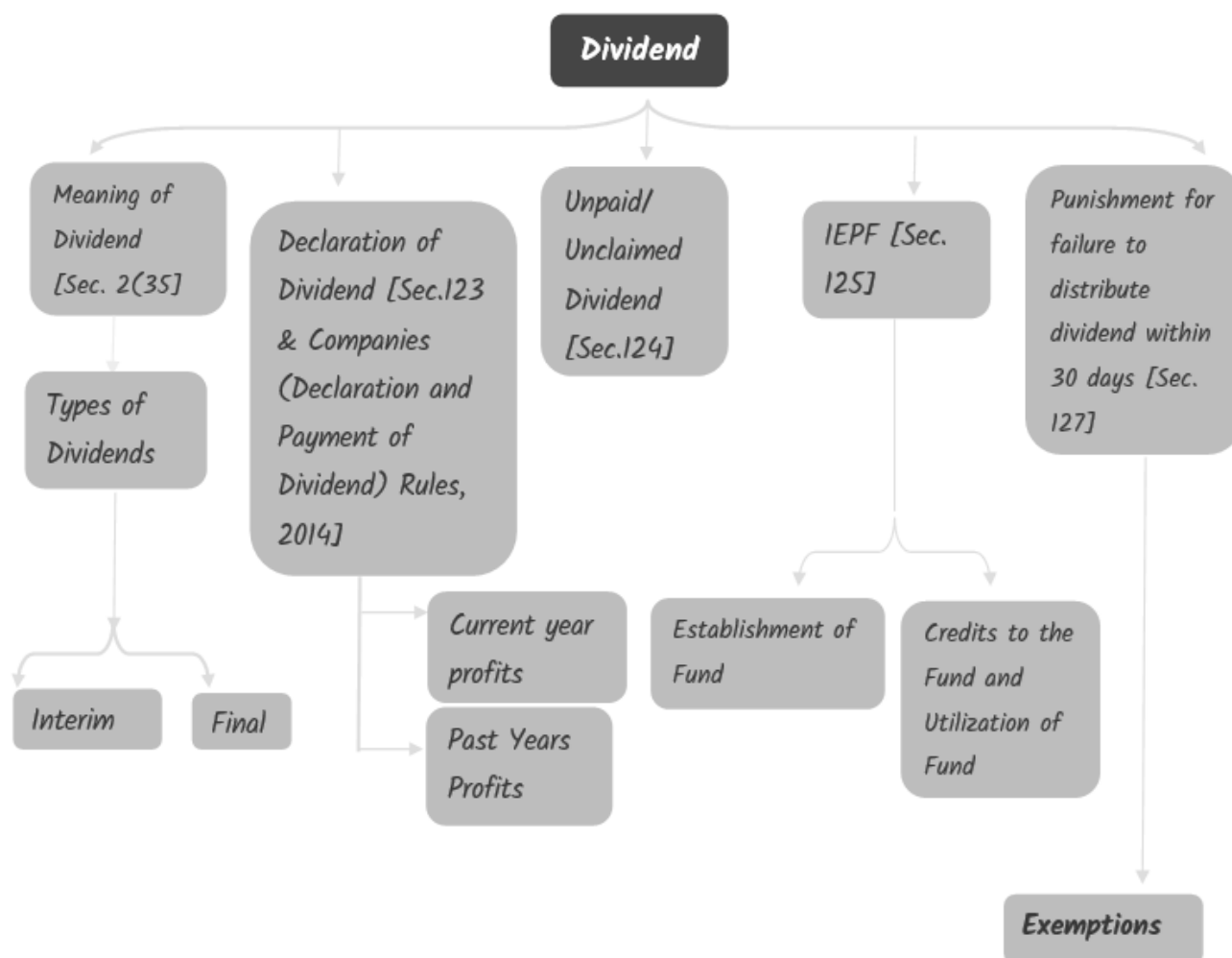


Chapter 8: Declaration & Payment of Dividend

Chapter Overview



Meaning of Dividend

Definition

Section 2(35) of the Companies Act, 2013, while defining the term dividend simply states that "**dividend**" includes any interim dividend.

In common parlance, "Dividend" implies a distribution of **any sums to members out of profits and wherever permitted** out of free reserves available for the purpose. Dividend is the shareholders return on their investment / capital in the company. Dividend is **part of the distributable profits** which has been paid out to them. In simple words, it is a distribution of profits i.e., a portion of profits earned and allocated as payable to the shareholders whenever declared.

The company in **general meeting may declare dividends**, but **no dividend shall exceed the amount recommended** by the Board. (**Clause 80** of Table F in Schedule I)



Dividend is **recommended by Board of Directors** in the Board's Report (**Section 134 (3) (k)**) and approved by Shareholders at the **Annual General Meeting**.

Dividend is **not a liability unless it is declared by the shareholders** at a validly constituted **general meeting by passing an ordinary resolution** (**section 102 (2)** declaration of **any dividend at the AGM** is an ordinary business requiring ordinary resolution. At any other general meeting it will be special business) at the rates recommended by the Board or such **lower rates as they may decide**.

Declaration of dividend by the company at a rate higher than the rate recommended by the Board is not permitted.

Dividend is Declared as a proportion of **Nominal or Face Value** of a share.

Example: AB Ltd. has issued equity shares having face value of 10 per share. The shares are currently quoting on the NSE at ₹250/- per share. The Company at its AGM held on 27.7.20 has declared a dividend of 20%. Mr. Shekar owns 1000 shares which he purchased at ₹300/- per share. What is the amount of dividend he will receive?

