

**BANGLADESH SECRETARIAL STANDARDS
[BSS-4]**

Published by:
Institute of Chartered Secretaries of Bangladesh (ICSB)

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**SECRETARIAL STANDARD
ON
DIVIDEND**

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PREFACE TO THE SECRETARIAL STANDARDS

Need for Secretarial Standards

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

Secretarial Standards Board and its Objectives

The Institute of Chartered Secretaries of Bangladesh (ICSB), recognizing the need for integration, harmonization and standardization of diverse secretarial practices, has constituted the Secretarial Standards Board (SSB) with the objective of formulating Secretarial Standards.

Scope and Functions of the SSB

The scope of SSB is to identify the areas in which Secretarial Standards need to be issued by the Council of ICSB 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 the members of ICSB, corporate 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 after periodic intervals.

Scope of Secretarial Standards

The Secretarial Standards do not seek to substitute or supplant any existing laws or the rules and regulations framed there under 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.

ICSB will endeavor to persuade the Government of Bangladesh 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 standardization of secretarial practices.

Procedure for Issuing Secretarial Standards

The following procedure is adopted for formulating and issuing Secretarial Standards:

1. SSB, in consultation with the Council, is to 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 assign to Secretarial Practice Sub-committee to formulate preliminary drafts of the proposed Standards.
3. The preliminary draft of the Secretarial Standard formulated by the Secretarial Practice Sub-committee is circulated amongst the members of SSB for discussion and is modified appropriately, if so required.
4. The preliminary draft is then circulated to the members of the Council of ICSB or other bodies / organizations as is 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 / organizations 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 Council Members / bodies / organizations referred to in para 4 above, an Exposure Draft is prepared and published in the “Chartered Secretary”, the journal of ICSB, and also put on the Website of ICSB to elicit comments from members of ICSB and the public at large.
6. The draft of proposed Secretarial Standard generally includes 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 proposed Secretarial Standard is finalized by SSB and submitted to the Council of ICSB.
8. The Council will consider the final draft of the proposed Secretarial Standard and finalize the same based on the recommendation of the SSB. The Secretarial Standard is then issued under the authority of the Council.

Compliance with Secretarial Standards

The Institute will request the Government and other appropriate authorities to enforce these Standards and will endeavor to educate the users about the utility and need for compliance with these Standards. The Standards will be made mandatory thereafter.

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SECRETARIAL STANDARD

ON

DIVIDEND

A. INTRODUCTION

Dividend is a return on the investment made in the share capital of a company. In commercial usage, the term “Dividend” refers to the share of the profits of a company that is distributed amongst the entitled Members of the company.

“Dividend” includes Stock Dividend or Bonus Shares. It also refers to the share of the assets of the company to be distributed among the persons who would be entitled to receive under the liquidation process. However, this Standard does not deal with the liquidating dividend.

This Standard prescribes a set of principles in relation to the declaration and payment of Dividend and matters incidental thereto or connected therewith.

The principles enunciated in this Standard relate to Dividend under the Act and are governed by the provisions of all Rules, Regulations, Notifications, Orders, Guidelines, etc. in force or to be enforced and issued or to be issued from time to time by Bangladesh Securities and Exchange Commission (BSEC) and the Listing Regulations issued by the Stock Exchanges of Bangladesh.

The principles set out herein this Standard relate to both ordinary and preference share capital. While the principles generally relate to Final Dividend, certain principles also be applicable to Interim Dividend as declared by the Board of Directors at their discretion.

B. DEFINITIONS

In this Standard, the following terms are used with the meaning as specified below:

“Act” means the Companies Act, 1994 (Act No. XVIII of 1994), or any statutory modification or re-enactment thereof.

“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 Schedule-I of the Act.

“Board” means the Board of Directors of a company.

“Dividend” means distribution of any sum to Members out of profits or reserves available for that purpose.

“Free Reserves” means the reserve which is not restricted in any manner.

“Interim Dividend” means the Dividend declared by the Board of Directors at any time during a year before the closing of the year.

“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 (BO) at the book closing date or record date in respect of the shares of the company held by him.

“Preference Shareholder” means a holder of shares having 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.

Unless the context otherwise requires, words and expressions used but not defined herein shall have the same meaning respectively as assigned to them under the Act.

C. SECRETARIAL STANDARD

The following is the text of 'Bangladesh Secretarial Standard on Dividend' issued by the Council of the Institute of Chartered Secretaries of Bangladesh (ICSB) and named as Bangladesh Secretarial Standard - 4 (BSS-4).

In this Secretarial Standard, the Standard portions have been set in 'Italic Type'.

