

MCA clarification on IEPF (Uploading of Information regarding Unpaid and Unclaimed amounts lying with companies) Rules,2012

Every now and then, we have been witnessing regulatory authorities prescribing new requirements for corporates for ensuring genuine and extensive disclosures being made for the benefit of stakeholders of companies. Such initiatives will go a long way in improving corporate governance in India.

“Section 205A of the Companies Act, 1956 requires companies to transfer the amount of unpaid or unclaimed dividend to a special account to be opened by the company in any scheduled bank, to be called as “Unpaid Dividend Account of Company Limited/Company(Private) Limited, when it has not been paid within 30 days from the date of declaration. In this context, the Ministry has taken the initiative of obliging the companies to disclose every year, the amount of unpaid and unclaimed dividend, in a separate eform, called as Form 5-INV.”

MCA vide Notification G.S.R. 352(E) dated May 10,2012 had notified ***Investor Education and Protection Fund (Uploading of information regarding Unpaid and Unclaimed amounts lying with companies) Rules,2012, which have come into effect from May 20th ,2012.*** In this regard, companies were facing the problem relating to fixation of date upto which unpaid and unclaimed dividend needs to be taken into account. In respect of the said non clarity, the Ministry has issued a clarification through Office Memorandum dated June 12,2012, resolving the issues encountered by corporates. Before going into the clarification, let us just revise the major requirements of rule 3 of the aforesaid rules.

Rule 3- Filing of Information Regarding Unpaid and Unclaimed Amounts

- a. **Eligibility-** Every company (including Non-banking Financial Companies and residuary non banking companies) shall furnish the information under this Rule.
- b. **Information which has to be furnished**
 - The names and last known addresses of the persons entitled to receive the sum
 - The nature of amount
 - The amount to which each person is entitled
 - The due date for transfer into the IEPF and
 - Such other information as considered relevant for the purpose.
- c. **Medium of filing information:** Through e-Form 5 INV and on its own website(if any) and such other website as may be specified by Government,;
- d. **Calculation of amount:** The company has to identify such unpaid and unclaimed dividend as per Section 205C of Companies Act, 1956.
- e. **Time period:** Within 90 days from the holding of Annual General Meeting or the date on which it should have been held according to Section 166 of Companies Act,1956. The statement shall be filed/uploaded every year till the completion of seven years.
- f. **Statement for financial year ending March 31,2011:** For this particular financial year, the statement has to be filed before July 31,2012.

Clarifications from MCA:

Cut-off Date for the calculation of amount unpaid and claimed undividend

This Rule requires that every company has to file a statement of unclaimed and unpaid dividend, within 90 days after the holding of Annual General Meeting, however the date as on which such amount has to be calculated was not clearly specified. **But it has now been made clear that the amount has to be calculated as on the date of Annual General Meeting or the due date on which the meeting should have been held as per Section 166 of the Companies Act, 1956.**

The example as follows will explain it better.

Name of Company: XYZ Limited

Financial year ending: 31st March 2012

Proposed AGM date: 30th September 2012

Cut-off date of recognition of unpaid/unclaimed dividend: 30th September, 2012 and in case Annual General Meeting has not been held, then the last date upto which the meeting should have been held as per Section 166 of the Companies Act, 1956.

Calculation of amount of unpaid dividend for the form to be filed with respect to Financial Year ending on March 31, 2011

Proviso to Rule 3, states that companies need to file the form for financial year ending on March 31, 2011 also till July 31, 2012. However, the cut-off date for recognizing the amount to be filed for the financial year ending 31st March 2011 was not clear. **But the clarification note has clarified that for financial year ending March 31, 2011, the statement of amount to be filed shall be the total balance of unclaimed and unpaid dividend and matured deposits appearing in the balance sheet as on March 31, 2011 to be updated further till the date of Annual General Meeting held for the financial year ending March 31, 2011.** The example as follows will explain it better.

Name of Company: XYZ Limited

Financial year ending: 31st March 2011

Proposed AGM date: 30th September 2011

Due date of filing the form: 31st July, 2012

Cut-off date of recognition of unpaid/unclaimed dividend: Amount of unpaid dividend, as appearing in the balance sheet ending on 31st March 2011, updated till the date of Annual General Meeting, i.e. September 30, 2011.

Whether statement of amount of unpaid dividend filed for the respective financial year shall include the amount of unpaid dividend declared in the recently concluded Annual General Meeting

The due date of submission of Form 5 INV relates to the date of Annual General Meeting, i.e. within 90 days from the date of the Annual General Meeting, and therefore in this respect there was a doubt whether the amount of dividend which becomes unpaid, after it has been declared in the recently concluded Annual General Meeting is also required to be included in the statement to be filed after the conclusion of this meeting. **It has now been clarified that the dividend remaining unpaid which was declared in the recently concluded Annual General Meeting and becoming unpaid after the expiry of 30 days, shall not be included in the form to be filed within 90 days from the date of Annual**

General Meeting. The example as follows will explain it better.

Name of Company: XYZ Limited

Financial year ending: 31st March 2012

Proposed AGM date: 30th September 2012

Due date of filing the form: 29th December,2012

Recognition of the amount of Unpaid Dividend: The dividend which has been declared on 30th September, 2012 and becoming unpaid on 30th October, 2012 shall not be included in Form 5INV to be filed on or before 29th December 2012, and will be included in the form filed for the next financial year ending on 31st March 2013, since the cut-off date is the date of Annual General Meeting and the dividend declared in the recently concluded Annual General Meeting becomes unpaid after the meeting.