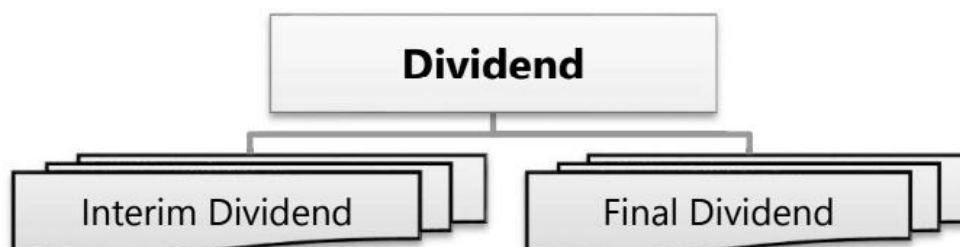
The dividend is to be calculated on Face Value i.e., 10/-. So, dividend per share is 20% of ₹10/- = ₹2/- per share. So, Mr. Shekar will receive 2 * 1000 shares = ₹2000/-.

Example: The shareholders at an annual general meeting unanimously passed a resolution for payment of dividend at a rate higher than that recommended by the directors. Discuss the validity of the resolution.

Articles of Association companies usually contain provisions with regard to declaration of dividend on the pattern of regulations 80 to 85 of Table F to Schedule I of the Companies Act, 2013. Under regulation 80, although the power to declare a dividend vests with the shareholders however under no circumstances they can declare dividend exceeding the amount recommended by the Board of Directors.

Types of Dividends

I. Classification based on time i.e., when declared



Interim Dividend

Section 123 (3) and also **section 123 (4)** contain provisions regarding interim dividend.



Following points are noteworthy:

- ✓ Interim dividend may be **declared by the Board of Directors at any time during the period from closure of financial year** till holding of the annual general meeting.
The declaration of interim dividend is done out of profits before the final adoption of the accounts by the shareholders and therefore, interim dividend is said to be declared and paid between two AGMs.
- ✓ The sources for declaring interim dividend include:
 - **Surplus** in the profit and loss account; **or**
 - **Profits of the financial year** in which such dividend is sought to be **declared**; **or**
 - Profits generated in the financial year **till the quarter preceding** the date of declaration of the interim dividend.
- ✓ If the **company has incurred 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 (rate of)** dividend declared by the company during the **immediately preceding three financial years**.

Example: If a company declared dividend at the rate of 16% during the immediately preceding three financial years, then in case the company incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 16%.

- ✓ The amount of the dividend, including interim dividend, **shall be deposited in a separate account** maintained with a scheduled bank **within five days from the date of declaration**.
- ✓ All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

Final Dividend

- ✓ When the **dividend is declared at the Annual General Meeting** of the company, it is known as '**final dividend**'.
- ✓ The rate of dividend recommended by the **Board cannot be increased** by the members.

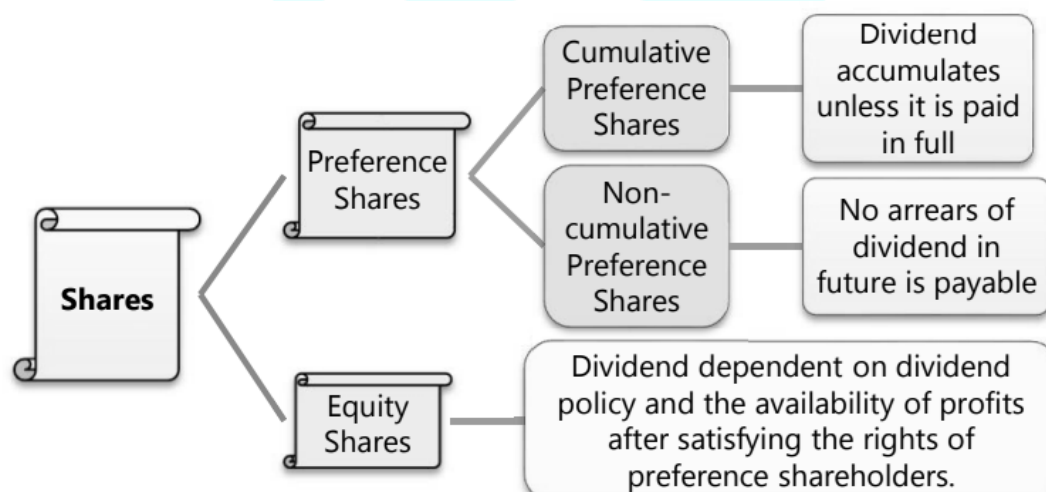
The table given below provides a quick summary of the above concepts of Interim Dividend and Final Dividend.

Basis for Comparison	Interim Dividend	Final Dividend
Definition	Interim dividend is declared and paid during an accounting year,	Final dividend is the dividend recommended by



	i.e., before the finalization of accounts for the year.	the board of directors, and approved by shareholders at the company's Annual General Meeting, after the close of financial year.
Announcement	Announced by Board of Directors.	Recommended by Board of Directors and approved by shareholders.
Time of Declaration	Before preparation of financial statements.	After preparation of financial statements.
Revocation	It can be revoked with the consent of all shareholders.	It cannot be revoked.

II. Classification based on Nature of Shares does not require any specific provision in the articles.



Shares can be classified into two categories i.e., preference shares and equity shares. The manner of payment of dividend is dependent upon the nature of shares.

