

Chapter 8 Declaration and Payment of Dividend

[Section 123 to 127]

Basics

- Definition u/s 2(35)
- Types (Final/ Interim)

Provisions

- Sec. 123: Declaration of Dividends
- Sec 124: Unpaid or Unclaimed Dividend

Funds related to Dividend

- Sec. 125: IEPF
 - o Establishment
 - o Credits to the Fund
 - o Utilization

Punishment

- Sec. 127: Failure to distribute dividend

Definition:

Section 2(35) "dividend" includes any interim dividend.

Important points relating to dividend:

- It is a **distribution of profits**.
- Final dividend is **declared & approved** by shareholders (by **OR** at **AGM**) on **recommendation** of Board
The **rate** of dividend declared by SH shall **not exceed** the amount **recommended** by BOD.
- Dividend % is a proportion of **nominal value** or face value.

Concept clarity check:

1. BoD recommended 10% div. Can SH, by passing unanimous resolution, declare 12% dividend? - **No!**
2. **Calculate** the amount of dividend in following case:
No. of shares held = 50
Face Value = Rs. 10; Market Value (in stock exchange) - Rs. 200; Purchase price - Rs. 190
SH approved and declared dividend = 10%
Amt. of dividend = No. of shares * Dividend * Face Value i.e., 50 shares * 10% * Rs. 10 = Rs. 50
Note - Market value or purchase price is irrelevant for the calculation of amt. of dividend

Types of dividend:

Classification based on time		
Particulars	Interim Dividend	Final Dividend
Announcement	Announced and declared by SH BOD at any time between 2 AGMs .	Recommended by BoD and declared by shareholders at the AGM of the co.
Source	Out of profits before final adoption of accounts. Sources for interim dividend = Surplus in PL or CY profit or Prior Profits	--

Rate of Dividend	If the company has incurred loss during the CY upto preceding quarter , then dividend not to be declared at a rate higher than Avg rate of dividend declared by co. during immediately preceding 3 FYs.	The rate recommended by the Board cannot be increased by the members.
Revocation	Can be revoked with consent of ALL shareholders .	Once declared - cannot be revoked.

Dividend to be deposited in separate A/c of a scheduled bank **within 5 days** from date of declaration

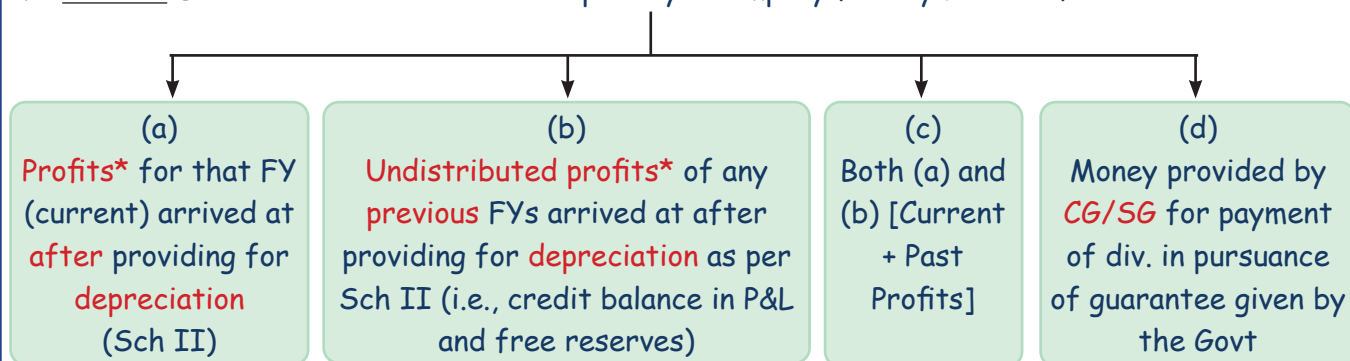
Classification of Dividend based on Nature of Shares		
Preference Shares (Sec 43)		Equity Shares
Cumulative	Non-Cumulative (Default)	
Dividend gets accumulated	Dividend is payable only in a year of profit. No accumulation of profit	Equity shares holder do not enjoy any preferential rights for dividends or repayment of capital
Arrears in dividend due to insufficiency of profits - Payable from future profits . Unless this dividend is paid in full (incl. arrears), no dividend is payable to ESH	Holder not entitled to be paid arrears of dividend out of future years i.e., right to receive dividend expires if not declared in any year.	Rate of dividend depends upon the dividend policy and availability of profits after satisfying Pref. SH rights



Section 123: Declaration of Dividend

1 2 3 12 15 17 18

1. Source: Dividend shall be declared or paid by a company for any **FY** out of:



*Provided that - While calculating **profits** - **exclude**:

- **unrealised gains**, **notional gains**, or **revaluation** of assets, and
- any change in **carrying amount** of an asset/liability on measurement at fair value.

Transfer to Reserves - A company **MAY**, before declaration of dividend in any FY, **transfer** such % of its profits for that FY **as it may consider appropriate** to **reserves** of the company.

Conceptual Clarity Check:

- Can capital reserve be used for payment of dividend? **-No! Only free reserves can be used.**
- Carried over previous **losses** and **depreciation** not provided in PY has to be **set off** against CY profits before declaration of dividend.

