

COMPANY LAW

UNIT 5 : Dividends, Audit and Winding Up

TOPIC- DIVIDENDS

Dividends (Sec.123 to Sec.127)

The term 'dividend' refers to that part of the profits of the company which is distributed by the company among its shareholders. As per Sec.2(35), dividend includes interim dividend. The shareholders can claim dividends only when-

- ✓ dividend is **recommended by BOD**
- ✓ dividend is **declared by shareholders** in the general meeting i.e. the shareholders approve the rate of dividend recommended by the BOD in the AGM

Points to remember

- **Unless the articles provide otherwise, the shareholders cannot compel the Board to increase the recommended rate of dividend (Regulation 80 of Table F of Companies Act, 2013). But they can reduce the amount\ rate of recommended dividend.**
- **Dividend is always declared for the working of one financial year and once it has been so declared, neither the company nor its directors can declare a further dividend for the same year at a subsequent general meeting**
- **Dividend should be declared only at an Annual General Meeting. However, dividend can be declared at an EGM only if the company could not declare a dividend at an AGM and the articles do not provide otherwise.**
- **A dividend once declared by the company in the general meeting becomes a debt payable by the company to the shareholders .**

Legal provisions relating to Dividends as per Sec.123 and 127

- Dividends can be **declared** by a company for any financial year :
 - a) out of current years' profits or out of undistributed profits of any previous financial year \ years arrived at after providing for depreciation as per Schedule II of the Companies Act or both;
 - b) out of accumulated profits lying in the free reserves but only in the case of inadequacy or absence of profits in the financial year and only in accordance with Rule 3 of Companies (Declaration and Payment of Dividend) Rules,2014' which is as follows
 - ✓ *The rate of dividend declared shall not exceed the average rates of dividends declared in the immediately preceding 3 years*
 - ✓ *Total amount drawn from accumulated profits \ reserves should not be more than 10% (paid up share capital + free reserves)*
 - ✓ *Balance of reserves after the withdrawal shall not fall below 15% of paid up share capital*
 - ✓ *Amount so withdrawn shall first be utilized to set off losses incurred in the year in which dividend is declared*
 - ✓ *No dividend can be declared by the company from reserves other than free reserves*
 - c) out of money provided by Central or State Government for the payment of dividends in pursuance of a guarantee given by them
- Dividends **cannot be declared out of capital** otherwise it will amount to irregular reduction of capital. Also.
- **Before declaration of dividend** in any financial year, a company may transfer some percentage of its profits for that financial year to the reserves of the company. However, it is totally optional for them and they can transfer any amount they deem fit.
- **Before declaration of dividend** in any financial year, the previous years' losses and depreciation not provided in earlier year\ years has to set off.

Legal provisions relating to Dividends as per Sec.123 and 127

- Once declared, the amount of **dividend shall be deposited in a separate bank account** within 5 days and shall be used for the payment of dividend.
- Dividend shall be **paid only to registered shareholders** or their orders or their bankers
- Dividend shall be **paid only in cash i.e. paid by cheque\dividend warrant\electronic means.**
- Dividends shall be **paid in proportion to the amounts paid up** on each share.
- Dividends \ dividend warrants must be **paid\ posted within 30 days from the date of declaration** otherwise the director \manager guilty of default shall be punishable with imprisonment ≤ 2 years + fine $\geq ₹1000$ per day during which default continues. Further , the company shall be liable to pay simple interest @18% p.a.during the period default continues. In the following cases however they are not liable
 - ✓ Where dividend cannot be paid due to operation of law e.g. dividends have been freezed
 - ✓ Where there is a dispute regarding the right to receive the dividend
 - ✓ Where dividend has been lawfully adjusted by the company against any amount due from a shareholder.
 - ✓ Where any directions given by the shareholder to the company regarding the payment of dividend cannot be complied with
 - ✓ Where, for any other reason, the failure occurred not due to any default on the part of the company.

Interim Dividend

A dividend declared by the Board of Directors in between two AGMs of the company is called interim dividend. Sec.2(35) defines dividend to include interim dividend.