(i) **Preference Shares:** According to Section 43 of the Companies Act, 2013, shareholders holding preference shares are assured of a preferential dividend at a fixed rate during the life of the company.

Preference dividend unless otherwise agreed as cumulative in nature need not be paid every year i.e., a company may decide not to declare any dividend where there is deficiency of profits.

Classification of preference shares on the basis of payment of dividend is as follows:

(a) **Cumulative Preference Shares:** A cumulative preference share is one



in respect of which dividend gets accumulated and any arrears of such dividend arising due to insufficiency of profits during the current year is payable from the **profits earned in the later years**. Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

(b) Non-cumulative Preference Shares: A non-cumulative preference share is one where the dividend is **payable only in a year of profit**. There is no accumulation of profit as in the case of cumulative preference shares. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year lapses and the holder of such a share is not entitled to be paid arrears of dividend out of future year profits.

(ii) Equity Shares: Equity shares are those shares, which are **not preference shares**. They do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital. The rate of dividend on equity shares is recommended by the **Board of Directors and may vary from year to year**. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

Provisions Regarding and Payment of Dividend

A. Sources for Declaration of Dividend

According to **Section 123 (1)**, the dividend for any financial year shall be declared or paid from the following sources:

(a) Profits of the current financial year- Profits arrived at after providing for depreciation in accordance with **Schedule II [Section 123 (2)]**.

(b) Profits of any previous financial year or years- Profits of **any previous financial year(s) arrived at after** providing for depreciation in accordance with **Schedule II** and remaining undistributed i.e., credit balance in profit and loss account and free reserves. It is to be noted that only free reserves and no other reserves are to be used for declaration or payment of dividend [**Third Proviso to Section 123 (1)**].

Authors Note: Section 2 (43) defines the term 'free reserves' to mean such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend. However, following items shall not be treated as free reserves:

(a) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise; or

(b) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.



(c) Both (a) and (b).

(d) **Provision of money by the Government-** 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.

Authors Note:

Note 1: Before declaration of any dividend, carried over previous losses and depreciation not provided in previous year or years are required to be set off against profit of the company for the current year. [Fourth Proviso to Section 123 (1)]

Note 2: In computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded. [Proviso to Section 123 (1) (a)]

Note 3: Capital profits are not same as distributable profits because they are not earned in the normal course of business; and therefore, normally not available for distribution as dividend.

Need for providing for depreciation out of profits before declaring dividend
Dividend is an **apportionment from revenue profits**. Therefore, dividend should never be **declared out of capital**. This is also the reason for prohibition on issue of shares at a discount which you studied in the topic Share Capital and Debentures.

"Depreciation" is a notional estimate of the reduction in the value of an asset due to

- i. wear and tear,
- ii. efflux of time,
- iii. improvements in technology etc.

If depreciation is not provided for there will be **two consequences**:

- i. The value of the asset will be overstated in Balance Sheet
- ii. The profits of the current year will be overstated.

Let us take a hypothetical case where a company declares all the profits earned during any year as dividend.

At the time of winding up of the company the value of assets appearing in the **Balance-sheet would appear to be sufficient to repay** the capital of the shareholders but the actual realizable value thereof will be a paltry sum which may not be **sufficient even to meet the expenses of winding up**.



This is because the company has failed to retain the amount of wear and tear in the value of the asset by way of provision for depreciation. In a way the company would have declared dividend out of capital, which is prohibited.

Hence the law mandates provision for depreciation **out of profits before declaration of dividend**.

Example: Shreyas Mechanics Limited owns a plot of land which was purchased long before. As the property rates are going up, it is decided to revalue the plot at fair value which is moderately ten times the original price, thus resulting in a revaluation profit of ₹20,00,000. The Board of Directors is keen to utilize this ₹20,00,000 along with free reserves of 24,00,000 for declaration of dividend at the forthcoming Annual General Meeting (AGM) to be held on 28th September, 2023. But according to Proviso to Section 123 (1) (a), the amount of ₹20,00,000 cannot be considered as it does not form part of Free Reserves as the same cannot be utilized towards declaration of dividend.

B. Transfer to Reserves

Transfer of profits to reserves for **any financial year has been left** to the discretion of the company. Therefore, a company is **free to transfer any portion** of its profit to reserves as it may deem fit. It may also decide not to transfer any amount to reserves.

Illustration: For the current year, Alma Watches Limited proposes to transfer more than 10% of its profits to the reserves before declaration of dividend at the rate of 12%. Can the company do so?

Ans: The amount to be transferred to reserves out of profits for any financial year before the declaration of dividend has been left to the discretion of the company. Therefore, Alma Watches Limited is free to transfer any part of its profits to reserves as it may deem fit.

Illustration: Brix Shipyards Limited has earned a profit of 1,000 crores for the financial year 2018-19. It has proposed a dividend @ 8.75%. However, it does not intend to transfer any amount to the reserves out of the profits earned. Can the company do so?

Ans: The amount to be transferred to reserves out of profits for any financial year has been left to the discretion of the company. The company is free to transfer any part of its profits to reserves as it may deem fit or it may even not transfer any profits to reserve if it is deemed appropriate before the declaration of dividend. Thus, Brix Shipyards Limited is justified in its action if it does not transfer any number of profits to the reserves.



