

## CH. 22 Dividends

<b>Meaning</b>	A share of the after-tax profit of a company, distributed to its shareholders according to the number and class of shares held by them is called dividend.
<b>Decided by BODs</b>	The amount and timing of the dividend is decided by the board of directors, who also determine whether it is paid out of current earnings or the past earnings kept as reserve.
<b>Power to pay dividend</b>	The power to pay dividend is inherent in a company and is not derived from the Companies Act, 2013 or the Memorandum or Articles of Association although the Act and the Articles regulate the manner in which dividends are to be declared.
<b>Right to dividend</b>	Right to claim dividend will only arise after a dividend is declared by the company in general meeting and until it is so declared, the shareholder has no claim against the company in respect of it.
The right to participation in the profits exists independent of any declaration by the company with only difference that the enjoyment of profits is postponed until dividends are declared. <b>[Bacha F Guzdar (Mrs.) v. CIT]</b>	
<b>Final dividend</b>	Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the company. Final Dividend can be declared only if it is recommended by the Board of Directors of the Company.
<b>Interim dividend</b>	Dividend is said to be an interim dividend, if it is declared by the Board of Directors between two annual general meetings of the company. All the provisions relating to the payment of dividend shall be applicable on the interim dividend also.

### Declaration of Dividend (Section 123)

<b>1. Sources of declaration of dividend</b>	Section 123(1) of Companies Act 2013 provides that no dividend shall be declared or paid by a company for any financial year except— (a) (i) out of the profits of the company for that year arrived at after providing for depreciation; (ii) out of the profits of the company for any previous financial year or years arrived at after providing for depreciation; (iii) out of both; Or (b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.
<b>2. Transfer of profits to reserves</b>	A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

<b>3. Dividend in case of absence or inadequacy of profits</b>	Owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.
Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014 provides that in the event of adequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfillment of the following conditions, namely: -	
<p><b>Conditions</b></p> <p>(1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the three years immediately preceding that year. Provided that this sub rule shall not apply to a company which has not declared any dividend in each of preceding 3 financial years.</p> <p>(2) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.</p> <p>(3) The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.</p> <p>(a) The balance of reserves after such withdrawal shall not fall below fifteen per cent of its paid up share capital as appearing in the latest audited financial statement. (b) No company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off against profit of the company of the current year.</p>	
<b>4. Dividend to be declared from free reserves only</b>	No dividend shall be declared or paid by a company from its reserves other than free reserves. Free reserves mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend.
<b>5. Declaration of interim dividend</b>	Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the Profit and Loss Account as well as profit of the financial year in which the interim dividend is sought to be declared.  When the company has incurred any loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding the three financial years.
<b>6. Dividend to be deposited in Bank</b>	The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

<b>7. Dividend only to registered shareholder</b>	No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash.
<b>8. Capitalization of Profits</b>	Sec 123 does not prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.
<b>9. Mode of payment</b>	The dividend shall be paid in cash. If any dividend is payable, it may be paid by cheque or in an electronic mode to the shareholder entitled to the payment of the dividend.
<b>10. Failure of repayment of deposits</b>	A company which fails to repay deposits etc. shall not, so long as such failure continues, declare any dividend on its equity shares.

#### **UNPAID DIVIDEND ACCOUNT (Section 124) Not yet enforced**

Section 124(1) states that when a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

<b>1. Application to Co.</b>	Section 124(4) states that any person claiming to be entitled to any money transferred under sub-section (1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.
<b>2. Details of unpaid dividend to be placed at the website</b>	Section 124 (2) provides that the company shall, within a period of ninety days of making any transfer of an amount under Section 124(1) to the Unpaid Dividend Account, prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the website of the company.
<b>3. Effect of Non-Transfer of the Dividend</b>	Section 124(3) provides that if any default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the Unpaid Dividend Account of the company, it 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 twelve percent per annum and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.
<b>4. Transfer to investor education and protection fund</b>	Section 124 (5) states that any money transferred to the Unpaid Dividend Account of a company 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.

<p><b>5. Shares in respect of unpaid dividend also to be transferred to IEPF</b></p>	<p>Section 124(6) provides that all shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed. (As per the Companies Amendment Act, 2015)</p> <p>It is also clarified in the Companies Amendment Act, 2015 that in case any dividend is paid or claimed for any year during the said period of seven consecutive years, the share shall not be transferred to Investor Education and Protection Fund.</p>
<p><b>6. Offence &amp; penalty</b></p>	<p>Section 124(7) provides that 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 five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.</p>

**Investor Education and Protection Fund (Section 125) (Not yet Enforced)**

The Central Government shall establish a Fund to be called the Investor Education and Protection Fund.

Section 125(2) prescribes that the following shall be credited to the Fund—

- (1) the amount given by the Central Government by way of grants after due appropriation made by Parliament;
- (2) donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (3) the amount in the Unpaid Dividend Account of companies transferred to the Fund u/s 124(5);
- (4) the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (5) the interest or other income received out of investments made from the Fund.
- (6) matured deposits with companies other than banking companies;
- (7) matured debentures with companies;
- (8) redemption amount of preference shares remaining unpaid or unclaimed for seven or more years;
- (9) And such other amount as may be prescribed.

**UTILISATION OF INVESTOR EDUCATION AND PROTECTION FUND (Not yet Enforced)**

Section 125 (3) provides the Fund shall be utilized for—

- (a) the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) promotion of investors' education, awareness and protection;
- (c) distribution of any disgorged (expelled, ejected, emptied, erupted, pour out) 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 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.

**PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS**

Section 127 of Companies Act 2013 provides that when a dividend has been declared by a company but has not been paid within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen percent per annum during the period for which such default continues.

**Exceptions:** Proviso to section 127 has provided a list where no offence under this section shall be deemed to have been committed: -

(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.