

Dividend under the Companies Act, 2013: Sources, Interim Dividend, Payment, Unpaid Dividend Account and IEPF (Sections 123, 124, 127)

Description

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Quick summary

- A company can pay dividend only out of profits of the year (after depreciation under Schedule II), undistributed profits of earlier years, both, or money provided by a Government under a guarantee. Unrealised and notional gains are excluded, and past losses and unprovided depreciation must be set off first.
- The Board can declare an interim dividend. The dividend amount must be deposited in a separate scheduled bank account within five days of declaration, and paid within 30 days.
- Dividend unpaid or unclaimed for 30 days goes to the Unpaid Dividend Account within seven days; after seven years it goes to the Investor Education and Protection Fund, along with shares on which no dividend was claimed for seven consecutive years.
- Failure to pay within 30 days attracts 18% simple interest on the company and imprisonment up to two years for a director who knowingly is party to the default.

A dividend is a share of the profits paid to members, so the Companies Act, 2013 allows it only from specific sources, requires the money to be put aside promptly, and protects shareholders who have not collected it.

Where dividend can come from (section 123(1))

A company can declare or pay dividend for a financial year only:

- **(a)** out of the **profits of that year** after providing for depreciation under **Schedule II**, **or** out of **undistributed profits of previous years** after providing for depreciation, **or** out of **both**; **or**
- **(b)** out of **money provided by the Central or a State Government** for the payment of dividend under a guarantee given by that Government.

In computing profits, any amount representing **unrealised gains, notional gains or revaluation of assets**, and any change in the carrying amount of an asset or liability on fair value measurement, is **excluded**.

Other conditions

- Before declaring dividend for a year, the company may transfer such percentage of the year's profits to its **reserves** as it considers appropriate.
- Where profits are inadequate or absent and the company proposes to pay from **accumulated profits earlier transferred to free reserves**, it must follow the prescribed rules.
- **No dividend may be declared or paid from reserves other than free reserves.**
- **No dividend can be declared** unless previous losses carried over and depreciation not provided in earlier years are **set off** against the current year's profit.
- A company that fails to comply with **sections 73 and 74** (deposits) cannot declare dividend on its equity shares while the failure continues.

Interim dividend (section 123(3))

The Board can declare an interim dividend during any financial year, or at any time from the closing of the year until the AGM, out of the **surplus in the profit and loss account**, or out of the **profits of the year** for which it is declared, or out of profits generated **up to the quarter before** the date of declaration. If the company has incurred a **loss** in the current year up to that quarter, the interim dividend **cannot be at a rate higher than the average dividends declared in the preceding three financial years**.

Payment (section 123(4) and (5))

- The amount of the dividend, including interim dividend, must be **deposited in a separate account in a scheduled bank within five days** from the date of declaration.
- Dividend is paid only to the **registered shareholder**, or to his order or his banker, and **not otherwise than in cash**. It may be paid by cheque, warrant or in any **electronic mode**. Issuing fully paid bonus shares by capitalising profits or reserves is not prohibited.

Unpaid or unclaimed dividend (section 124)

1. A dividend that is not paid or claimed **within 30 days** of declaration is transferred, **within seven days after those 30 days**, to a special account called the **Unpaid Dividend Account** in a scheduled bank.
2. Within **90 days** of the transfer, the company prepares and places on its website (and a website approved by the Central Government) a statement of **names, last known addresses and amounts**.
3. If the company defaults in the transfer, it pays **interest at 12% a year** on the amount not transferred, for the benefit of the members in proportion.
4. A person entitled can **apply to the company** for payment of the money.
5. Money that remains unpaid or unclaimed for **seven years** from the date of transfer goes, with accrued interest, to the **Investor Education and Protection Fund** (section 125).
6. **Shares** on which dividend has not been paid or claimed for **seven consecutive years or more** are transferred to the IEPF. A claimant can claim them back from the IEPF by the prescribed procedure. If a dividend is paid or claimed in any year within the seven years, the shares are not transferred.
7. **Penalty (section 124(7)):** the company is liable to a penalty of **Rs 1 lakh** and a further **Rs 500 a day** (maximum Rs 10 lakh), and every officer in default to **Rs 25,000** and a further **Rs 100 a day** (maximum Rs 2 lakh).