C. Declaration of Dividend when there is inadequacy or Absence of Profits (Second Proviso to Section 123)

Where in any year there are **no adequate profits for declaring dividend**, the company may declare dividend out of the accumulated profits earned by it in previous years and transferred by it to the free reserves only in accordance with the procedure laid down in **Rule 3** of the Companies (Declaration and Payment of Dividend) Rules, 2014.

Free Reserves [Section 2 (43)] means such reserves which, as per the latest audited balance sheet of a company, **are available for distribution as dividend:**

The following shall not be treated as free reserves:

1. Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
2. Any change in carrying amount of an asset or of a liability recognized in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value.

Under **Rule 3** such declaration shall be subject to the **following conditions:**

Condition I

The rate of dividend declared **shall not exceed the average** of the rates at which dividend was declared by the company in the **immediately preceding three years.**

$$\text{Rate of Dividend} \leq (RD_1 + RD_2 + RD_3)/3$$

Where, RD₁, RD₂, RD₃ are rates at which dividend was declared by the company in the immediately preceding three years.

However, this **condition shall not apply** if the company has **not declared any dividend** in each of the three preceding financial year.

Condition II

The total amount to be drawn from such **accumulated profits shall not exceed 10% of its paid-up share capital and free reserves** as appearing in the latest audited financial statement. In other words:

$$\text{Total amount that can be drawn from accumulated profits} \leq 10\% \text{ of (paid up share capital + free reserves)}$$

Condition III

The amount so drawn shall **first be utilised to set off the losses** incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

Condition IV



The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Free Reserves - Amount drawn for payment of dividend \geq 15% of paid up share capital

It may be noted that all the above three conditions have to be satisfied.

The conditions prescribed by **Rule 3** are not applicable to a government company in which the entire paid-up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments (vide Notification No. 463 (E), dated 05-06-2015).

Illustration: Capricorn Industries Limited has a paid-up capital of 200 lakhs and accumulated Reserves of 240 lakhs. Loss for the year ending 31st March 2020 is 30 Lakhs. Dividend was declared at the following rates during the three years immediately preceding.

Year 1	9%
Year 2	10%
Year 3	12%

What is the maximum rate at which the company can declare dividend for the current year?

Ans: In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Let us apply the conditions:

Condition I:

Average rate = $9+10+12/3 = 10.33\%$

Therefore, the rate of dividend shall not exceed 10.33%.

i.e., 10.3% of Paid-up Capital i.e., 200 lakhs = 20.6 lakhs

Condition II:

Paid-up capital + Free reserves	= ₹(200+240) Lakhs
(Assuming all reserves are free)	₹440 Lakhs
10% thereof	₹44 Lakhs
Less: loss for the year	= ₹30 Lakhs
Amount available	₹14 Lakhs

Hence, the quantum of dividend is further restricted to 14 lakhs.

Condition III:

Accumulated Reserves	₹240 Lakhs
Proposed withdrawal declaration of dividend	₹ 14 Lakhs
Balance of Reserves	₹226 Lakhs

This is more than 15% of paid-up capital (i.e. 15% of ₹ 200 Lakhs) i.e., ₹ 30 lakhs.

Thus, the company can declare a dividend of 14 lakhs i.e., at a rate of 7% on its paid-up capital of 200 lakhs.



Illustration: Shipra Sugar Mills Limited has been regularly declaring dividend at the rate of 20% on its equity shares for the past 3 years. However, the company has not made adequate profits during the current year ending on 31st March, 2020, but it has got adequate free reserves which can be utilized for maintaining the rate of dividend at 20%.

Advise the company as to how it should proceed in the matter if it wants to declare dividend at the rate of 20% for the year 2019-20, as per the provisions of the Companies Act, 2013.

Ans: The company can declare a dividend out of its Accumulated Free Reserves subject to satisfaction of the following conditions:

- ✓ The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.
- ✓ The total amount to be drawn from free reserves shall not exceed 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
- ✓ The amount so drawn shall first be utilised to set off the losses incurred in the current financial year and only thereafter, dividend at 20% shall be declared.
- ✓ After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

The company is advised to get the desired dividend recommended by the Board of Directors and propose the same for the approval of the members at the ensuing Annual General Meeting as the authority to declare dividend lies with the members of the company.

D. Depositing of Amount of Dividend

In terms of **section 123(4)**, the amount of the **dividend (including interim dividend)**, shall be deposited in a separate account maintained with a scheduled bank. This is to be **done within 5 days from the date of declaration of dividend** (this requirement shall not apply to a **Government Company** in which the entire paid-up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company).



Example: The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is 50.00 lacs divided into 5,00,000 equity shares of 10 each. At its Annual General Meeting (AGM) held on 24th September, 2019, the company declared a dividend of 2 per share by passing an ordinary resolution. The amount of dividend must be deposited in a scheduled bank in a separate account latest by 29th September, 2019.

E. Payment of Dividend

Section 123(5) contains provisions regarding payment of dividend. These are stated as under:

(a) Dividend shall be payable only to the registered shareholder or to his order or to his banker.

In case a shareholder informs the company to pay dividend to a particular banker and if the payment is so made by the company, then it shall be deemed to be made to the shareholder himself.

A purchaser of shares whose name is not entered in the Register of Members cannot claim payment of dividend to him though he might have made full payment to the seller of shares. In this regard we will, later in this chapter, see **Section 126** which provides for keeping of dividend etc., in abeyance pending registration of transfer of shares, **unless the registered holder has authorized the company** to pay the dividend to the purchaser.

