Chapter 1

Declaration and Payment of Dividend

1: Meaning of Dividend

The dividend stands for the sum payable as interest on loan/share of profit to 'shareholders' in a business of a company. In commercial sense, dividend means in relation to companies as going concerns as a portion of profits earned and allocated as payable to the shareholders yearly or whenever declared. According to section 2(35) dividend includes interim dividend also.

[Interim Dividend: According to section 123(3), the Board of Directors of a company may declare interim dividend during any FY out of the surplus in the profit and loss account and out of profits of the FY in which such interim dividend is sought to be declared.

Interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three FYs in case the company has incurred loss during the current FY.]

2: Declaration of dividend [Section 123]

I: Sources of Dividend—

(a) Profits of current year after providing for depreciation; or
(b) Profits of the company for any previous FY(s); or
(c) Both; or
(d)Money provided by the C.G/S.G for the payment of dividend.

II: Transfer to reserves:

Before the declaration of any dividend in any FY a company may transfer such percentage of its profits for that FY to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.

III: Declaration of dividend out of 'Free Reserves' (Accumulated Profits):

The Companies (D&PD) Rules, 2014 lays down the following conditions shall be fulfilled before declaring dividend out of reserves:

1. The rate of dividend declared shall not exceed the average of 3 years dividend rates immediately preceding that year
2. The total amount to be drawn shall be

Total amount that can be drawn from accumulated	≤	$1/10^{th}$ of (Paid up share capital + Free reserves)

3. The amount so drawn in 1 & 2 shall first be utilised to **set off the losses** incurred in the FY in which dividend is declared.
4. The balance of reserves after such withdrawal shall not fall below **15%** of its paid up share capital as appearing in the latest audited FS.
5. Company shall declare dividend only after carried over previous losses and depreciation not provided in previous year(s) are set off against profit of the company of the current year.

(iv) *Depositing of amount of dividend:*

The amount of the dividend (including interim dividend) shall be deposited in a scheduled bank in a separate account **within 5 days** from the date of declaration of dividend.

(v) *Payment of dividend:*

(a) Dividends are payable in cash (may be paid by cheque/warrant/ electronic mode).
(b) Payment shall be only to the
- registered shareholder; or
- to his order; or
- to his banker.

(vi) *Prohibition on declaration of dividend:*

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 accepted before the commencement of this Act) shall not declare any dividend on its equity shares so long as such failure continues.

3: Right of dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares [Section 126]

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, the company shall

- 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 share in writing to pay such dividend to the transferee specified in such instrument of transfer; and
- keep in abeyance to such shares any offer of rights shares and any issue of fully paid-up bonus shares

4: Punishment for failure to distribute dividends [Section 127]

(i) Where a dividend has been declared by a company but has not been paid **within 30 days** from the date of declaration to any shareholder entitled to the payment of the dividend,

1. every director of the company shall, if he is knowingly a party to the default, be punishable with **imprisonment** which may **extend to 2 years**.

   He shall also be liable for a **fine** which shall **not be less than Rs.1,000 for every day** during which such default continues.

2. The company shall also be liable to pay simple **interest @ 18% p.a.** during the period for which such default continues.

(ii) **Exceptions,** under which no offence shall be deemed to have been committed:

- where the dividend could not be paid by reason of the operation of any law;
- 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;
- where there is a dispute regarding the right to receive the dividend;
- where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- where the failure to pay the dividend within the period under this section was not due to any default on the part of the company.

5: Unpaid or Unclaimed Dividend [Section 205A*]

1. **Transfer to Special Bank Account**: The company shall, **within 7 days** from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid/unclaimed, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of ....Company Limited/Company (Private) Limited".

2. **Default in transfer**: Where the default is made in transferring the unpaid/unclaimed amount of dividend to the unpaid dividend account of the company, the company shall, from the date of such default, pay **interest** on so much of the amount as has not been transferred to the said account, **@12% p.a.** and the interest amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

3. **Transfer to IEPF:** Any money transferred to the unpaid dividend account which remains **unpaid/unclaimed for a period of 7 years** from the date of such transfer shall be transferred by the company to the Investor Education and Protection Fund(IEPF).

   If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with **fine** which may **extend to Rs. 5000 for every day** during which the failure continues.

Note: No claims shall lie against the IEPF/the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years **and** no payment shall be made in respect of any such claims [Section 205A(5)*].

6: Investor Education & Protection Fund [Section 205C*]

The Fund shall be utilized for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

The following amounts shall be credited to the Fund:

- amounts in the unpaid dividend accounts of companies;
- the application moneys received by companies for allotment of any securities and due for refund;
- matured deposits with companies;
- matured debentures with companies;
- the interest accrued on the amounts referred as above;
- grants and donations given to the Fund by the C.G/SG(s)/companies/ any other institutions for the purposes of the Fund; and
- the interest or other income received out of the investments made from the Fund:

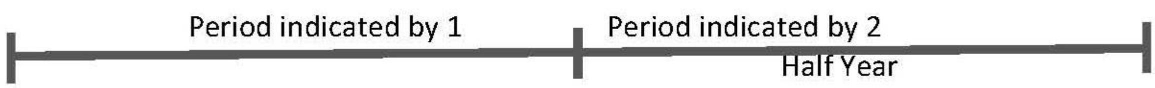
8: Payment of Interest Out of Capital [Section 208*]

Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any work/building/ the provision of any plant, which cannot be made profitable for a lengthy period, the company may—

1. pay interest on so much of that share capital as is for the time being paid up, for the period and subject to certain conditions and restrictions.
2. charge the sum so paid by way of interest, to capital as part of the cost of construction of the work or building, or the provision of the plant.

Conditions for payment of interest out of capital

- Payment shall be authorised by AOA/SR
- Payment shall be made only after previous sanction of the CG.
- Before sanctioning any such payment, the CG may appoint a person to inquire into, and report to the CG on, the circumstances of the case; and may require the company to give security for the payment of the costs of the inquiry.
- The payment of interest shall be made only for such **period** as may be determined by the Central and that period shall **in no case extend beyond the close of the half-year[2] next after the half-year during which the work/building has been actually completed/ the plant provided[1].**



- The rate of interest shall not exceed 4% p.a. or such other rate as the CG may direct by notification in the Official Gazette.
- The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.