

DIVIDEND

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CONCEPT OF DIVIDEND

- Dividend can be defined as that share of the company's profits which are distributed among the members
- Section 2(34) of the Companies Act, 2013 states that **dividend includes any interim dividend**
- It is the discretion of the directors to recommend any dividend. The shareholders cannot insist on getting dividend till it is recommended by the BOD.
- The BOD determines the rate of dividend to be declared and the shareholders may reduce this rate or reject it but in no case they can increase the amount
- Thus, it is the prerogative of the Board to recommend the dividend and it is the right of the shareholders to approve it in the general meeting
- A dividend once declared (and not just only proposed) by the company in a general meeting is a debt to the shareholders and creates an enforceable obligation on the company to pay the dividend

REVOCAION OF DECLARED DIVIDEND/ INTERIM DIVIDEND

- As the dividend once declared becomes an enforceable obligation, it can not be revoked except with the consent of the shareholders
- However, the Board of Directors can revoke the dividend, preferably with the approval of shareholders in the following circumstances:
 - i. **fire** destroying the company's property
 - ii. outbreak of **war**
 - iii. imposition of new killing **tax burden**
 - iv. when the dividend is **illegally declared**
 - v. any other cause **significantly reducing the assets** of the company making it necessary to conserve the remaining assets

LEGAL PROVISIONS RELATING TO DIVIDEND

1. Dividend can be declared only by passing a resolution at a general meeting in accordance with the provisions of articles of association of the company
2. If authorised by the articles, a company can pay dividend in proportion to the amount paid-up on each share. However, in absence of any such provision in the articles, dividend is paid in proportion to the nominal value of each share
3. Dividend can be paid only out of the divisible profits.
4. Sec 123 defines divisible profits as profits arrived at (i) after providing for depreciation, and (ii) after transferring to reserve a percentage of its profits before declaring dividend.
5. The dividend shall be paid by the company out of:
 - (a) profits for that year, or out of the profits for any previous financial year(s), or out of both
 - (b) out of moneys provided by the Central or State government in pursuant of guarantee given by the Government

6. For this purpose, depreciation shall be provided in accordance with the provision of Schedule II of the Act
7. The company can transfer any amount of profits to reserves, as it deems fit. However, it should follow a prudent transfer policy
8. Section 123(1) provides that a company can declare dividend only when its past losses and depreciation has been set off against the current year's profit
9. **In case of inadequacy or absence of profits in a given year**, a company can pay dividend out of the accumulated profits earned by it in previous years and transferred by it to free reserves. Further, the following provisions are to be followed as mentioned in Rule 3 of the Companies (Declaration and Payment) Rules, 2014:
 - (a) rate of dividend shall not exceed the average of rates at which dividend was declared by the company in previous three years immediately preceding that year
 - (b) total amount drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserve
 - (c) amount so drawn shall be first utilised to set off the losses incurred in the financial year
 - (d) balance of reserve after such withdrawal shall not fall below 15% of its paid up share capital

10. Dividend including interim dividend must be deposited in a separate account of a Scheduled bank **within 5 days** of declaration of such dividend, after deducting tax at source
11. Dividend to be paid **within 30 days** of declaration
12. Dividend to be **paid only in cash**. Section 125(5) provides that dividend payable in cash may be paid by cheque or warrant or any electronic mode
13. Section 123 (6) provides that a company which fails to comply with provisions of Section 73 and Section 74 relating to acceptance and repayment of public deposits, shall not be allowed to declare dividend

INTERIM DIVIDEND

- The dividend paid between two annual general meetings is called as interim dividend
- Generally declared in cases where a company has made sufficient profits and has prospects of good profits in the remainder of the year
- As per Section 2(34), the term dividend includes any interim dividend
- **All the provisions applicable to dividend are also applicable to interim dividend**
- However, in case the company has suffered losses during the current financial year up to the end of quarter immediately preceding the date of declaration of interim dividend, then rate of interim dividend cannot be higher than the average of rates of dividend declared in immediately preceding three years

UNPAID DIVIDEND/ UNCLAIMED DIVIDEND

- Any dividend which has not been paid claimed or paid or the dividend warrant which has not been encashed is termed as unpaid or unclaimed dividend
- A dividend declared but not paid or claimed within 30 days from the date of declaration, shall be transferred to a special account within 7 days from the date of expiry of said period of 30 days
- Such an account shall be opened by the company in any scheduled bank to be called as '**Unpaid Dividend Account of Co. Ltd./Co. (Pvt.) Ltd.**
- Further, **within 90 days** of transfer to unpaid dividend account, the company should **prepare a statement** containing the names, addresses, the amount of unpaid dividend to be paid to each person and place the statement on its website and on any other website approved by Central Government