Illustration: The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2022-2023. The company announced 28th September 2023 as the record date for payment of dividend. The dividend was approved in the Annual General Meeting held on 30th September 2023.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been entered in the register of members on 18th June, 2023. Who will be entitled to the above dividend?

Ans: According to section 123, dividend shall be paid by a company only to the registered shareholder of such share.

Record date is the date announced by the company for determining entitlement to dividend. All those persons whose name is included in the register of members on that date shall be entitled to dividend.

In the instant case, on the date announced by the company as the record date, Mr. Mohan's name is present in the register of members (i.e., Mr. Binoy's name is NOT present therein). Therefore, the dividend should be paid to Mr. Mohan who is the registered shareholder on the record date.



Illustration: The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2022-23. The same was approved at the Annual General Meeting of the company held on 25th June, 2023.

Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2023, but the same were transferred by him to Mr. Raj, whose name was registered on 20th April, 2023 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

Ans: According to section 123(5), dividend shall be payable only to the registered shareholder of the shares or to his order or to his banker. Facts in the given case state that Mr. Nitin Jha, the holder of equity shares transferred his shares to Mr. Raj whose name was registered on 20th April, 2023. Since, Mr. Raj became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 25th June, 2023, he will be entitled to the dividend.

Authors Note: In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only 5 (face value 10) on each share held by them. In case of declaration of dividend at the rate of 5 per share, the company, if authorised by its articles, shall be justified in paying dividend of 2.50 per share in respect of such partly paid shares.

(b) Dividends are payable in cash and not in kind. Dividends that are payable to the shareholders in cash may also be paid by cheque or dividend warrant or through any electronic mode.

Section 127 requires that the **declared dividend must be paid to the entitled shareholders within the prescribed time limit of thirty days** from the date of declaration of dividend. In case dividend is paid by issuing dividend warrants, such warrants must be posted at the registered addresses within the prescribed time.

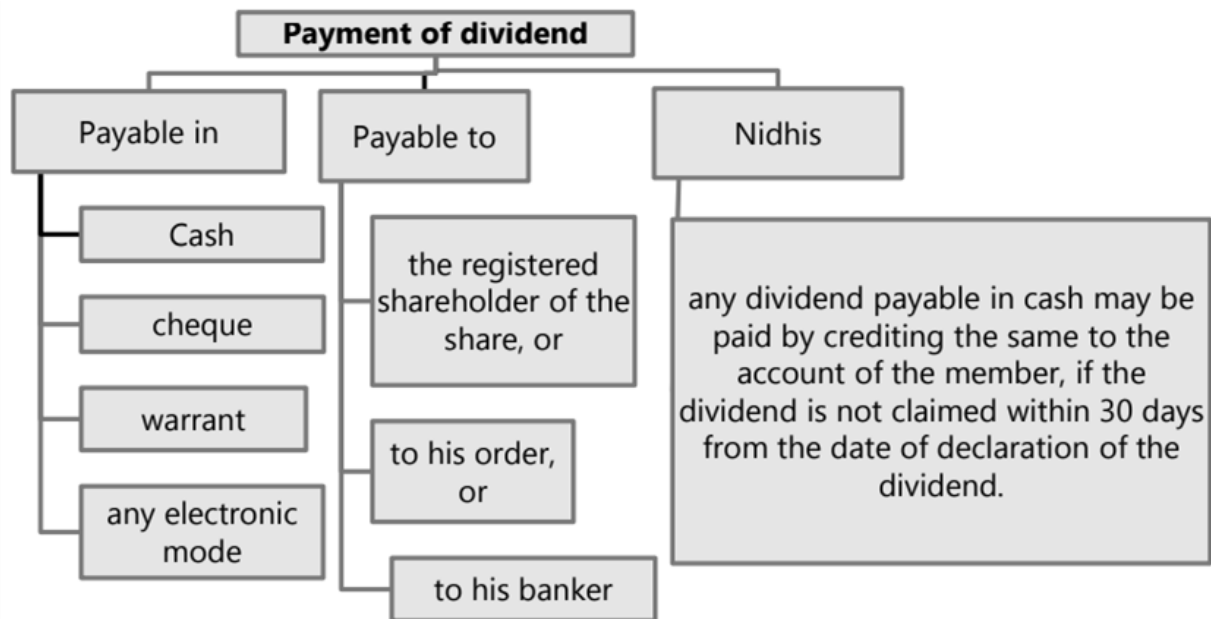
Authors Note: Dividends shall be paid only in cash. The exception to this is the capitalization of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company [First Proviso to Section 123 (5)] But you may note that while Declaration of dividend does not affect the company's power to issue fully paid-up bonus shares, such shares cannot be issued in lieu of dividend.

(c) **Applicability of Section 123 (5) to Nidhis:** In terms of Notification No. GSR 465 (E), dated 05-06-2015, this sub-section shall apply to the Nidhis, subject to the modification that any dividend payable in cash may be paid by crediting the



same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.

Chart depicts the mode of payment and recipient of dividend:



F. Prohibition on Declaration of Dividend

In the following cases declaration and payment of dividend is prohibited.

(i) **Prohibition in case of any Defaulting Company [Section 123 (6)]:** A company which fails to comply with the provisions of section 73 (Prohibition on acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act of 2013) shall not, so long as such failure continues, declare any dividend on its equity shares.

(ii) **Prohibition in case of Section 8 Companies:** According to section 8 (1), a company having licence under Section 8 (Formation of companies with charitable objects, etc.) is prohibited from paying any dividend to its members. Its profits are intended to be applied only in promoting the objects for which it is formed.

