

Sahasri Singar Academy

CA | CMA | CS

*CMA Final Group 3 - Paper 13
Corporate Laws and Compliances*

Sec A – Companies Act



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Content

Section - A: Companies Act

1. The Companies Act, 2013		
(a)	Company Formation and Conversion	1
(b)	Investment and Loans	20
(c)	Dividends	37
(d)	Accounts and Audits	
(e)	Board of Directors & Managerial Personnel	
(f)	Board Meetings and Procedures	
(g)	Inspection, Inquiry and Investigation	
(h)	Compromises, arrangements and Amalgamations	
(i)	Prevention of Oppression and Mis-management	
	(i) Majority Rule but Minority Protection	
	(ii) Prevention of Oppression and Mis-management	
(j)	Revival and Rehabilitation of Sick Industrial Companies	
(k)	Corporate winding up and Dissolution (i) Kinds of Winding up – Powers of the court and Official Liquidator	
(l)	Companies Incorporated outside India	
(m)	Offences and Penalties	
(n)	National Company Law Tribunal and Special Courts	

Insolvency and Bankruptcy Code, 2016 (Annexure 1)		
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(a)	An Introduction	
(b)	Corporate Insolvency Resolution Process	
(c)	Liquidation of a Corporate Person	

Part – A: Company Formation and Conversion

1. Introduction

The Act

Earlier Act: The Companies Act, 1956

Current Act: Act to amend and consolidate the law relating to companies |

Contemporary

Content: 470 Sections | 7 Schedules | 29 Chapters | Rules

Highlights:

To improve Corporate Governance

Simply Regulations

Strengthen the interests of Minority investors

Whistle Blowers (first time)

Resident Director | Woman Director

Necessity:

Changes in national / international economic environment

To facilitate expansion & growth of our economy

Applicability:

Companies incorporated under 1956 / 2013 Act

Insurance | Banking | Electricity | Special Act (except inconsistent)

CG – Notification

Characteristics / Features

Incorporated association	Common Seal	Termination of Existence
Artificial person	Transferability of shares	Voluntary Association for profit
Corporate Personality	Separate Management	Nationality and Residence
Separate Legal entity	Separate property	Citizenship Experience
Perpetual succession	Capacity to sue and be sued	Limitation of action
Limited liability		

Separate Legal Entity

Striking Feature	Clothed with legal personality	Same rights and powers as human being
Unique Character	Enter into contracts	Distinct and Separate from its members
Own property	Open Bank Account	Raise Loans Incur Liabilities

Points to Ponder:

A person and Subscriber (MOA) are different

Even members can enter into contracts

Creditors can sue for the debts of the company

Property – Company is the owner, even though SHs contribute the capital and assets.

Case Law: Macaura v. Assurance Co. Ltd: A member does not have insurable interest in the property of the company

Perpetual Succession

Members may come and go, but company goes on forever

No death – Legal Entity

Even an atom bomb cannot destroy a company

Limited Liability – Depends on the kind of the company

1. Limited by shares – to the extent of unpaid amount
2. Limited by Guarantee – to the extent of amount guaranteed (during wind up and adjustment of rights of the contributories)
3. Unlimited – whole liability

Artificial Legal Person

Status:

Legal Process

No natural Birth

Clothed with rights of individuals

Capacity to sue and be sued

Non – Eligibility:

Send to jail | Take oath | Marry | Practice profession

Acting through:

Human agency - Directors (But not the agents for the members)

Authenticate the formal acts thro common seal

Common Seal

Symbol of Incorporation

Official Signature

Affixed by Officers and Employees

A relic of medieval times

Optional under the Companies (Amendment Act), 2015

Alternative mode – Authorisation by 2 Directors / Director and CS

2. Corporate veil theory

Corporate Veil - A legal Concept to identify the company separate from its members

Concept: Members are shielded from liability connected to the company's action.

The members enjoy the corporate insulation.

Case Law: Salomon v Salomon and Co Ltd – A SH cannot be held liable even virtually holds the entire capital

Lifting / Piercing of Corporate Veil –

Looking behind the company as a legal person

Court's willingness to lift to question the control and not ownership

BSN (UK) Ltd. v. Janardan Mohandas Rajan Pillai - Evasion of tax

Statutory cases – by statute and abuse of the status

Judicial decision

Cases	Case Law
Enemy Character	Daimler Co Ltd Vs Continental type Rubber co Ltd Connors Bros. v. Connors
Protection of Revenue	Juggilal vs. Comm of IT Re Sir Dinshaw Mauckjee Petit
Welfare legislation / Legal Obligation	Workmen employed in Associated Rubber Industries Ltd Vs Associated Rubber Industries Ltd
Formation of subsidiaries to act as agents	Merchandise Transport Limited vs. British Transport Commission (1982)
Prevention of Fraud or Improper conduct	Gilford Motor Co Ltd Vs Horne
Transfer of property	Jones v. Lipman
State is responsible for PSUs	Kapila Hingorani v. State of Bihar

3. Types of Companies

Incorporation	Size/members	Control	Liability	Listing	Sh Capital	Others
Charter Statutory Registered	(1) Public (2) Private OPC / Small / Others	(1) Holding (2) Subsidiary (3) Associate	(1) Unlimited (2) Limited by Shares / by Guarantee	(1) Listed (2) Unlisted	1. Having 2. Not having	1. Section 8 2. Foreign 3. Govt 4. Dormant 5. Vanishing 6. Nidhi 7. producer 8. Dormant 9. PFIs

I. On the basis of liability

(a) Limited by shares – Section 2(22) | MOA | A SH is the owner of the company but not for the company's assets.

(b) Limited by Guarantee - Section 2(22) | MOA | guaranteed amount during wind up

Case Law: Narendra Kumar Agarwal vs. Saroj Maloo. The membership of a guarantee company may carry privileges much different from those of ordinary SHs

(c) Unlimited Company – Whole Liability | Entitlement to claim compensation from other members

II. On the basis of members

(a) One person Company – To encourage entrepreneurship and corporatization of business

ONE	Person (Natural Person with RoI No Minor)
	Nominee (No Minor)
	Director (may be more than 1 also)
	in only one OPC

More about OPC....

Pvt Ltd Co

Exemptions given

Suffix OPC

Nominee – consent and withdrawal

Nominee becomes the member on the death of the original member

Change in the name of the person shall not be deemed to be alteration in the MOA

No carrying Non-Banking Financial investment activities including investment in other companies

No conversion to Sec 8 companies, but can convert to private / pub Companies

Voluntary conversion only after 2 years

(Except – paid up capital > ₹ 50 L / Avg T/O > ₹ 2 cr)

Contravention: Fine – ₹ 10,000 and ₹ 1000 / day

(b) Private Company

Restricts – Rights to transfer | Max – 200 members | Prohibits invitation to the public

Number of members: OPC – Not applicable | Joint holding – single SH

Excludes: Employees | Ex-employees cum members

Small Co: Pvt Co | paid up share capital – ₹ 50L and T/O – ₹ 2 Cr

Non-applicability – Holding / Subsidiary / Sec 8 / Special Act

(c) Public Company

Not a pvt Co | Free Transferability of shares | Members: min – 7 / Max – any
| Deemed pub Co – sub of pub co

III. On the basis of control

(a) Holding and Subsidiary companies

Controls – Composition of BoD | $> \frac{1}{2}$ Total voting power | No layers of subsidiaries

Examples:

1. B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A. Likewise, if D is a subsidiary of C, D will be subsidiary of B as well as of A and so on.