1. Declaration / Recommendation of Dividend

- 1.1 *Dividend should be declared by the Members at an Annual General Meeting on the basis of recommendation of the Board.*

The recommendation for Dividend should not be made by any Committee of the Board or by way of a 'Resolution by Circulation'.

Unless the Dividend has been recommended by the Board, the 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 its submission to the Board. Dividend should be recommended by the Board after consideration and approval of the financial statements. All requisite approvals and clearances, where necessary as applicable, should be obtained before the declaration of Dividend.

Members may declare a lower rate of Dividend than what is recommended by the Board. The amount or rate of Dividend recommended by the Board cannot be increased by the Members.

- 1.2 *Dividend should relate to a financial year.*
- 1.3 *No Dividend should be declared on equity shares for previous year(s) in respect of which annual financial statements have already been adopted at the respective Annual General Meeting(s).*

1.4 *Interim Dividend should be declared by the Board of Directors.*

Declaration of Interim Dividend should not be made by any Committee of the Board or by way of a Resolution by Circulation.

Interim Dividend should be a part of the Final Dividend. Where a company has an Audit Committee, it should review the periodic financial statements which should then be submitted to the Board.

1.5 *Dividend, once declared, becomes a debt of the company and cannot be revoked in any way.*

2. Dividend out of Profits

2.1 *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).*

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 or income statement which should give a true and fair view of the profit or loss of the company for a financial year.

2.2 *Dividend should not be declared out of the Share Premium Account or the Capital Reserve Account or Revaluation Reserve Account or out of profit earned prior to the incorporation of the company.*

Revaluation Reserve is neither profit of the business nor created out of such profit, and hence cannot be applied in the payment of Dividend. Profit earned prior to incorporation is one type of capital reserve and hence it should not be applied for distribution as dividend.

2.3 *Where applicable, no Dividend should be declared unless the prescribed percentage of profit is transferred to reserve(s).*

2.4 *Interim Dividend should be declared out of profit after considering the audited periodic financial statements.*

3. Dividend out of Reserves

3.1 *In a year in which the profits are inadequate, the company may declare and pay Dividend out of Free Reserves.*

3.2 *Interim Dividend should not be declared out of reserves.*

4. Entitlement to Dividend

4.1 *Only the Members of the Company are entitled to receive Dividend.*

Dividend should be paid (i) in respect of shares held in electronic form, to those members whose names appear as Beneficial Owners (BO) in the statement(s) furnished by the Depository as 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; and (iii) in respect of share warrants, to the holders of such warrants.

4.2 *Dividend should be paid to the Preference Shareholders before payment of Dividend to the Ordinary Shareholders.*

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.

In the case of Interim Dividend, while Preference Shareholders need not necessarily be paid Dividend before Interim Dividend is paid to Ordinary Shareholders, the Board should set aside such sum as would be necessary to pay Dividend to Preference Shareholders at the contracted rate.

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 immediately after declaration of Dividend.

5.2 *Dividend should be paid by Cheques or Dividend Warrants or through Electronic Transfer.*

Payment of Dividend through Electronic Transfer should be made to the bank accounts of the Members concerned as per depository record / to the bank account given by the Members concerned.

The Cheque or Dividend Warrant 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 six months.*

A Cheque or Dividend Warrant may be revalidated or a fresh instrument may be issued. The company should revalidate the Dividend Warrant or issue a fresh Dividend Warrant in lieu thereof upon receipt of a request for revalidation.

Particulars of every revalidated Dividend warrant should be entered in a Register of Revalidated Dividend Warrant 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, in case the original instrument is not tendered to the company, only after obtaining requisite declaration from the Member.*

In the case of defaced, torn or decrepit Dividend Warrants, a duplicate warrant may be issued on surrender to the company of such defaced, torn or decrepit warrant.

Particulars of every duplicate 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.

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.*

6. Unpaid / Unclaimed Dividend

6.1 *The amount of Dividend which remains unpaid or unclaimed after one year from the date of declaration should be transferred to a special dividend account, to be called 'Unclaimed Dividend Account' of the Company.*

The company should maintain the details of unpaid or unclaimed dividend and reconcile the amounts thereof with the concerned bankers, periodically.

6.2 *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 Unclaimed 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 unclaimed Dividend Account.

6.3 *The Financial Statements of the company should disclose the amount lying in the Unclaimed Dividend Account.*

D. EFFECTIVE DATE

This Standard has been approved by the Council of the Institute of Chartered Secretaries of Bangladesh (ICSB) on June 2, 2016 with immediate effect.