Unpaid Dividend Account (UDA)

Section 124 of the Act contains the provisions relating to Unpaid Dividend Account (UDA). These are as follows:

(i) **Unpaid or Unclaimed Dividend to be transferred to the Unpaid Dividend Account-** Where a dividend has been declared by a company but has not been paid or claimed within thirty (30) days from the date of declaration, the company shall, within seven (7) days from the expiry of the said period of 30 days, transfer the



total amount of unpaid or unclaimed dividend to a **special account called the Unpaid Dividend Account (UDA)**. The UDA shall be opened by the company in any scheduled bank.

(ii) Preparing of Statement of the Unpaid Dividend- **Within 90 days of transferring any amount to the Unpaid Dividend Account**, the company shall prepare a statement containing the names, last known addresses and the amount of unpaid dividend to be paid to each person and place such statement on its web-site, if any, and also on any other web-site approved by the Central Government for this purpose.

(iii) Payment of Interest if default is made in transferring the Amount- If any default is made in transferring the total unpaid dividend amount or any part thereof to the Unpaid Dividend Account, the company shall pay, from **the date of such default, interest at the rate of twelve per cent per annum on the amount not so transferred to the said account**. The interest accruing on such amount shall ensure i.e. be available to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(iv) Claimant to apply for payment of Claimed Amount- Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account may apply to the company concerned for payment of the money so claimed.

(v) Transfer of Unclaimed Amount to Investor Education and Protection Fund (IEPF)- Any money transferred to the Unpaid Dividend Account which **remains unpaid or unclaimed for seven (7) years from** the date of such transfer shall be transferred by the company along with interest accrued thereon to the Investor Education and Protection Fund.

Further, the company shall send a prescribed statement containing the details of such transfer to the IEPF Authority and in turn, the Authority shall issue a receipt to the company as evidence of such transfer.

(vi) Transfer of Shares to IEPF- All shares in respect of which dividend has **not been paid or claimed for 7 consecutive years or more** shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing the prescribed details.

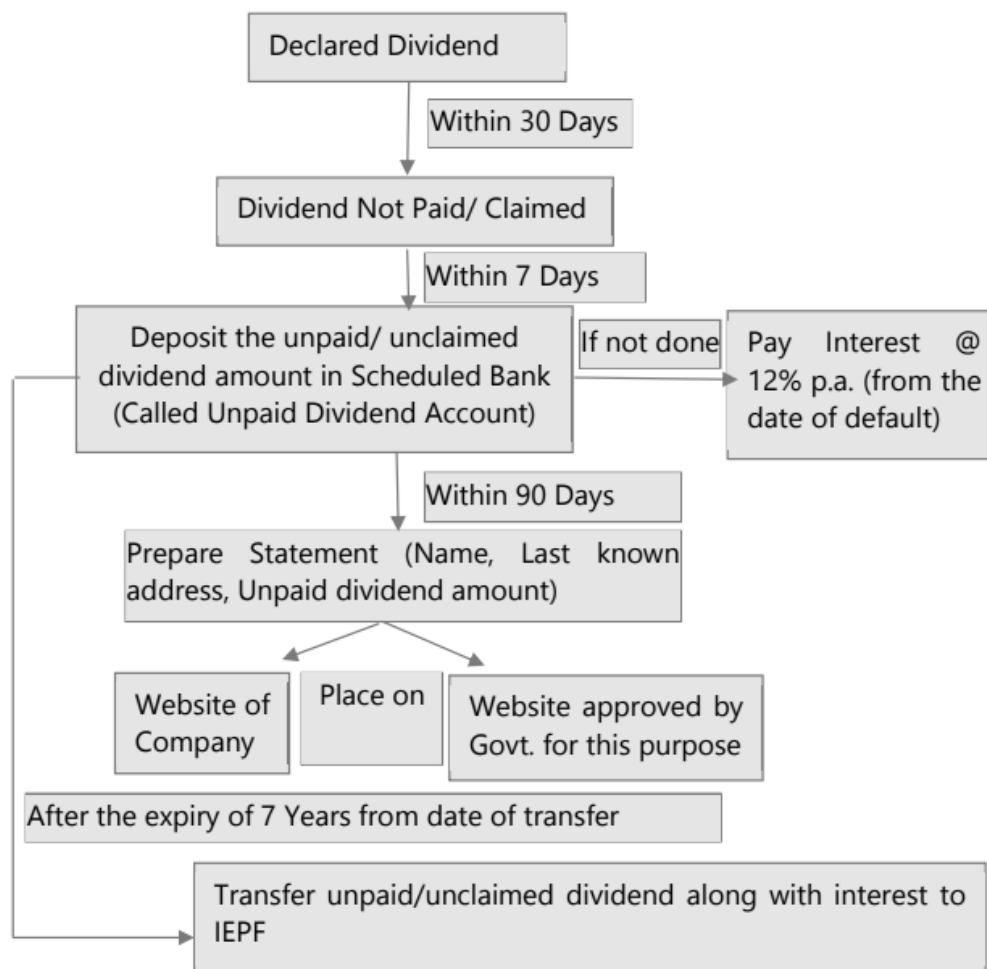
By way of Explanation, it is clarified that in case any dividend is paid or claimed for any year during the **said period of seven consecutive years**, the share shall not be transferred to Investor Education and Protection Fund.