(b) Associate Company

Significant Influence (20% of the voting power) | Not a subsidiary Co. | Includes Joint Venture

IV. On the basis of Capital

(a) Listed Company – Listed on any recognized Stock exchange Definition – Sec 2 of Securities Contracts (Regulation) Act, 1956

(b) Unlisted Company – Not listed

V. Other Companies

(a) Government Company

Pub Co | 51% paid up capital by CG / SG / both | Includes – Sub of a Govt company

(b) Foreign Company

Company / Body Corporate outside India | Place of business (thro agent / e mode) in India and conducts any business activity

(c) Formation of Companies with Charitable objects etc. (Section 8 Company)

Promote – Charitable Objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment, etc.

Applies profit to promote its object | prohibits payment of dividend

Examples: FICCI | ASSOCHAM | National Sports Club of India | CII

License:

CG's Power | No suffix -Ltd or Pvt Ltd | Apply for Registration | same privileges as Ltd Co.

Revocation – Fraud | violation of objects | written notice by CG and opportunity of being heard

Order of CG – On revocation,

1. Amalgamate with another Sec 8 company with the similar objects
2. Wind up

Contravention:

Company: Fine - ₹ 10Ls – ₹ 1Cr

Director / Officer: Imprisonment – 3 years / Fine ₹ 25T to ₹ 25 L / both

Officer in default for Fraud – Liable under Sec 447

Others:

A partnership firm can be partner

14 days clear notice for GM, instead of 21 days

Non requirement of min number of directors and IDs | NRC | SRC

(d) Dormant Company (Status)

Formed for future project/ hold an asset or intellectual property

No SAT

Apply to the Registrar for Dormant Status

Inactive Company shall also apply

Note:

1. **Inactive company:** Not carrying business / operation | No SAT for 2 years | Not filed Fin, Statements and AR for 2 years

2. Not SAT: Allotment of shares | Payments w.r.t. Fees to Registrar / other payments / maintenance of office & records

(e) Nidhi Companies

To cultivate the habit thrift (cost cutting) and savings amongst its members | receive deposits | Lending to its members only for their mutual benefit | Comply CG Rules (Sec 406)

(f) Public Financial Institutions (PFI)

LIC | IDFCI | UTI | CG Notification under Companies Act and RBI
Conditions: Unless under Central / State Acts or Companies Act | Govt Company

4. Registration / Incorporation of Company

Promoters:

The person who formed the company	Has control over the affairs of the company
Named in Prospectus	The BoD accustomed by their advice / directions / instructions
Conceived the idea	Taken steps for registration (But not in professional capacity)
Identified in AR under sec 92	

Formation of Company

Pub Co – 7 / Pvt Co - 2 or more subscribers for lawful purpose and complying the Act

Incorporation of company

1. Filing of the Documents and information with the registrar

MOA – signed by Subscribers

Declaration by person involved in formation and proposed directors / officers / Secretary

Declaration by subscribers and Directors w.r.t. conviction of any offence / found guilty of fraud / misfeasance during 5 years / documents filed are true to the best of their knowledge and belief.

Address - Registered office / correspondence

Particulars of subscribers / first directors

2. Issues: Certificate of Incorporation | Allotment of Corporate Identify Number (CIN)

3. Maintenance of copies of all documents and information at Registered Office till its dissolution

4. Furnishing of false / incorrect information / Suppression of material fact - Fraud under Sec 447

At the time of incorporation – All person is liable

Post incorporation – Promoters / First Directors / persons given declaration are liable

5. Order of Tribunal, NCLT -

Pass such orders | Unlimited Liability | Removal of Name | Wind up | others

Simplified Proforma for Incorporating Company Electronically (SPICE) – E form

Effect of Registration: Date in CoI | Exercises all functions of a body corporate

Case Law:

Hari Nagar Sugar Mills Ltd vs S. S. Jhunjhunwala | State Trading Corporation of India

Spencer & Co. Ltd Madras vs. CWT Madras | Heavy Electrical Union vs. State of Bihar

Effect of MOA and AOA: Binds the company and its members | Money paid by a member is a debt

Shares

I. Nature of Shares

Definition – a share in the share capital | Includes stock | Proportion of interest

An interest in the Company

Case Law: Borland Trustees vs. Steel Bros & Co Ltd – Share is an interest measured by a sum of money and various rights | as per MOA and AOA | Contractual rights and legal rights for SH

Movable property – Movable Property | Transferable as per AOA | Includes Debentures also

Numbering – Distinguished by distinctive numbers | Except – Demat Shares

II. Kinds of share Capital – Not Applicable for Pvt Co

(i) Equity share Capital – voting rights | Differential rights w.r.t. dividend, voting or otherwise

Example:

Tata Motors in 2008 issued equity shares with differential rights

'A' equity shares with every 10 'A' equity shares carrying only one voting right but 5% more dividend. This share is traded at discount.

Future Retail, Jian Irrigation also issued equity shares with differential rights

(ii) Preference share Capital- Rights to participate in the proceeds during wind up

Points to Ponder:

Equity Share Capital: For Company limited by shares - all share capital and not preference share capital

Preference Share Capital – preferential right w.r.t. payment of dividend and repayment during winding up

Capital shall be deemed to be preference capital – w.r.t. dividend and capital

Classification of capital

Capital – Share Capital | Rupees divided into shares of fixed amount | contribution to the stock.

“A share is not the sum of money, it is rather an interest (and rights) measured by a sum of money”

a. Nominal / Authorised / Registered capital

Authorised by MOA | The maximum amount of share capital of the company | stamp duty is paid accordingly | Fixed including working capital and reserve capital

b. Issued Capital

Company issues from time to time | Includes shares allotted for consideration other than cash

Schedule III – To disclose in the B/S

c. Subscribed Capital - Shares taken by public

Stating of Authorised, Subscribed and Nominal Capital in notice, advertisement, Communication / business letter, bill head, letter paper.

Contravention: company – ₹ 5000 and Officer – ₹ 10,000

d. Called-up Capital - Capital called for payment

e. Paid-up Capital - Amount paid or credited | Capital less in arrears

5. Memorandum of Association & Articles of Association

Memorandum of Association (MOA)

Charter | Public Document (open for inspection) | Defines constitution, object and scope | Foundation | an Edifice | Limitation of action | Powers of SHs, Creditors and other | Ultra vires act is prohibited

Tables (Format): Schedule III –

Table A – Ltd by Shares

Table B – Ltd by Guarantee and having SH capital

Table C – Ltd by Guarantee and not having SH capital

Table D – Unlimited Company

Table E – Unlimited Company and having SH capital

More about MOA...

Contents – Clauses | Compulsory Clauses | Conditions

a. Name clause – Ltd | Pvt Ltd | OPC | Section 8 – Electoral Trust, Foundation, Forum, Association, Chambers, Confederation, Council | Govt Co - Ltd

b. Registered office / Situation Clause - State

c. Object clause – Scope of the company | shall change its name in its activities

d. Liability clause – Ltd by shares / guarantee

e. Capital clause – Authorised Capital | share of fixed amounts | Not applicable to the company not having share capital

f. Association / Subscription clause – Every subscriber shall take atleast one share | Indicated in the table under the clause

Must: printed | paragraphs | consecutively numbered | signed by subscribed and witnessed and details entered | Company enters thro' its agents | Minor is not competent, but guardian in his personal capacity | Not contrary to The Companies Act | All other documents should comply with MOA.

Doctrine of Ultra vires

Ultra vires:

Beyond its powers	Void, inoperative and not binding
Not to do acts in excess of the legal powers	Restriction on employment of Company's fund
Presupposes limited powers	Exception to "Capacity to sue and be sued"
Constructive notice	Departure of objects to the extent provided by law

Ratification by SHs: MOA – No | AOA – Yes (if done within the powers) | Directors – Yes

Disadvantage is that the company cannot change its activities in a direction agreed by all. But does not affect the change in Object clause

Disadvantage is its advantage: Protection to the SHs and Creditors

No Intravires by estoppel / Acquiescence / Lapse of time / delay / ratification

Case Law: Ashbury Railway carriage & Iron company Ltd V Richie – w.r.t. financing (not in object clause)

Points to Ponder:

Money lent on supplied goods / performed service cannot be recovered, unless not expended it can be done by injunction.

