Understanding Dividend Declarations: Key Requirements Under Section 123(1) of the Companies Act 2013

As per section 123 (1) of Companies act 2013, No dividend shall be declared or paid by a company for any financial year **except**—

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

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

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

Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and 7[transferred by the company to the free reserves], such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:]

Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves**.** **Provided also that** no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.

As per section 123 (2) of Companies act 2013 provides that for the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.

As per section 123 (3) of Companies act 2013 The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

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

As per section 123 (4) of Companies act 2013 The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

<u>As per section 123 (5) of Companies act 2013</u> No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

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

Provided further that any dividend **payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the** dividend.**]**

<u>As per section 123 (6) of Companies act 2013</u> A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

In the case of **Kantilal v. CIT, 26 Comp. Cas. 357 (Bom) the Bombay High Court** clarified the legal principles surrounding the declaration of dividends by a company.

The court held that the power to declare a dividend lies solely with the shareholders of the company, typically exercised during a general meeting. This process is governed by the company's articles of association, often following the model provided in Regulations 85-94 of Table "A" in Schedule I of the Companies Act.

According to Regulation 85, while the general meeting can declare a dividend, it cannot declare a dividend greater than the amount recommended by the Board of Directors. Moreover, once a dividend is declared at a general meeting, the company cannot declare a second dividend for the same financial year.

However, the Board of Directors is empowered to declare an interim dividend **under Section 205(1A) of the Companies Act**. This interim dividend can be declared even if the articles of association do not explicitly provide for it, unless the articles specifically prohibit it.

In summary:

*- **Declaration of Final Dividend:** Shareholders at a general meeting, limited to the amount recommended by the Board.*

*- **Interim Dividend**: The Board of Directors can declare it under Section 205(1A), unless expressly prohibited by the company's articles.*