimed matured deposits;

   (*d*) Unclaimed matured debentures;

   (*e*) Interest in respect of (*a*) to (*d*).
7. Relevant financial year in which amount is due for payment or redemption.

Signature of Person presenting the return:
Date and Place

Certificate from auditors

Verified and found correct.

Place Chartered Accountant/Cost Accountant/Company Secretary/Statutory Auditor

Date

Form No. 3

(*See* rule 14)

Application for registration

Notes.—(1) Submission of the registration form does not necessarily guarantee automatic registration or funding.

(2) Committee reserves the right to reject any application in its own discretion without assigning any reason thereof.

(3) Committee may call for additional details as and when required for the purpose of granting registration.

(4) Any false information furnished or false representation made shall make the application/registration liable for rejection/cancellation.

1. Name of Association:
2. Address:
   Tel No./Fax No./E-mail
3. Year of Establishment:
   Registration No.: and Date:
4. Principal office bearer.
   Address:
5. Organisational structure

   (*a*) Office Bearers:

Name	*Educational Qualifications*	*Occupation/ Profession*	*Experience (specify in number of years of experience as investor either in primary or secondary market)*	*Remuneration received from the Association*
President				
Vice President				
Secretary				
Treasurer				

   (*b*) How elected or appointed or nominated and what is the frequency of election to the Board;

   (*c*) Total number of employees.
   (For the last three years)

6. Membership (For last three years)

   (*a*) Total Number;

   (*b*) Number of Members who are:

   (*i*) Investors

   (*ii*) Connected with Investment activities

   (*iii*) Professionals.

7. Financial Information:

   (*a*) Source of Funds
   (Information for last three years)

   (*i*) Membership fees

   (*ii*) Annual Subscription fees

   (*iii*) Any other fees

   (*iv*) Any other source of income

(*b*) Uses of funds:

(*i*) Administrative expenses

(*ii*) Salary and wages:

— Stationary and postage

— Miscellaneous

(*iii*) Expenses for holding seminars, meetings and other activities of the Fund

(*iv*) Any other expenses

Excess of income over expenditure

8. Activities of the association

(*a*) Objectives of the Association.

(*b*) How has the Association met the objectives in the past/objectives of the present application.

(*c*) How does the Association communicates to the investors;

(*d*) Whether the Association holds meeting regularly (if yes, details of the number of meetings held during the last three years and the participation to be given).

(*e*) Number of shareholders/conferences/seminars held during the last three years.

(*f*) Whether representatives of the Association are sent to attend shareholders' meeting of companies.

(*g*) Whether the association handles investors grievances? (if yes, then number of grievances received and settled during the last 12 months to be given).

(*h*) Grievances redress system of the Association.

(*i*) House Journal/publication of the Association.

(*j*) Whether any representation has been made by the Association in the past to the Stock Exchanges/Government/Companies in the interests of the investors in general and the members in particular.

(*k*) Any other activity.

(*l*) Whether any suits/proceedings are pending against the association or any of its office bearers/members in any court of law, if so details may be given.

(*m*) Whether the association agrees to abide by the rules/regulations/guidelines framed by Committee/ Central Government from time to time for its effective functioning and better discipline.

(*n*) Whether any office bearer of the Association is a board member of any corporate entity.

9. Enclosures

(*i*) Copies of Memorandum and Articles of Association, rules regulations/bye- laws;

(*ii*) Latest membership and their addresses;

(*iii*) Copies of the audited statement of accounts/annual report for the last three years;

(*iv*) Copies of last 3 issues of the House magazine/journal, if any;

(*v*) A copy of the statement authenticating registration of the Association;

(*vi*) A statement elaborating details of activities of the Association.

Signature
(with name)

President
Vice-President

Secretary

Treasurer

Form No. 4

(*See* rule 14)

Application for Funds for Services/Programmes

1. Name of the Applicant:
2. Address:
   Registered Office:
   Corporate Office Address:
3. Constitution: (Whether Association/Chamber of Commerce/Institute/Individual)
4. Date of Incorporation/registration
5. Details (Number/Date) of recognition granted by Committee under rule 14
   Existing activities:
   (*i*) Management:
   Board of Directors:
   (*ii*) Details relating to proposed seminar/programme/activity
   Date when to be conducted:
   Venue:
   Brief Literature on subject matter:
6. Amount required for the proposed seminar/programme/activity and full Justification for the same including following detail:—
   (*i*) The Nature of Activity;
   (*ii*) List of proposed Guests/VIPs who would chair the dais;
   (*iii*) Description of expenses proposed to be incurred for the activity;
   (*iv*) Venue expenses;
   (*v*) Traveling, Boarding and Lodging expenses of Guests for the activity;
   (*vi*) Other expenses;
   (*vii*) Expected number of people who would attend the activity;
   (*viii*) Any other information for the justification of the amount.

Signature
(with name)

President:

Vice President

Secretary

Treasurer

Appendix 4

Investor Education and Protection Fund

The Department of Company Affairs has issued Circular F. No. 17/63/99-CL.V dated 10th August 2004 which states that—

"1. The Department has *vide* its Circular No. 22/2002, dated 23rd September, 2002 have clarified *inter alia* that the Investor Education Protection Fund (IEPF) became operational only on 1st October 2001, and all amounts due for transfer between 1st November 1998 and 30th September 2001 should have been transferred to it within the grace period of 30 days, *i.e.*, by 31st October, 2001. Accordingly all concerned were advised to transfer to IEPF all the amounts referred to in section 205C immediately after issue of the said circular.

2. In the said circular it was also clarified how, when and the date from which the unpaid and unclaimed dividend due for payment prior to and after the amendment of section 205A and the enactment of section 205C by the Companies (Amendment) Act, 1999 should be transferred to IEPF.

3. It has come to the notice of the Department that some companies have deposited the requisite amounts within the said 30 days and while some others had deposited the same at a later date. Department has received representations stating that in making the said deposits, companies were faced with unavoidable practical difficulties arising from the following:—(1) Issue of various debt instruments with varied interest dates; (2) Acceptance of fixed deposits from the public and shareholders over a long period of time; (3) Segregation of accounts in respect of debentures redemption proceeds, fixed deposit repayments and interest thereon was time consuming; (4) Manual maintenance of records by some companies requiring that old records had to be retrieved and reconciled and (5) time required to obtain the arrear amounts from their respective bankers. (6) Time taken by the Registrar and Transfer Agents with their multiple clients for identification of the unclaimed and unpaid amounts to transfer to IEPF. (7) Delay due to the process of complication of data, reconciliation and audit thereof.

4. In view of the above, the matter was carefully considered in the Ministry. Having noted that in depositing the unpaid dividend and other amounts referred to in section 205C (which had become due for payment into the IEPF) subsequent to the issue of Circular No. 22/2002, dated 23-9-2002 companies were faced with practical difficulties as noted above, and a reasonable period of time was required to resolve the same, it has been decided that in cases where compliance had actually been made by the company in question on or before 31st March, 2003, by deposit of the requisite amount into the IEPF, the objective of the said circular shall be deemed to have been satisfied and therefore a company need not be proceeded against for any penal action on grounds of delay upto 31-3-2003. All Regional Directors and Registrars of Companies are advised to take note of the above while contemplating action under the section and proceed in only those cases where compliance had not been made by 31-3-2003. This would equally apply to cases where show cause notice has been issued."