Money lent for payment debts is recoverable.

Articles of Association (AOA)

Rules and Regulations for internal affairs | Bye laws of the company

Directors / officers are required to perform their functions as regards the management of the company, its accounts and audit.

Case Law:

1. Guinness vs Land corporation of Ireland - Benefit of the creditors and outside public | Internal regulation

2. Ashbury Railway carriage & Iron company Ltd V Richie – Subsidiary to MOA | Defines duties, the rights and powers of the governing body | w.r.t. changes in internal regulation

3. S. S. Rajkumar vs Perfect Castings (P) Ltd – AOA is the business document | Domestic management of the company | creates certain rights and obligations between members and the company

Section 5: Contents and Model AOA

1. Contains Regulations for management
2. Inclusion of matters – Additional matters may be included
3. Contains provisions for entrenchment – i.e. Alteration for more restrictions only (like special resolutions)
4. Manner of inclusion in the entrenchment provision – at the time formation / by amendment.

Pvt Co – All the members | Pub Co. – Special Resolution

5. Notice to the Registrar of the entrenchment provision
6. Forms of AOA – Schedule I | Tables F, G, H, I and J
7. Model Articles – Adopt all or any as per applicability
8. Company registered after the commencement of this 2013 Act – Not to exclude or modify regulations.

Contents

Exclusion wholly or in part of Table F	Adoption of Preliminary Contracts
SH Capital, Variation of Rights, Number and Value of Shares	Issue of Preference Shares
Shares – Allotment Calls Lien Transfer & Transmission Nomination Forfeiture Buy – Back SH Certificates Dematerialisation Conversion of Shares to Stock	Directors – Appointment Delegation of Powers Nominee Directors MD WTD Manager Secretary CEO CFO Additional Directors Remuneration BoD Meetings Proceedings of Meetings Rules regarding Committees of the BoD

Voting Rights & Proxies	GMs Proceedings Adjournment Voting Rights & Proxies
Seal	Audit Committee
Borrowing Powers	Dividends & Reserves Capitalisation of profits, Reserves
Accounts and Audit	Winding up
Indemnity	Secrecy

Key Differences between MOA and AOA

Characteristics	MOA	AOA
Objective	Defines and delimits the objectives	Provides Rules and Regulations
Relationship	Company and outside world	Company and its members
Alteration	As provided in the act Permission of RD / Tribunal is required	Special Resolution
Ultra vires	Acts are void Cannot Ratify	Ratified thro' special Resolution, if not contrary to MOA

Doctrine of Constructive Notice

Section 399 – Inspection of documents kept by the Registrar by electronic means | Take record | get copy or extracts including CoI.

MOA and AOA are public documents available on payment of nominal fees.

Duty of outsider to inspect its documents and conformity.

Presumption / Implied Notice that the person has not only read but also has knowledge of the contents of the documents and understood in its true perspective

A person cannot acquire any rights under the contract when a company has entered in ultra vires act

Doctrine of Indoor Management - Turquand's Rule

Exception to the Doctrine of Constructive Notice

Case Law: D. Royal British Bank V Turquand – If an act is authorised by MOA / AOA, an outsider is entitled to assume all the detailed formalities for doing that act

Exceptions:

a. Actual or Constructive Knowledge of irregularity:

Case Law:

1. Howard v Patent Ivory Manufacturing Company

☛ The directors of a company could borrow upto £1,000 without the sanction of members in GM

☛ The consent of the shareholders was required to borrow in excess of £1,000

☛ The directors themselves lent £3,500 to the company, internal irregularity – company is liable only for £1,000

2. Morris v Kanssen – A director cannot defend an allotment | validity of Director's appointment

b. **Negligence** – suspicious circumstances or unusual magnitude of transactions

Case Laws:

1. Anand Bihari Lal v Dinshaw & Company- the third party could not enforce a contract against the company (contract entered by an accountant to sell the property) even-though the third party acted bonafide

2. Haughton & Co. v Nothard Lowe & Mills Ltd – Apply one company's money for the payment of debt in another company by a director

c. Forgery:

Case Law: Ruben v Great Fingall Consolidated Company: Forgery of signature by the secretary for two directors is not defect in consent but absence of consent. Hence the certificate is invalid, even though the holder of the certificate is not aware of this.

Part - B: Investment and Loans

Follows from

Ch – V: Acceptance of Deposits by the Companies

Ch – XII: Meetings of Boards and its Powers

B:1.1 Procedure for Inter-Corporate Loans, Investments, Giving off Guarantee and Security

Investments:

Common parlance - Any property / right in which money or capital is invested

Present: Limited sense | Investment of money in shares, stock, debentures, or other securities

Prerogative power of BoD - To invest the funds of the company | Sec 179

Restrictions for Companies: Follows from Sec 186

To make investments

To provide Loans

Giving corporate guarantee / security

[As good as giving a loan, because the person to whom guarantee or security is given can decide to enforce the guarantee or security in certain conditions and in such a situation, the company will have to pay the amount]

1.1.1 Loan and investment by company (Sec 186)

(a) Without prejudice | unless otherwise prescribed

make investment through not more than two layers of investment companies

Provided that the provisions of this Sub-Section shall not affect:

(1) Acquiring any other company incorporated in a country outside India which has investment subsidiaries beyond two layers as per the laws of such country.

(2) a subsidiary company from having any investment subsidiary | To meet out the requirements under any law / regulation

- (b) No company shall directly or indirectly:
- (1) give any loan to any person or other body corporate
 - (2) give any guarantee or provide security in connection with a loan to any other body corporate or person, and
 - (3) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate.

Exceeding WEH:

[60% (paid-up share capital + FR + SP A/C + (debit or credit balance) P/L A/C] or [100% (FR + SP A/C)]

(c) If exceeds, Prior approval - SR

(d) Disclosure to Members in FS - Full particulars including the purpose of utilisation of the amount by the recipient of such

(e) Sanctioned (Consent) of ALL directors at the BM

Prior approval – PFI (Not necessary if Limit does not exceed + No default - repayment of instalments + interest

(f) Prohibition: Such Company prescribed and registered under Sec 12, SEBI, 1992
To take inter-corporate loan / deposits exceeding the prescribed limit
Furnish in financial statement the details of the loan or deposits

(g) Prohibition: Rate of interest < Prevailing yield of 1 / 3 / 5 / 10 years Government Security closest to the tenor of the loan.

(h) Prohibition: Subsisting default – on repayment of any deposits (+ interest) accepted before or after the commencement of this Act

(i) Maintain a Register

(j) Register – At Registered office | Open to inspection | Extract & Copies on payment of fees

(k) Non – Applicability:

(1) w.r.t. Loan / Guarantee / Security

Banking company / Insurance company / Housing Finance company in the ordinary course of its business Company engaged in the business of financing of industrial establishment or of providing infrastructural facilities.

(2) to any investment:

(i) made by an investment company

(ii) subscription to right issue

(iii) by NBFC

(iv) made by a company whose principal business is the acquisition of securities.

