

SS – 3

SECRETARIAL STANDARD ON DIVIDEND



The Institute of

Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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MAY 2003

Published by :

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

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PREFACE TO THE SECRETARIAL STANDARDS

Secretarial Standards Board and its Objectives

The Institute of Company Secretaries of India, (ICSI), recognising the need for integration, harmonisation and standardisation of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the Secretarial Standards Board

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSI and to formulate such Standards, taking into consideration the applicable laws, business environment and best secretarial practices. SSB will also clarify issues arising out of such Standards and issue guidance notes for the benefit of members of ICSI, corporates and other users.

The main functions of SSB are :

- (i) Formulating Secretarial Standards;
- (ii) Clarifying issues arising out of the Secretarial Standards;
- (iii) Issuing Guidance Notes; and
- (iv) Reviewing and updating the Secretarial Standards / Guidance Notes at periodic intervals.

Need for Secretarial Standards

Companies follow diverse secretarial practices and, therefore, there is a need to integrate, harmonise and standardise such practices so as to promote uniformity and consistency.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed thereunder but, in fact, seek to supplement such laws, rules and regulations.

Secretarial Standards that are issued will be in conformity with the provisions of the applicable laws. However, if, due to subsequent changes in the law, a particular Standard or any part thereof becomes inconsistent with such law, the provisions of the said law shall prevail.

ICSI will endeavour to persuade the Government and appropriate authorities to enforce these Standards, to facilitate the adoption thereof by industry and corporate entities in order to achieve the desired objective of standardisation of secretarial practices.

Procedure for issuing Secretarial Standards

The following procedure shall be adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, shall determine the areas in which Secretarial Standards need to be formulated and the priority in regard to the selection thereof.
2. In the preparation of Secretarial Standards, SSB may constitute Working Groups to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard prepared by the Working Group shall be circulated amongst the members of SSB for discussion and shall be modified appropriately, if so required.
4. The preliminary draft will then be circulated to the members of the Central Council as well as to Chairmen of Regional Councils/ Chapters of ICSI, various professional bodies, Chambers of Commerce, regulatory authorities such as the Department of Company Affairs, the Department of Economic Affairs, the Securities and Exchange Board of India, Reserve Bank of India, Department of Public Enterprises and to such other bodies/organisations as may be decided by SSB, for ascertaining their views, specifying a time-frame within which such views, comments and suggestions are to be received.

A meeting of SSB with the representatives of such bodies / organisations may then be held, if considered necessary, to examine and deliberate on their suggestions.

5. On the basis of the preliminary draft and the discussion with the bodies / organisations referred to in 4 above, an Exposure Draft will be prepared and published in the "Chartered Secretary", the journal of ICSI, and also put on the Website of ICSI to elicit comments from members and the public at large.
6. The draft of the proposed Secretarial Standard will generally include the following basic points:
 - (a) Concepts and fundamental principles relating to the subject of the Standard;
 - (b) Definitions and explanations of terms used in the Standard;
 - (c) Objectives of issuing the Standard;
 - (d) Disclosure requirements; and
 - (e) Date from which the Standard will be effective.

7. After taking into consideration the comments received, the draft of the proposed Secretarial Standard will be finalised by SSB and submitted to the Council of ICSI.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalise the same in consultation with SSB. The Secretarial Standard on the relevant subject will then be issued under the authority of the Council.

Compliance with Secretarial Standards

In the initial years, the Secretarial Standards will be recommendatory. The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavour to educate the users about the utility and need for compliance with these Standards. The Standards would be made mandatory thereafter.

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 effected 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.

Companies (Transfer of Profits to Reserves) Rules, 1975
[GSR 426(E), DATED 24-7-1975]

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 :—

Short title

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

Percentage of profits to be transferred to reserves

2. 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 not 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.

Conditions governing voluntary transfer of a higher percentage

3. 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.

Penalty

4. If 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 further fine which may extend to fifty rupees for every day, after the first, during which such contravention continues.

Companies (Declaration of Dividend out of Reserves) Rules, 1975
[GSR 427(E), DATED 24-7-1975]

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 :—

Short title

1. These rules may be called the Companies (Declaration of Dividend out of Reserves) Rules, 1975.

Declaration of dividend out of reserves

2. 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 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 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 utilized to set off the losses incurred in the financial year before any Dividend in respect of preference or equity shares is declared; and
 - (iii) the balance of reserves after such drawal shall not fall below fifteen per cent of its paid-up share capital.

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.