- The Board of Directors declare interim dividend .
- The interim dividend may be declared during any financial year or during the period from closure of financial year till the holding of AGM.
- Interim dividend may be declared out of surplus in the P&L Account or out of profits of the concerned financial year or out of profits generated during the current financial year upto the quarter preceding the date of declaration of interim dividend.
- In case a company has incurred loss during the current financial year up to the quarter preceding the date of declaration of interim dividend, then rate of interim dividend shall not be higher than the average of dividends declared by the company during immediately preceding three financial years.
- The amount of interim dividend shall be deposited in a separate bank account within 5 days of its declaration by Board. Similarly, all other provisions of Sec.123 and Sec.127 shall apply to interim dividend also.

Difference between interim dividend and final dividend -

INTERIM DIVIDEND	FINAL DIVIDEND
Board of Directors declare interim dividend	Shareholders in AGM declare final dividend
It is declared before the preparation of final accounts	It is declared only after the preparation of final accounts and ascertainment of profits
Usually it relates to a part of year eg. for 6 months or 3 months	Final dividend relates to a full year
Board can declare interim dividend only when the Articles permit	No need of any express provision in Articles for declaring final dividend as it is an inherent right of shareholders.
An interim dividend once declared does not become a debt due from the company i.e. can be revoked with the consent of shareholders	A final dividend once declared becomes a debt due from the company i.e. cannot be revoked by shareholders

Unpaid or Unclaimed Dividends (Sec.124)

- Where a dividend has been declared by a company but has not been paid or claimed, within 30 days from date of declaration, the company shall within 7 days from the expiry of 30 days, transfer such dividends to a special account called " Unpaid Dividend Account" to be opened by the company in any scheduled bank.
- If the company commits default in transferring such amount to the " Unpaid Dividend Account", within the prescribed time period, it will have to pay interest @ 12% p.a. on such amount, from the date of default.
- Any person claiming to be entitled to any money from such " Unpaid Dividend Account" shall have to apply to the company for the payment .
- Within 90 days of transferring the amounts to the "Unpaid Dividends Account", the company shall prepare a statement containing the names, last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company as well as any other website approved by the Central Government.
- All the unclaimed dividends lying in the credit of " Unpaid Dividend Account" for a period of 7 years from the date of such transfer, must be transferred by the company, along with interest earned, to the Investor Education and Protection Fund(IEPF). Further, all such shares in respect of which dividend has not been paid \ claimed for seven consecutive years or more shall also be transferred by the company to the IEPF along with a statement containing such details as may be prescribed. Any claimant of shares transferred to IEPF, shall be able re-claim such shares from IEPF on submission of prescribed documents and after following stipulated procedure .

Investor Education and Protection Fund (Sec.125)- created by the CG

Sources of Fund	Utilization of Fund	Management of Fund
<ul style="list-style-type: none">• Grants given by CG for the Fund• Donations given by CG\ State govts\ others for the Fund• Amounts lying in Unpaid Dividend Account u\s124• Amount lying in Investor Education and Protection Fund of Companies Act, 1956• Interest \ Income received out of investments made from Fund• Amount received through disgorgement of securities of person convicted u\s 38 for personation• Application money due for refund but remaining unclaimed for 7 years or more• Matured amount of deposits\ debentures remaining unclaimed for 7 years or more• Redemption amount of preference shares remaining unclaimed for 7 years or more• Interest accrued on above amounts	<ul style="list-style-type: none">- Refund of unclaimed dividends, matured deposits\ debentures, redemption of preference shares, application money due etc.- Promotion of investors education, awareness and protection- Distribution of disgorged amount among eligible and identifiable persons who suffered losses due to wrong actions of those guilty .- Reimbursement of legal expenses incurred in pursuing class action suits filed by security holders against the companies- any other purpose incidental thereto	<ul style="list-style-type: none">- CG has constituted an Authority for administration of the Fund.- The Authority consists of the Chairperson, some members and CEO appointed by CG- The Authority administers the Fund and maintains separate accounts and relevant records in relation to the Fund- The Authority is competent to spend money out of funds for carrying out the objects of the Fund.-The accounts of the Fund shall be audited by the CAG of India.