(v) of shares allotted in pursuance of clause (a) of Sub-Section (1) of Section 62

(l) CG – Rules

On Contravention:

Company - Fine: ₹ 25,000 – ₹ 5L

Officer in default - Imprisonment - extend to 2 years | Fine: ₹25,000 – ₹ 1L

1.1.2 Investments of company to be held in its own name [Sec 187]

(a) In its own name

Exemption: Subsidiary Company – Nominees | To satisfy the requirement of number of members

(b) Nothing in this Section shall be deemed to prevent a company:

(1) Deposit with Bankers

Shares / Securities for the collection of - Dividend / Interest payable / Investments (in its own name)

(2) Deposit / Transfer / Holding in the name with SBI / Scheduled bank (Bankers) Transfer of shares or securities

Provided, Re-transfer it to its own name after the expiry of said period (6 months)

(3) Deposit / Transfer - Shares / Securities – To any person

for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it.

(4) Investments held by Depositories & the company as a beneficial owner

(c) Maintain Registers for Investments not held in its own name

open to inspection by any member or debenture-holder | No charge | Reasonable restrictions – AOA / GM

(d) On contravention: Company – ₹ 5L | Officer in default – ₹ 50,000 each.

B: 1.2 Acceptance of Deposits, Renewal, Repayment, Default and Remedies

Introduction:

Receipt of money – Deposit / Loan / other form

External Finance

Cost effective

A receipt of finance

To control the malpractices

To safeguard the investors made the investment [Sec 76]

Private Company - From Members only

Statutory / Regulating Provisions: Else Prohibited

Chapter V, The Companies Act, 2013

Sec 73: Prohibition on Acceptance of Deposits from Public

Sec 74: Repayment of Deposits, etc., accepted before commencement of this Act

Sec 75: Damages for Fraud

Sec 76: Acceptance of Deposits from Public by certain companies

The Companies (Acceptance of Deposits) Rules, 2014

Non – Applicability: Sec 73(1) & Rule 1(3)

Banking Company | NBFCs (RBI) | Housing Finance Company (NHB Act, 1987) | CG + RBI Consultation

“NOT” Deposits: Sec 2(31) | Rule 2(1)(c): Any amount received from

(i) CG | SG | other source (guaranteed by CG/ SG) | Local Authority
| Statutory Authority (Act of Parliament / State Legislature)

(ii) Foreign Govts | Foreign / International Banks

Multilateral Financial Corporations (International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation and International Bank for Industrial and Financial Reconstruction)

Development Financial Institutions, Foreign Export Credit agencies, foreign collaborators, foreign bodies corporate Foreign - Citizens | Authorities | PROI

(*FEMA, 1999 | Rules and Regulations)

(iii) Loan / facility from Banking Company / SBI / Subsidiary Banks

Banking Institutions

- notified by CG under Sec 51, Banking Regulation Act, 1949

- New Bank, Sec 2(d) or Sec 2(b) of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and 1980

- Co-Operative Bank, Sec 2(b-ii), RBI, 1934

(iv) Loan / Financial Assistance – PFI (CG + RBI) | RFI | Insurance Companies / Scheduled Banks (RBI Act, 1934)

(v) Issue of CP / Instrument (RBI Guidelines)

(vi) By a company from another company

(vii) Towards subscription of shares - Share Application Money

- Advance (Pending Allotment – if not allowed within 60 days & not refunded within 15 days from 60 days)
- Adjustment for other purpose, not treated as refund.

(viii) Person – Director / Relative of a Director

Provided:

Declaration to the company is given

Not from Loans / Deposits from others

Disclosure in Board's Report

(ix) Issue of Bonds / Debentures (First charge / pari paasu Charge – Sch III / Excluding Intangible Assets / Not exceeding MV)

Bonds / Debentures (Compulsory Convertible within ten years)

(ixa) Issue of Non-Convertible debenture (No charge) | Listed – SEBI

(x) Employee (not exceeding his annual salary – Contract of Employment | Non - interest bearing security deposit)

(xi) Non - interest bearing amount received and held in trust

(xii) Business (* Refundable (with / without interest) | No permission – Goods / Services)

(a) *Advance – Supply of Goods / provision of services – appropriated within 365 days (NA- Legal proceedings)

- (b) *Advance – Immovable Property – Agreement / Arrangement – provided adjusted
- (c) Security Deposit – Performance of the contract – Goods / Services
- (d) *Advance – Long term projects – Capital Goods (except (b))
- (e) Advance – Future services – warranty / maintenance contract (written agreement / arrangement) – period (WEL: Common parlance / 5 years)
- (f) Advance – Received / allowed – Sectoral Regulator – CG/SG
- (g) Advance – Subscription towards publication (print / electronic)
- (xiii) Promoters – Unsecured Loan (Lender: FIs / Banks)

Conditions: (a) Brought in by stipulation (b) promoters/ relatives (c) Exempted - until repayment

(xiv) Nidhi Company – Sec 406, The Companies Act, 2013.

The following is considered as deposits unless specifically excluded

- (a) Amount received by the company– Instalments / others – Promise / offer to give returns in cash / kind – on completion of period
- (b) Additional contribution of (a) made by the company

(xv) Subscription of chit (Chit Fund Act, 1982)

(xvi) CIS – as per SEBI

(xvii) ₹ 25 L or more – Start – up Company – Convertible Note (to Equity or repayable in 10 years) – Single tranche

[Start-up Company: Private Company | Recognised by DPIIT

Convertible Note: Instrument evidencing Receipt of money initially as debt – Convertible to Equity Shares of Start – up company]

(xviii) Amount – Alternate Investment Funds | Domestic Venture Capital Fund | Infrastructure Investment Trusts | Real Estate Investment Trusts | Mutual Funds (Reg with SEBI)

DPIIT - Department for Promotion of Industry and Internal Trade

Tenure: 6 months to 36 months [Sec 73 (2), Rule 3]

Exception: Earlier than 6 months, but not repayable earlier than 3 months

- Meeting short term requirements
- Accept / Renew
- Not more than 10% of paid-up share capital + FR + SP

Depositor / Deposit Holder: Member (deposited as per sec 73(2)) | Any person (deposited as per Sec 76 & Rule 2(1)(d))

Acceptance Limit: Deposits (+ outstanding) [Sec 73(2), Rule 2 (3, 4, & 5)]

Type of Company	% (paid-up share capital + FR + SP)	
	Members	Public
Eligible Company	10%	25%
Non- Eligible Company (Sec 73 (2))	35%	Prohibited
Govt Company	-	35%
Exception	IFSC Public Company Private Company – Not exceeding 100% (File form DPT 3)	
Non – Applicability	Private Company (i) Start-up – 10 years from the date of incorporation or (ii) (a) Not an Associate / Subsidiary (b) Borrowings (from Banks / FI / Body Corporate) < WEL (2* Paid up share capital / ₹ 50Cr) (c) No default in repayment of borrowings subsisting at the time of acceptance of deposits	

Eligible Company:

A public company [Sec 76(1)]

- Net worth – not less than ₹ 100 crs
- T/O – Not less than ₹ 500 crs
- Prior Consent (SR in GM) | Filed with RoC b/f inviting the public
- OR, if within the limits as specified in Sec 180(1)

Acceptance of Deposits:

I. From Members (Private & other Company)

II. Public (Eligible Companies)

I. **From Members:** Conditions – Sec 73(2)

- (i) Resolution – GM
- (ii) RBI Consultation + Conditions
- (a) Circular (DPT 1) – Financial Position | Credit Rating | Total number of depositors | Previous deposit dues | Other particulars
- (b) File to Registrar within 30 days b/f the date of issue
- (c) DRR
- (d) Omitted
- (e) Certification – No default (+ Interest) b/f or a/f commencement | Default made good & Five years elapsed
- (f) Secured Deposits: Security (Deposit + Interest) – Deposit Insurance / Charge Creation (in favour of a Trustee)

Furnishing of deposit receipts to depositors [Rule 12]:

- Includes Agents | within 21 days | Signed by an officer authorised by the BoD
- Content: Date of Deposit | Name & Address | Amount | Rate and periodicity of Interest | Repayable Date