(vii) Right of Owner of 'transferred shares' to Reclaim- Any claimant of shares so transferred to IEPF shall be entitled to reclaim the 'transferred shares' from



Investor Education and Protection Fund in accordance with the prescribed procedure and on submission of prescribed documents.

(viii) Punishment for Contravention- If a company fails to comply with any of the requirements of this section, such company shall be **liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first** during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of **twenty-five thousand rupees** and in case of continuing failure, with a **further penalty of one hundred rupees for each day after the first** during which such failure continues, subject to a **maximum of two lakh rupees**.



Investor Education and Protection Fund (IEPF)

Section 125 of the Act along with various Rules framed from time to time including Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 deal with the Investor Education and Protection Fund (IEPF). This fund, being established by the Central Government, **shall be credited with specified amounts and utilized for refund of unclaimed and**



unpaid amounts, promotion of investors' awareness and protection of the interests of investors, etc.

The relevant provisions are discussed below:

1. Credit of Specified Amounts to the Fund: Following specified amounts shall be credited to the Fund:

(a) Amount given by the Central Government-

The amount given by the Central Government by way of grants after due appropriation made by Parliament;

(b) Donations by the Central Government- Donations given by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;

(c) Amount lying in the Unpaid Dividend Account- The amount lying in the Unpaid Dividend Account (UDA) of companies which is transferred by them to the Fund under **section 124(5)**;

(d) Amount in the General Revenue Account of the Central Government-

The amount in the General Revenue Account of the Central Government which had been transferred to that account under **section 205A(5) of the Companies Act, 1956** as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of the Act of 2013;

(e) Amount in IEPF- The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;

(f) Income from Investments- The interest or other income received out of investments made from the Fund;

(g) Amount received through disgorgement or disposal of Securities- The amount received under **section 38(4)** i.e., amount received through disgorgement [*Disgorgement is the legally enforced repayment of ill-gotten gains imposed on wrongdoers by the courts. Funds that were received through illegal or unethical business transactions are disgorged, or paid back, often with interest and/or penalties to those affected by the action*] or disposal of **securities seized from a person** who has been convicted for personation for acquisition of securities as provided in **section 38(3)**;



(h) Application Money- The application money received by companies for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);

(i) Matured Deposits- Matured deposits with companies other than banking companies (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);

(j) Matured Debentures- Matured debentures with companies (only if such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment);

(k) Interest- Interest accrued on the amounts referred to in clauses (h) to (l)
Amount received from Sale Proceeds- Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;

(m) Redemption Amount- Redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and

(n) Other Amounts- Such other amounts as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. They are as under:

(a) all amounts payable as mentioned in clause (a) to (n) of section 125 (2) of the Act [as stated above];

(b) all shares in accordance with section 124 (6) i.e., all those shares in whose case dividends have not been claimed or paid for seven consecutive years or more;

(c) all the resultant benefits arising out of shares held by the Authority under clause (b) above;

(d) all grants, fees and charges received by the Authority under these rules;

(e) all sums received by the Authority from such other sources as may be decided upon by the Central Government;

(f) all income earned by the Authority in any year;

(fa) all shares held by the Authority in accordance with proviso of sub-section (9) of section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions;

(g) all amounts payable as mentioned in sub-section (3) of section 10B of



the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, **section 10B** of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 **sub-section (3) of section 38A** of the State Bank of India Act, 1955 and **section 40A** of the State Bank of India (Subsidiary Bank) Act, 1959; and; and

(h) all other sums of money collected by the Authority as envisaged in the Act. Further, according to **Rule 3 (3)**, in case of term deposits and debentures of companies, **due unpaid or unclaimed interest shall be transferred to the Fund** along with the transfer of the matured amount of such term deposits and debentures.

2. Utilization of the Fund: According to **section 125 (3)** the Fund shall be utilized for:

- (a) refund 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 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 the rules framed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Refund of Amount- A person amounts referred to in **clauses (a) to (d) of sub-section (2) of section 205C** were transferred to IEPF, **after the expiry of 7 years** as per provisions of the Companies Act, 1956, shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

3. Application to the Authority for payment: According to **section 125 (4)**, any person claiming to be entitled to the amount referred in **section 125 (2)** may apply to the Authority constituted under **section 125 (5)** for the **payment of the money claimed**.

4. Other Provisions governing the IEPF

- (i) **Constitution of the Authority for Administration of Fund-** In terms of Notification dated 13.01.2016, the **Ministry of Corporate Affairs has**



notified sub-section (5), sub-section (6) (except with respect to the manner of administration of the Fund) and sub-section (7) of section 125 of the Act w.e.f. 13.01.2016. With this Notification, an Authority is being constituted for the administration and maintenance of accounts as well as other relevant records of the Fund.

Further, with the notification of **IEPF Authority** (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016 on 13.01.2016, the Secretary, Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority. In addition, there shall be six members (maximum limit seven) and a **Chief Executive Officer who shall be the convenor** of the Authority.

(ii) Provision of required Resources by the Central Government for Administration of the Fund- The Central Government may provide to the Authority such offices, officers, employees and other resources in accordance with the IEPF Authority (Appointment of Chairperson and Members, holding of Meetings and provision for Offices and Officers) Rules, 2016.

(iii) Authority to work in consultation with CAG of India- The Authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the **Comptroller and Auditor- General of India**.

(iv) Spending of Money- The Authority shall be competent to spend money out of the Fund for carrying out the objects specified in **section 125 (3)** i.e. purposes for which the fund shall be utilized.

