

## Unpaid Dividend Account (Sec 124)

### 1. Legislative Background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 124 – This clause corresponds to section 205A of the Companies Act, 1956 and seeks to provide that where the dividend is not paid or claimed within thirty days, the company shall, within seven days, transfer the total unpaid or unclaimed amount to a Unpaid Dividend Account to be opened by the company in a scheduled bank. The company shall prepare a statement of names and unpaid dividend and place on the website of the company and also on any other web-site approved by Central Government in the prescribed manner. In case of any default in transferring the amount, the company shall be liable to pay interest on the amount as has not been transferred. The amount remaining unpaid or unclaimed along with interest accrued thereon for seven years shall be transferred to Investor Education and Protection Fund. A statement of such amount is required to be sent to the Authority administering the Fund. The shares in respect of which unpaid or unclaimed dividend has been transferred shall be transferred in the name of investor education and protection fund. Any claimant of shares so transferred shall be entitled to claim them in accordance with prescribed procedure. If company fails to comply with the provisions of this clause the company and every officer of the company who is in default shall be punishable with fine.”

### 2. Unpaid dividend account

The company is required to deposit the amount of dividend in a separate bank account within five days from the date of its declaration. In case dividend has been declared by a company but has not been paid to or claimed by any shareholder entitled to the payment of the dividend within 30 days from the date of the declaration, the company shall, within seven days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special bank account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account”.

The scheduled bank may be advised to change the nomenclature of the said dividend account as Unpaid Dividend account to avoid opening of new account and transfer of funds. For the purpose of clarity, the Dividend / Unpaid dividend Account may be opened with the company name and year of declaration as prefix e.g. “Dividend Account – XYZ Limited - 2015” / “Unpaid Dividend Account – XYZ Limited - 2015”.

### **3. Name of shareholders to be hosted on website**

The company shall, within a period of 90 days of making any transfer of an amount to the Unpaid Dividend Account, prepare a statement containing the names of the shareholders who have not been paid or claimed dividend, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed. Since the sub-section (2) of section 124 is not notified, the forms, manner and other particulars are yet to be prescribed.

### **4. Interest to be paid in case of failure to transfer**

Pursuant to sub-section (3) of section 124, if the company fails to transfer the amount of unpaid or unclaimed dividend in separate bank account within specified time of 30 days, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of 12% per annum and the interest accruing on such amount. The company is also required to ensure the benefit of the members of the company in proportion to the amount remaining unpaid to them.

### **5. Entitlement of dividend from unpaid dividend account**

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. There is no form for such application. However, an application may be prepared mentioning all the relevant details therein and the same may be submitted to the company. The company, after being satisfied, with the particulars of the application may pay the amount of dividend to such person out of the unpaid dividend account.

### **6. Investor Education and Protection Fund (IEPF)**

Any money transferred to the Unpaid Dividend account of a company and which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund established under sub-section (1) of section 125 of the Act and the company shall send a statement in form IEPF-1 under rule 5 of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

It is also prescribed that all shares, in respect of which unpaid or unclaimed dividend has been transferred, shall also be transferred by the company in the

name of IEPF along with a statement containing such details as are in Form IEPF-6 under rule 4. This is the new and unique requirement where the ownership of the share will also be transferred by the company to IEPF. The mechanism relating to the same is yet to be prescribed. However, it is prescribed that any claimant of shares transferred above shall be entitled to claim the transfer of shares from IEPF in accordance with the procedure and laid down in rule 7 of investor education and protection fund authority (Accounting, Audit, Transfer and Refund) Rules, 2016 and by filling of form IEPF-5.

## 7. Constitutionality of IEPF

Delhi High Court while noting the provisions of having no claim after a period of 7 years, upheld the constitutionality of the overall provisions related to establishment of IEPF and lauded the efforts of the legislature in the following words in the case of *Nivedita Sharma v. The Industrial Credit & Investment Corporation Of India & ors [W.P.(C) No. 1017/2009 decided on 07.07.2011, reportable]*: “Explanation to subsection (2) to Section 205 C mandates and clarifies that no claim shall lie against the fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the date they became due for payment and no payment shall be made in respect of any such claims. Thus a limitation period is provided. The limitation period is reasonable. ... Section 205 C is a salutary and virtuous provision. It has been enacted to ensure that a company does not unjustifiably and unduly enrich themselves, as the depositors have failed to stake claim and have not been paid for a period of seven years from the date the amount became due. We do not see any reason to hold that the said provisions are unconstitutional or they violate Article 14 or any other provisions of the Constitution. It cannot be said that the aforesaid provisions are faulty and violate the fundamental rights guaranteed in the Constitution. ... To strike down Section 205 C will amount to negating and striking down a worthy and meritorious legislation which is on the whole beneficial and advantageous and in public interest”.

## 8. Punishment and Compoundability

If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than Rs. 5,00,000/- but which may extend to Rs. 25,00,000/- and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-. The offenses committed by company and officer, being punishable only with fine, are compoundable under section 441 of the Act.

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*

Premier on Company Law