Maintenance of liquid assets and creation of DRR Account [Sec 73(5), Rule 13]:

- A specific Reserve
- Deposit not less than 20% in Separate Bank A/C in Scheduled Bank
- on or b/f 30th April of each year

Exemptions:

Private Companies: [No compliance under 73(2) (a) to (e) | Follow only 73(2)(f)]

- Amount – Not exceeding 100% of paid – up share capital + FR + SP
- Start – up – 10 years
- Conditions:
 - Not an Associate / Subsidiary
 - Borrowings from Banks / FIs / Body Corporate
 - WEL (less than twice of paid-up share capital / ₹ 50 cr)
 - No default in repayment
- File DPT -3 to Registrar

Specified IFSC Public Company: A unlisted Public Company | Licensed | RBI / SEBI / IRDA – IFSC (Multi services SEZ)

[No compliance under 73(2) (a) to (e) | Follow only 73(2)(f)]

- Amount – Not exceeding 100% of Paid – up share capital + FR
- File DPT -3 to Registrar

II. From Public:

- Eligible Company | Compliance as per Sec 73(2) | CG + RBI
- Rating (Net worth | Liquidity | Ability to repay) @ invitation to the public
- Secured (Create charge within 30 days | Amount – not less than the amount of deposits)

Tenure: 6 months to 36 months [Sec 73 (2), Rule 3]

Exception: Earlier than 6 months, but nor repayable earlier than 3 months

- Meeting short term requirements
- Accept / Renew
- Not more than 10% of paid up share capital + FR + SP

Rate of interest / Payment of brokerage [Rule 3 (6)]: Not to exceed the maximum rate prescribed by RBI for NBFC.

Types of Deposits: Secured / Unsecured | Payable on demand / on notice

Joint Names [Rule 3 (2)]: Max 3 names | Clauses (not mandatory):
"Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor"

Broker [Rule 3(6)]: Person authorised in writing

Alteration of terms & conditions [Rule 3(7)]:

- No right reserved to company
- To disadvantage the Depositor
- Deposit / Deposit Trust Deed / Deposit Insurance Contract
- Circular issued & deposits accepted

Credit Rating [Rule 3(8)]:

- Atleast once in a year
- File Form DPT 3 to RoC
- Rating not below Minimum investment grade rating / Specified Credit Rating
- Agency: Specified for NBFCs (NBFC Acceptance of Public deposits (Reserve Bank) Directions, 1998)

Forms & Particulars of Advertisements / Circulars [Rule 4]:

- Circular to members in DPT 1 | Newspaper – English & Vernacular
- Certification (Statutory): No default (+ Interest) b/f or a/f commencement | Default made good & Five years elapsed
- Upload – website
- Circular – Issued in authority, BoD
- Issued not less than thirty days b/f the date of issue signed by majority of directors
- Circular (Advertisement) - Valid 6 months: WEL (Close of FY / FS in AGM / AGM been held)
- Fresh circular (advertisement) in each succeeding year
- Date of issue [newspaper - Date of advertisement | Circular – Date of dispatch

Deposit Trustees (DT) [Rule 7]:

- Written Consent – Appointment (one or more trustees) | Include in Circular
- Execute Trust Deed | DPT 3 | 7 days b/f issue of circular / advertisement
- Remove – consent of all Directors present in the BM (atleast one ID in BM)

Who cannot be DTs?

- Director | LMP | Officer | Employee - Includes Relative
- Depositor
- Person indebted to the company
- Having material pecuniary relationship
- Enter in Guarantee Arrangement – Secured Principal Debts

[*Company includes Holding / Subsidiary / associate]

Duties of DTs [Rule 8]:

- Ensure: Sufficient amount (including O/S Deposits) for charge creation
- Satisfy: Not inconsistent content in the Circular w.r.t. Deposit scheme / Trust Deed / Compliance
- Ensure & Steps to Remedy: Company does not commit any breach of covenants and provisions of the trust deed
- Meet: Deposit Holders, as and when required
- Supervise: Implementation – Charge creation
- Such acts: security becomes enforceable
- Other Acts: Protection of interest of DHs
- Resolve Grievances

Meeting of depositors with DTs [Rule 9]:

- Request in writing | signed | 1/10th of Depositors (+O/S) in value
- Happening of an event – default | affects the interest of the Depositors

Nomination [Sec 72, Rule 11]: Nominate any person

Registers of deposits [Rule 14]:

- Maintain at Registered office
- One or more Registers
- Entries within 7 days | authenticated by Director / Secretary / Authorised Officer
- Preserve for not less than 8 years from the latest entry

Contents:

Name, address and PAN Guardian's Details, if Minor	Nominee's Particulars	Deposit Receipt Number	Security & Charge Creation
Date & Amount	Duration Repayable date	Interest - Rate (%) Due dates Mandates & Instructions No TDS, if any	others

General provisions regarding premature repayment of deposits [Rule 15]:

- Reduce the rate of interest payment by 1%

Non - Applicability:

(a)Rule 3	(b)War risk Related benefits: <ul style="list-style-type: none">- Naval / military / Air forces- Personnel / family- Application made by Associations / Societies – Emergency under Article 352, CoI Part of the year: Less than 6 months – Exclude More than 6 months – Reckoned as one year
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Company shall permit to renew for higher rate of interest, in accordance with terms and conditions, a period longer than the unexpired period

Return of Deposits (includes reporting of “What is not a deposit?”)

- Periodic Return
- On or b/f 30th June, every year
- File DPT 3 + fee
- Furnish by 31st March of every year

[* DPT 3: Form to file return & / or “Not a deposit” by every company other than a Govt Company

Additional Requirement – One time return within 90 days from 31st March, 2019]

Disclosure in FS [Rule 16A]: As notes

Other than Private Company – If received from Director

Private Company – If received from Director / his relatives

Penal rate of Interest [Rule 17]: 18% p.a. | overdue period | matured & claimed but remains unpaid

Power of Central Govt to decide certain Questions [Rule 18]: w.r.t. applicability | with RBI

Applicability of sections 73, 74 and 75 to eligible companies [Rule 19]:

Earlier Deposits: follows 1956 Act | Fresh deposits – follows Ch – V, 2013 Act

Statement Regarding Deposits existing as on the Date of Commencement of the Act [Sec 74(1)(a), Rule 20]: File DPT 4

Provisions	Penalty	
	Company	Officer
Failure for repayment [Sec 74 (3)]	₹ 1 cr to ₹ 10 cr	Imprisonment – 7 years / Fine – ₹ 25L to ₹ 2 crs
Contravention of Rules [Rule 21]	₹ 5000 Continuing: ₹ 500 / day for every day	
Contravention of Sec 73/ 76	WEL (₹ 1 cr / 2x amount) to ₹ 10crs	Imprisonment – 7 years / Fine – ₹ 25L to ₹ 2 crs

Criminal Liability – Sec 447	-	w.r.t Company / SHs / DHs / Crs / Tax Authorities
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Penal Provisions:

Miscellaneous:

Sec 73 (3) - Repayment as per terms and conditions

Sec 73 (4) - On failure of repayment, the depositor may apply to Tribunal & it orders / directs for the sum due | Loss | Damage

Sec 74(1) - Deposits (includes Interest) b/f 2013 Act - Unpaid / becomes due after

- File within 3 months (All deposits / interest / arrangements for repayment)
- Repay (WEE: within 3 months / expiry period) [Renewal as per Chapter V]

Sec 74 (2) - Tribunal (applied by the company) allow further time based on financial condition for repayment

Sec 75(1) – Defraud the Depositors / Fraudulent Purpose – Criminal Liability – Sec 447

Sec75(2) – Person / Group of Persons / AOPs – File suit / proceedings / other action – For loss

Part – C: Dividends

Introduction:

Divisible profit - Profit / portion of profit | Legally distributed |

Profits available for dividend to SHs

Note: All profits are not Divisible profit

Dividend –

A reward to a SHs | A share of the after- tax profit | A right and not an obligation

Distributed w.r.t. number / class of shares held by them

BoDs - Decides / recommends | Amount / timing | Current Earnings /

Reserves (past earnings)

Requires SHs approval

Profit that shares with the SHs

Declared out of profit [If declared in absence, Director's own pocket]

Distribution of Company's Earnings

Inherits from the Company – Not from the act / MOA / AOA (it only regulates)

Right to claim arises only after declared

Not a dividend - Distribution of discount coupons [SS3]

Waiver of right to receive dividend – (Not in Act) AOA | full / part

Declared Dividend – Debt to a company | No revocation possible

Dividend Warrant – Warrant used to encash

Unpaid Dividend – Dividend not paid / claimed | Warrant not encashed

Interest and Dividend

Nature	Interest	Dividend
Meaning / Nature	Money - Charge against profit	Percentage / Appropriation of profit
To whom paid to	Lenders, Crs , DH	SH – Equity / Preference
Mandatory of profits	Yes	No
Rate	Fixed	Depends

Definition:

Dividend:

- Companies Act, 2013 [Sec 2(35)]: Includes Interim dividend
- SS3 – Distribution of any sums to members out of profits and wherever permitted out of free reserves

Free Reserves [Sec 2 (43)]: Reserves available for distribution of dividend

Not a FR : unrealised gains | Notional gains | Revaluation of assets | Changes in carrying amount of an A/L on measurement fair values

Types

I. Basis - Time

a. Final Dividend

- Dividend recommended by BoDs and declared by members at AGM [SS3]
- Declared dividend is a debt, which becomes enforceable
- Sec 134(3)(k) – State in Directors' report

b. Interim Dividend

- Declared by BoDs between two AGMs [SS3]
- Follows same provisions as Final Dividend

II. Basis – Shares

a. Preference Shares

- Preferential right on payment of dividend
- Fixed amount / Fixed rate
- Not a debt – Not to sue for payment [Except: As per AOA, if company's profit apply]

i. Cumulative Preference Shares:

- Fixed amount / rate
- Payable out of future profit if current year profits are insufficient
- Accumulates dividend

ii. Non – Cumulative Preference Shares:

- Fixed amount of dividend
- No accumulation of dividend

b. Equity Shares

- Any amount – based on level of profit and Company's needs
- varies from year to year
- depends on Dividend policy & profits
- Paid after satisfying the rights of Preference SH.

Declaration of Dividend [Sec 123]:

Sec 51 – Pay dividend in proportion to the amount paid up on each share, if AOA authorizes

SS3 – Declared on recommendation of BoD at BM

Reg 43, SEBI (LODR) Regulations, 2015 – Listed Entity | To declare & Disclose – as per share basis only

A. Sources of Dividend [Sec 123(10):

a. Profits - related

- Out of profits (CY) after providing depreciation
- Out of Profits (PYs) after providing depreciation and undistributed
- Both of CY and PY

Note: In computation – Exclude

- unrealised gains
- Notional gains
- Revaluation of assets
- Changes in carrying amount of an A/L on measurement fair values

b. Money – CG /SG – in pursuance of Guarantee

[SS3 – Declaration of dividend only on repayment of deposits with interest]

No declaration of dividend, if default (includes extended time given by Tribunal) exists in

- Redemption – Debentures / Creation of DRR
- Redemption – preference Shares / Creation of CRR
- Payment of CYs / PYs declared dividend
- Repayment of Term loan – Bank / FIs

B. Transfer percentage of Profits to Reserves: CY | B/f declaration

C. Absence / Inadequacy of Profits: PYs Accumulated profits transferred to FR

Conditions:

1. Rate of dividend < Avg (rates of 3 PYs dividend)

2. Drawing from Accumulated profit $< 1/10^{\text{th}}$ (paid-up capital + FR as per latest financials)

3. Utilisation of drawn amount – To set off the losses

Note:

1. Balance of Reserves not to fall below 15% (paid-up capital) after withdrawal

2. NA – Govt Company

D. From FR only

E. Declaration of Dividend by set off of previous losses and depreciation against the profit of the Company for the CY

F. Manner of providing depreciation: Schedule II of the Act

G. Declaration of interim dividend:

- Out of Surplus in P/L A/C

- Profits of FY –

- Profits in FY till the quarter preceding the date of declaration (If incurred losses, Rate of dividend $<$ Avg (rates of 3 PYs dividend))

SS3: BoD to consider the financial results to satisfy the position w.r.t.

- a. Full Year's Depreciation
- b. Tax including deferred Tax
- c. Other anticipated loss
- d. Dividend for preference shares
- e. Loss – during CY and the immediate preceding quarter

Interim Dividend:

Rate of Dividend $<$ Avg (Rate of 3 preceding years)

Not to be issued in case of loss / inadequacy of profit

H. Deposit in Special Account of a Schedule Bank [Sec 123 (4)]:

- includes Interim Dividend
- within 5 days
- NA – Govt Company, if holds entire share capital

SS3 – Deposit within 5 days and pay within 30 days | Intervening holidays to be included

I. Only to registered SHs [Sec 125(5)]: Paid to Registered SH | Banker | “to his order” | Pay in Cash

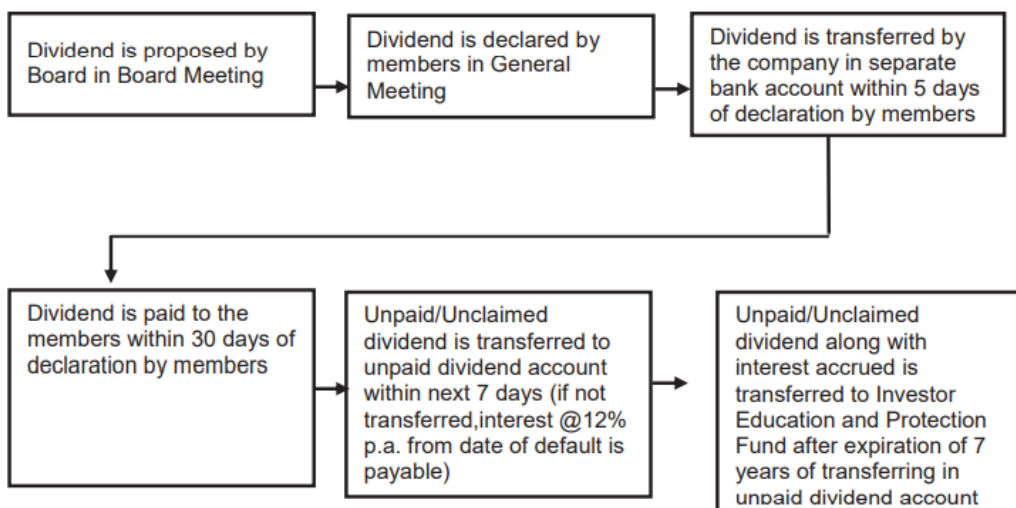
Note: Nidhi Company – Credit in Members A/c if not claimed within 30 days from the date of declaration.

J. Payment of Dividend: Deposit in 5 days in Scheduled Separate Bank A/C | Pay within 30 days | Include intervening holidays

K. Capitalization of Profits: Does not affect issue of Fully paid up Bonus Shares / paying up any unpaid amount

L. Mode of Payment: In Cash / Cheque / Warrant / E mode

M. NA [Declaration / Payment] [Sec 123 (6)]: Non – Repayment of deposits: On failure of Sec 73 and 74



Unpaid Dividend A/C [Sec 124]:

A special A/C opened by the company in any Scheduled Bank [Sec 124(1)]

- “Unpaid Dividend A/C of Company Limited / Company (Private) Limited”
- Transfer
- Not paid / claimed dividend
- Within 30 days from the date of declaration
- Within 7 days (from 30 days)

Apply for payment of money [Sec 124 (4)]: To the company by that person

Details on Website [Sec 124(2)]:

- Within 90 days of transfer to unpaid dividend A/C
- Statement – Names / Last known address / Amount
- Website - Company’s / approved by CG

Effect of Non- Transfer [Sec 124 (3)]: Interest @ 12% p.a.