(v) Audit of the Fund- The accounts of the Fund shall be audited by the **Comptroller and Auditor-General of India** at such intervals as may be specified by him. Such audited accounts together with the audit report thereon shall be forwarded annually by the Authority to the Central Government.

(vi) Preparation of Annual Report by the Authority- For each financial year, the Authority shall prepare in the prescribed form and at prescribed time its annual report giving full account of its activities during the financial year and forward a copy thereof to the Central Government. In turn, the **Central Government shall cause the annual report and the audit report** given by the Comptroller and Auditor- General of India to be laid before each House of Parliament.



Right of Dividend, Rights Shares and Bonus Shares to be held in Abeyance Pending Registration of Transfer of Shares

According to **Section 126**, in case any instrument of transfer of shares has been **delivered by a shareholder for registration and the transfer** of such shares has not been registered by the company, such company shall take the following steps:

- (a) Transfer the dividend in relation to such shares to the **Unpaid Dividend Account unless it is authorised** by the registered holder of such share in writing to pay such dividend to the transferee specified in the instrument of transfer; and
- (b) Keep in abeyance in relation to such shares **any offer of rights shares** under **section 62 (1) (a)** and any issue of **fully paid-up bonus shares** in pursuance of first proviso to **section 123 (5)**.

Punishment for Failure to Distribute Dividends within 30 days

Section 127 of the Act contains time limit for distribution of dividends and punishment for failure to distribute dividend on time. Certain exemptions from punishments are also provided. These provisions are stated as under:

A. Time Limit for Distribution of Dividends: Where a company declares dividend, it must be paid or the dividend warrant thereof must be posted **within 30 days from the date** of declaration of dividend to the shareholders entitled to the same. **Posting of dividend warrants within 30 days absolves the company from** any punishment irrespective of whether it is received by the shareholder concerned within this time or not. The offence is committed only when the company fails to post dividend warrants to the **registered address of the members within 30 days** of declaration. Non-receipt of dividend warrants by the shareholders within the prescribed time does not attract any punishment.

B. Punishment for Failure: In case a company fails to pay declared **dividends or fails to post dividend warrants within 30 days of declaration**, following punishments are applicable:

- (i) Every director of the company shall be punishable with **imprisonment of up to two years**, if he is knowingly a party to the default. And, he shall also be **liable to pay minimum fine of ₹1,000 for every day** during which such default continues.



(ii) The company shall be liable to pay simple interest **at the rate of 18% p.a. during the period** for which such default continues.

C. Exemption from Punishment: Under the following cases, where the company has **failed to pay declared dividend within 30 days of declaration, no offence** shall be deemed to have been committed and therefore, no punishment is attracted:

- (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;
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the prescribed period of 30 days was not due to any default on the part of the company.

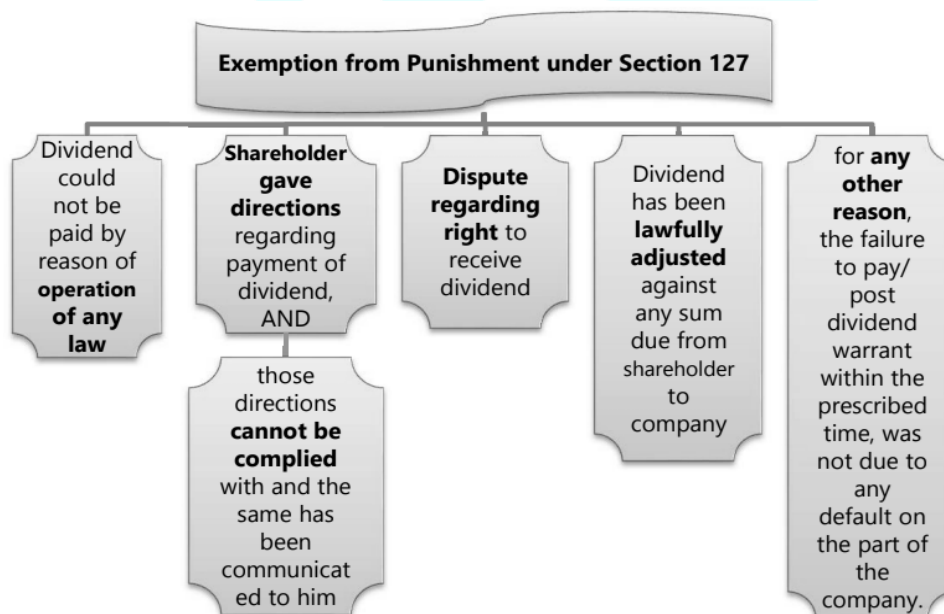


Illustration: Mr. Alok, holding equity shares of face value of 10 lakhs, has not paid 80,000 towards call money due on shares. Can the dividend amount payable to him be adjusted against such dues? Give reasons for your answer.

Ans: Yes. As per clause (d) of Proviso to Section 127, where the dividend is declared by a company and there remains calls in arrears or any other sum due from a member, then the dividend can be lawfully adjusted by the company against any such dues.

Thus, the action of the company adjusting dividend payable to Mr. Alok towards call money due on shares amounting to 80,000 is justified and therefore, no punishment is attracted.



Applicability of Section 127 to Nidhi's

In terms of Notification No. GSR 465 (E), dated 05-06-2015, Section 127 dealing with punishment shall apply to the Nidhi's, subject to the following modification: In case the **dividend payable to a member is 100 or less**, it shall be sufficient compliance of the provisions of the **section 127**, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi's for **at least 3 months**.