Failure to pay a declared dividend (section 127)

If a declared dividend is not paid, or the warrant is not posted, **within 30 days** of declaration to a shareholder

entitled to it:

- every **director who is knowingly a party** to the default is punishable with **imprisonment up to two years** and a **fine of not less than Rs 1,000 for every day** the default continues; and
- the company is liable to pay **simple interest at 18% a year** during the default.

No offence is committed where the dividend could not be paid by reason of the operation of any law; where a shareholder's directions cannot be complied with and this has been communicated to him; where there is a dispute about the right to receive it; where it has been lawfully adjusted against a sum the shareholder owes the company; or where for any other reason the failure was not due to the company's default.

A short dividend checklist

1. Compute distributable profits: current year profit after Schedule II depreciation, less past losses and unprovided depreciation, excluding unrealised and notional gains.
2. Board recommends (or declares an interim) dividend; members approve the final dividend at the AGM.
3. Deposit the amount in a separate scheduled bank account within five days of declaration.
4. Pay within 30 days, electronically where possible, to registered holders.
5. Move unclaimed amounts to the Unpaid Dividend Account on time, publish the statement within 90 days, and track the seven year clock for IEPF transfer of money and shares.

Points to check

- This post follows the Companies Act as published on India Code, including its amendments up to the footnotes in that edition. The Rules on dividend out of accumulated profits (the conditions for paying when profits are inadequate), the form of the unpaid dividend statement, and the IEPF Rules for transfer and claim were not reviewed.
- Tax on dividend in the hands of the shareholder and TDS on dividend are governed by the Income-tax law and are not covered here.
- Listed companies also follow SEBI's listing regulations on dividend policy and record dates.

Frequently asked questions

Out of what can a company pay dividend?

Out of the profits of the current year after providing for depreciation as per Schedule II, out of undistributed profits of previous years after depreciation, out of both, or out of money provided by the Central or a State Government under a guarantee. Unrealised gains, notional gains and revaluation gains are excluded when computing profits.

Can dividend be paid out of reserves?

Not from reserves other than free reserves. Where profits are inadequate or absent and the company proposes to pay from accumulated profits transferred to free reserves, it must follow the prescribed rules. No dividend can be declared unless carried over previous losses and unprovided depreciation have been set off against the current year's profit.

What is an interim dividend?

A dividend the Board declares during the financial year, or between the year end and the AGM, out of the surplus in the profit and loss account, the profits of that year, or profits up to the quarter before the declaration. If the company has a loss up to the previous quarter, the interim dividend rate cannot exceed the average of the dividends in the preceding three financial years.

When must the dividend be paid?

The amount must be deposited in a separate account in a scheduled bank within five days of declaration, and paid, or the warrant posted, within 30 days from the date of declaration. It is paid only to the registered shareholder or to his order or banker, in cash, by cheque or warrant, or electronically.

What happens to dividend not claimed?

Within seven days after the 30 day period, the unpaid or unclaimed amount is transferred to the Unpaid Dividend Account. Within 90 days a statement of names, addresses and amounts is placed on the company's website. After seven years the amount goes to the Investor Education and Protection Fund, and shares on which dividend has not been paid or claimed for seven consecutive years are transferred to the IEPF as well.

What if the company cannot pay dividend because of a deposit default?

A company that fails to comply with sections 73 and 74 on deposits cannot declare any dividend on its equity shares while the failure continues.

What is the penalty for not paying a declared dividend?

Under section 127, every director who is knowingly a party to the default is punishable with imprisonment up to two years and a fine of not less than Rs 1,000 for each day of default, and the company pays simple interest at 18% a year during the default. Exceptions apply, for example where payment is prevented by law, there is a dispute about the right to the dividend or the shareholder's directions cannot be complied with.

Official sources

- India Code: The Companies Act, 2013 (sections 123 to 127)
- Ministry of Corporate Affairs

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