Dividend and IEPF

Investor Education and Protection Fund [Sec 125]:

- CG’s establishment
- Credit [Sec 125(2)]:
 - a. Amount by CG – grants (after due appropriation made by Parliament by law)
 - b. Donations – CG / SG(s) / Company / Other Institution
 - c. Amount from Unpaid Dividend A/C as per Sec 124
 - d. Amount in CG’s General Revenue A/C (Sec 205A (5), The Companies Act 1956) and remaining unpaid / Unclaimed
 - e. Amount in IEPF – Sec 205C, The Companies Act, 1956

- f. Interest / other Income from Investments made from this fund
 - g. Amount received under Sec 38 (4)
 - h. Application money (for allotment) but due for refund
 - i. matured deposits with companies other than banking companies
 - j. matured debentures with companies
 - k. Interest accrued on the amounts referred to in clauses (h) to (j)
 - l. Sale proceeds - Fractional shares | Bonus Issue / Merger and amalgamation | 7 or more years;
 - m. Unpaid / Unclaimed (7 or more years) Redemption amount on preference shares
 - n. such other amount as may be prescribed
- Rule 6(5), IEPF (Accounting, Audit, Transfer & Refund) Rules, 2016
- i. Sec 125 (2) – Clauses (a) to (n)
 - ii. Shares as per Sec 124(6)
 - iii. Resultant benefits as per Clause (b)
 - iv. Grants / Fees / Charges received by the authority
 - v. Sums from other sources (by Govt's decision)
 - vi. all Earned income of the Authority
 - vii. Amount
 - Sec 10B (3), Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970,
 - Sec 10B, Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980

- Sec 38A(3), SBI Act, 1955

- Sec 40A, SBI (Subsidiary Bank) Act, 1959

viii. all other sums of money collected by the Authority as envisaged in the Act

Not a part of the fund – Clauses (h) to (j) | Unless remained unclaimed/ unpaid for a period of seven years from the date it became due for payment.

Utilisation of IEPF [Sec125(3)]:

a. Refund – Unclaimed dividends / matured deposits / matured debentures / application money due for refund

b. Protection of Investor's Education, Awareness and Protection

c. Distribution of any disgorged amount among eligible and identifiable applicants

- Shareholders / Debenture-holders / Depositors

- suffered losses

- due to wrong actions by any person,

- orders made by the Court

d. Reimbursement of legal expenses | Class action suits | Sec 37 and 245 | members, debenture-holders or depositors | Sanctioned by the Tribunal

e. Incidental purpose in accordance with Rule 3, IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016

Transfer to IEPF:

Money - [Sec 124 (5)]:

- Fund – Sec 125 (1)
- Money in Unpaid Dividend A/C + Interest
- Unpaid / unclaimed for 7 years
- Statement to the Fund's Administrative Authority
- Evidence – Receipt

Shares – [Sec 124 (6)]:

- Transfer (Money + Shares) in the name of IEPF
- Form IEPF – 4, Rule 6(5), IEPF (Accounting, Audit, Transfer & Refund) Rules, 2016
- Claimant to follow procedure and submit documents for claiming

Offence & Penalty [Sec 124 (7)]: Company – ₹ 5L- ₹ 25L | Officer ₹ 1L to ₹ 5L

Procedure for Transfer: Rule 5, IEPF (Accounting, Audit, Transfer & Refund) Rules, 2016

1. Remitted online | IEPF 1 | within 30 days becoming due
2. Transferred amount as per Sec 205C, 1956 Act, if failed to file the statement (even if not in excel format)
 - File Form No IEPF 1A + Excel template | within 60 days of notification
3. May also be remitted by EFT, as specified by CG
4. The authority enters the details in the Register (Physical / Electronic) | Each company, every Year | Reconciles on monthly basis
5. Abstract of Receipts – By designated bank | Monthly | within 7 days

6. Maintain the record file (Rule 5(1)) | Same format | with Supporting documents | Authority's power to inspect

7. Identification of Unclaimed amount

- WEE (Within 60 days of AGM / date of AGM to be held) and every year till the completion of 7 years period

- Furnish IEPF 2 and upload on its website – Own / Authority / specified by CG | Separately for each of the 7 years

- Contents: Names and Address | Nature of amount | Amount | Due date of transfer to IEPF | others

Right to Dividend, Rights Shares and Bonus Shares to be held in Abeyance Pending Registration of Transfer of Shares [Sec 126]:

Instrument of transfer delivered to company and shares not registered, shall

a. Transfer the dividend to Unpaid Dividend A/C , unless authorized by the registered holder in writing to the transferee

b. Keep in abeyance, any offer of Right Shares (Sec 62 (1)(a)) and Issue of fully paid – up bonus shares (Sec 123(5)(proviso 1))

Punishment for failure to distribute the dividends [Sec 127]:

- Unpaid / warrant not issued - declared dividend
- Within 30 days from the date of declaration
- Director: Imprisonment – 2 years | Fine ₹ 1000 / day | If continues- SI @ 18% p.a.
- Exceptions:
 - a. Reason for operation of law
 - b. Cannot comply the SH's Directions (the same is communicated)
 - c. Dispute regarding the right to dividend

- d. Lawful adjustment against any sum due
- e. Not a company's default

Nidhi Company – Dividend < ₹ 100 | Announced in Newspaper – Local language | Displayed in the notice board

Dividend and Beneficial Owner (BO):

Sec 89 (9) – Dividend to member and not BO

Paid to BO on SHs instruction (Sec 123 (5) includes “to his order”)

Case Law: “Rameswar Lal Sanwermal vs Commissioner of IT, Assam” – Deemed Dividend

Dividend & other type of Companies:

Sec 8 Company – Sec 8(1) | Prohibited

Nidhi Company -

- Rule 18, Nidhi Rules, 2014 | < 25% or higher amount as approved by RD (recorded reasons in writing)

- Conditions:

- Transfer equal amount to GR

- No default in repayment – Matured deposits + Interest

- In compliance with Nidhi's Rules

Producer Company – Dividend as “Limited Return”

- Sec 581A (c), 1956 Act (not repealed by 2013 Act)

- Max rate of dividend as per AOA

- Sec 581E, 1956 Act: Patronage Bonus to members who are in participation of the business | Cash / Shares / as decided in AGM

Patronage Bonus – Bonus issued after making the provision of payment of limited return and reserves

Company limited by Guarantee: A company for Non-profit purpose

- Profits are reinvested and used for promoting its non-profit activities
- Act does not prohibit
- AOA provides that all the income of the company shall be applied for promotion
- No portion is paid / transferred as dividend / bonus / by way of profits to the members

Claiming of Unclaimed / Unpaid Dividend:

Apply to the company | within 7 years | Else dividend + shares transferred to IEPF

Procedure for declaration and Payment of Interim Dividend

1. Verify for authorisation – AOA, else alter

2. Issue Notice for BM– Not less than 7 days / shorter notice – urgent business

Content: Time / Date / Venue / Details of business

3. Listed Company – Notify SEs atleast 2 working days in advance (excluding the date of intimation & meeting)

[Reg 29, SEBI (LODR) Regulations, 2015]