- In the event of **default** in transferring the unpaid dividend to unpaid dividend account, the company shall pay **interest at the rate of 12% p.a.** from the date of default on the amount not transferred
- Sec 124(4) states that any person claiming to receive the unpaid dividend, may apply to the company for the payment of money claimed
- According to Sec 124(5) any money transferred to unpaid dividend account which remains **unpaid or unclaimed for a period of 7 years** from the date of such transfer, must be **transferred to Investor Education and Protection Fund** set up under Sec 125 after intimating the concerned members at least 6 months before the due date of such transfer
- If a company fails to comply with the requirements of Sec 124, the company shall be punishable with fine ranging from Rs. 5 lakhs to Rs. 25 lakhs and every officer in default shall be fined ranging from Rs. 1 lakh to Rs. 5 lakhs

FAILURE TO DISTRIBUTE DIVIDEND WITHIN 30 DAYS

- According to the provisions of Sec 127, where a dividend has been declared by a company but **has not been paid within a period of 30 days** from the date of its declaration, to the shareholders who are entitled to the dividend then-
 - (i) the company shall be liable to pay interest @ 18% p.a. for the period of default, and
 - (ii) every director of company will be punishable with imprisonment up to 2 years and a fine of Rs. 1000/- for every day during which such failure continues.

- **EXCEPTIONS TO SEC 127-**

However, no offence shall be deemed to have been committed for failure to distribute dividend within 30 days under the following cases:

- (a) where the dividend could not be paid by reason of the **operation of any law**;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those **directions cannot be complied with and the same has been communicated** to him;
- (c) where there is a **dispute regarding the right to receive the dividend**;
- (d) where the dividend has been **lawfully adjusted** by the company against any sum due to it from the shareholder; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

INVESTOR EDUCATION AND PROTECTION FUND

- Sec 125 (1) provides that the Central Government shall establish a Fund to be called the Investor Education and Protection Fund

- **AMOUNTS TO BE CREDITED TO THE FUND**
The following amounts shall be credited to the Fund according to Sec 125 (2)
 - a) the amount given by the Central Government by way of **grants** after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
 - b) **donations** given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
 - c) the **amount in the Unpaid Dividend Account** of companies transferred to the Fund under sub-section (5) of section 124;
 - d) the **amount in the general revenue account** of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;

- e) the amount lying in the Investor Education and Protection Fund **under section 205C** of the Companies Act, 1956 (1 of 1956);
- f) the **interest** or other income received out of investments made from the Fund;
- g) the **amount** received under sub-section (4) of section 38 that is the amount **received through disgorgement or disposal of securities**;
- h) the **application money** received by companies for allotment of any securities and **due for refund** (remaining unclaimed after 7 years from due date);
- i) **matured deposits** with companies other than banking companies (remaining unclaimed after 7 years from due date);
- j) **matured debentures** with companies (remaining unclaimed after 7 years from due date);
- k) **interest accrued** on the amounts referred to in clauses (h) to (j) (remaining unclaimed after 7 years from due date);
- l) **sale proceeds of fractional shares** arising out of issuance of bonus shares, merger and amalgamation for 7 or more years;
- m) **redemption amount of preference shares** remaining unpaid or unclaimed for 7 or more years; and
- n) such other amount as may be prescribed

- **PURPOSE OF THE FUND**

Sec 125 (3) provides that the amount lying in the fund shall be utilised for-

- (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- (d) reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) any other purpose incidental thereto, in accordance with such rules as may be prescribed

- **REFUND OF UNPAID OR UNCLAIMED DIVIDEND FROM THE FUND**

Persons whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of 7 years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section. Such a person may apply to the authority constituted under sub-section (5) for the payment of the money claimed.

- **MANAGEMENT OF THE FUND**

- The Central Government has constituted an authority for administration of the fund consisting of a chairperson and such other members, not exceeding 7 and a chief executive officer, as the Central Government may appoint.
- The manner of administration of the fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.
- The authority shall administer the fund and maintain separate accounts and other relevant records in relation to the fund after consultation with the Comptroller and Auditor General of India.
- The accounts of the fund shall be audited by the Comptroller and Auditor General of India and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government. The annual report along with audit report shall be laid before each house of the parliament by the Central Government.

RIGHT TO DIVIDEND, RIGHTS SHARES AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER (SEC 126)

- Where any instrument of transfer of shares has been delivered to any company for registration but the transfer of such shares has not been registered by the company, it shall-
 - a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
 - b) keep in abeyance in relation to such shares, any offer of rights shares under Sec 62(1)(a) and issue of fully paid-up bonus shares as per Sec 123 (5).

PAYMENT OF DIVIDEND OUT OF CAPITAL

- Dividend **can not** be paid out of capital
- As per Sec 123, dividend can be paid only out of following three sources
 - (a) Out of current profits
 - (b) Out of profits of any previous financial year(s)
 - (c) Out of money provided by the Central or State Government for the payment of dividend
- Directors knowingly paying dividend out of capital shall be held personally liable to make good the amount to the company
- Shareholders receiving dividend out of capital with full knowledge can not keep the dividend and have to return the amount received to the company