4. @BM

- a. - Satisfy the financial position | Earned adequate profits (after providing full year's depreciation)
 - Personal liability for wrong declaration (proforma of P/L A/C)
 - Provisions made for working expenses and depreciation
 - In case of loss – Dividend < Avg (3 years dividend)
- b. Quantum of dividend
- c. entitlement
- d. Closure of RoM for dividend payment and record date
- e. Notice in Newspaper - atleast 7 days | reg closure
- f. Open Separate Bank A/C
- g. Printing of dividend warrants
- h. Authority to sign the warrants
- j. Pass a resolution – Equity Shares
- k. Interim dividend - Preference Shares (generally paid annually)

5. Listed Company – Imm within 30 mins of BM | after close of market hours | + Financial position

[Reg 30, SEBI (LODR) Regulations, 2015]

- 1. Listed Company
 - Publish notice (atleast 7 days before) of book closure in Newspaper
 - Notice in advance

- Recommend / Declare dividend atleast 5 working days before the record date
- Time gap between 2 Book Closure dates: atleast 30 days
- On per share basis only

7. Close – RoM and Share Transfer Register

8. BM – Approve Registration of Transfer / transmission (lodged prior to book closure) and dispatch share certificates to the transferees

9. Round off to nearest rupee

10. Open “Interim Dividend A/C of _____” and deposit within 5 days | Give authority to bank to honor warrants

11. Listed company – Pay thro RTI & STA | ECS (Local / Regional / National), NEFT

Maintain Details

- Relevant bank details from the depositories and investors
- Physical Payment Instructions (In case of failure / unavailability of MICR, IFSC) | Mandate – Bank A/C details

12. Make arrangements with other banks (as determined by SEs) for payment of dividends at par

13. Prepare a statement of SH – Name | Ledger Folio No | No of shares | Dividend payable

14. w.e.f. AY 2021-2022, Dividend from Domestic Company is taxable in the hands of the SHs | NO DDT

15. Dividend Warrants

Printing – Sufficient no (in consultation with Banker) | Approval from RBI for MICR facility

Signing authorized person

16. No RBI approval is required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.

17. List of Members - Two copies [1. Self - sticking labels | 2. To secure receipt from the Post Office] | Names & Addresses

18. For the shares for which transferred before book closure but not registered, keep in “Unpaid Dividend A/C ___” unless authorization

19. Dispatch Dividend warrants within 30 days | Joint SHs – first named

20. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank for circulation to the branches where the dividend warrants will be payable at par.

21. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank
22. Publish a Company notice in a newspaper – to give effect for dividend warrants | To get in touch in 15 days if not received
23. In case of receipt after expiry of currency / lost in transit, Issue bank cheques and / or cheques (after satisfying that it is not encashed)
24. Arrangements for transfer to “Unpaid dividend A/C of _____” within 7 days after expiry of 30 days.
25. Confirm interim dividend in the next Annual General Meeting.

Procedure for Declaration and Payment of Final Dividend

1. Issue Notice for BM - Contents: Time / Date / Venue / Details of business
2. Listed Company – Notify SEs atleast 2 working days in advance (excluding the date of intimation & meeting)
[Reg 29, SEBI (LODR) Regulations, 2015]

3. Hold BM
 - a. Approve the annual accounts
 - b. Recommend – Quantum / Source of dividend
 - c. AGM – Time / Date / Venue

d. Approve Notice of AGM | Authorize CS / competent person to issue notice

e. Closure of RoM / Share transfer Registers [Sec91 and SEBI (LODR) Reg, 2015]

Listed Company – the date should follow a holiday | not to clash with clearance program (& consult)

5. Transfer to reserves (% as it considers appropriate)

6. Listed Company – Intimate to SE | Imm within 30 mins of BM | Dividend + Appropriation + Sources

[Reg 29 & 30, SEBI (LODR) Regulations, 2015]

7. Listed Company

- Publish notice (atleast 7 days before) of book closure in Newspaper
- Notice in advance
- Recommend / Declare dividend atleast 5 working days before the record date
- Time gap between 2 Book Closure dates: atleast 30 days
- On per share basis only

8. Declare and disclose the dividend on per share basis only.

[Reg 43, SEBI and Sec 51 – Not to forfeit unclaimed dividends b/f the claim becomes debarred by law, shall be annulled in appropriate cases]

9. Listed Company – Top 500 listed entities | market capitalization

- Formulate a dividend policy | Disclose in ARs and websites

- Include parameters:

- Circumstances that SHs may or may not expect dividend

- Financial parameters

- Internal / External factors

- Policy to use retained earnings

- parameters to adopt with various classes of shares

[In case of change / addition of above – disclose in the AR and website]

10. Close – RoM and Share Transfer Register

11. Amount of Dividend – Directors' Report - As appropriation of Profits | B/S – “Proposed Dividend” (“Current Liabilities & Provision – “Provisions”)

12. BM – Approve Registration of Transfer / transmission (lodged prior to book closure) and mail share certificates to the transferees

13. Hold AGM | Pass OR | SHs cannot declare the higher dividend than the Board's recommendation.

Note:

- No further declaration of dividend at an EGM (even though no provisions exists on the same)

- Pro-rata basis

[A method of dividing something between a number of participants in proportion to some factor]

- Preference Shares – fixed rate

- Paid proportionately to the amounts paid / credited as paid on the shares. But shall rank for dividend [Sch I, Table F, Article 83(3)]

14. Prepare a statement of SH – Name | Ledger Folio No | No of shares | Dividend payable

15. w.e.f. AY 2021-2022, Dividend from Domestic Company is taxable in the hands of the SHs | NO DDT

16. Round off to nearest rupee

17. Open “Dividend A/C of _____” and credit within 5 days

18. Listed company – Pay thro RTI & STA | ECS (Local / Regional / National), NEFT

Maintain bank details from the investors

19. Dividend Warrants

Printing – Sufficient no (in consultation with Banker) | Approval from RBI for MICR facility

Signing authorized person

20. No RBI approval is required for payment of dividend to shareholders abroad, in case of investment made on repatriation basis.

21. List of Members - Two copies [1. Self - sticking labels | 2. To secure receipt from the Post Office] | Names & Addresses

22. For the shares for which transferred before book closure but not registered, keep in “Unpaid Dividend A/C ___” unless authorization

23. Dispatch Dividend warrants within 30 days | Joint SHs – first named

24. Send sufficient number of cancelled dividend warrant forms with MICR code allotted by the RBI, to the bank for circulation to the branches where the dividend warrants will be payable at par.

25. Instructions to all the specified branches of the bank that dividend should be paid at par should be sent by the Bank

26. Publish a Company notice in a newspaper – to give effect for dividend warrants | To get in touch in 15 days if not received

27. In case of receipt after expiry of currency / lost in transit, Issue bank cheques and / or cheques (after satisfying that it is not encashed)

28. Arrangements for transfer to “Unpaid dividend A/C of _____” within 7 days after expiry of 30 days.

Procedure for declaration of dividend out of reserves

1. BM

- Issue notice
- Take decision because of inadequacy / absence of profits
- Fix – Date / Time / venue for AGM
- Authorize CS / other Competent person

2. Ensure compliance of Companies (Declaration and Payment of Dividend), Rules 2014

3. Calculation purpose – Net profit after tax is alone considered

4. Computation Purpose: Include: Development Rebate Reserve | Exclude – All items of Capital Reserves (Revaluation Reserve)

5. Listed Company – Inform SE within 30 mins of closure of BM

6. Issue notice of AGM – 21 clear days | Hold the meeting and pass resolution

7. Listed Company – Forward notices copies and AGM proceedings to SE
8. Open separate bank account and credit the amount within 5 days of declaration of dividend
9. Issue dividend warrants within 30days from the date of declaration of dividend
10. Follow other steps from the declaration of final dividend