3. **Capital profits** are not earned in normal course of biz. Hence, **not available for distribution**.
4. Is it okay if a company decides not to transfer any amount to reserves before dividend?
 - **Yes! Whether or not to transfer and what % to be trf to reserve is left to discretion of the co.**

2. For the purposes of Sec 123(1)(a), **depreciation** shall be provided in accordance with **Sch II**

3. Rate of Dividend -

Board **may declare** interim dividend during any FY or at any time from closure of FY till holding of AGM out of:

- **Surplus** in the P&L account or
- Profits of the FY for which such interim dividend is sought to be declared (**past FY**), or
- Profits generated in the **FY till the quarter** preceding date of declaration of interim dividend

Interim Dividend in case of **loss** in recent quarter (not Final Dividend):

In case the co. has incurred **loss** during the **current FY** up to the end of **quarter** immediately preceding the date of declaration of interim dividend, such interim dividend shall **not be declared** at a **rate > Average dividends** declared by company during **immediately preceding 3 FYs**

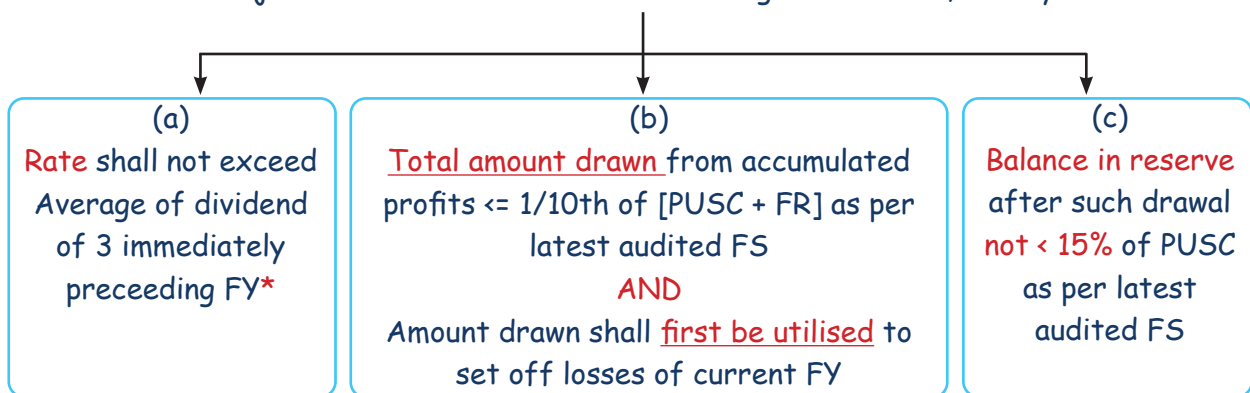
Concept clarity check:

Is upper limit on rate of dividend (i.e., not > Avg of preceding 3 FY) applicable in case of profit in current FY till preceding quarter? - **No. In case of profit, % of dividend can be higher.**



Rule 3 Declaration of Dividend out of Reserves: [Very important]

In the event of **inadequacy** or **absence** of profits in any year, a co. may declare dividend out of free reserves subject to the fulfilment of the following **3 conditions**, namely:



* This sub-rule (1) shall not apply if a co. has not declared **any dividend in each** of 3 preceding FY.

4. Dividend (incl. interim) - **Deposit** in separate a/c with **scheduled bank** **within 5 days** from **declaration**
5. **Dividend shall be paid** by a co. only to the:

Registered shareholder of such share or

to his **order** or

to his **banker** and

shall not be payable except in **cash**.

Provided that **nothing** in this sub-section shall be deemed to **prohibit the capitalisation 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.

Concept clarity check:

1. Mr. Singh has purchased shares of Burraaah Ltd. from Mr. Jai by making full payment. However, transfer of shares is not yet registered with the co. Meanwhile, the co. announces dividend. Is the company allowed to pay the dividend to Mr. Singh? - **No. In such case, the company will keep the dividend till the registration is pending** (Discussed in detail in sec 126)
2. Can a company issue bonus shares in lieu of dividend - **No. Dividend can only be paid in cash.**
3. Can a company pay dividend via bank? - **Absolutely Yes. Cash doesn't mean hard cash. It means - Cash, cheque, dividend warrant or via any e-mode.**

4. A company which fails to comply with the provisions of sections 73 and 74 shall **not, so long as** such failure continues, **declare any dividend on its equity shares.**

10. Note: **Section 8** companies are 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. [Sec 8]

Bonus Point

What is record date? - Record date is the date announced by the company for determining members who are entitled to dividend. All person whose name is included in the register of members on the record date shall be entitled to dividend.



Section 124: Unpaid Dividend Account

5 6 14

1. Where a dividend is declared but **not paid or claimed** within **30 days** from the date of declaration,
 - the company shall, within **7 days** from the expiry of the said 30 days,
 - transfer the **total** unpaid/unclaimed amount of dividend to a special account (with scheduled bank) called the **Unpaid Dividend Account (UDA)**
2. Preparing of Statement of the Unpaid Dividend
 - **Within 90 days** of transferring any amount to the Unpaid Dividend Account
 - prepare a statement containing the following:

Name	Last known address	Unpaid dividend amount
------	--------------------	------------------------
 - and place it on **website** and on any other website approved by CG for this purpose.
3. Payment of Interest on default

If **default** is made in transferring the total amount u/ss (1) to UDA, company shall:

 - Pay **interest @12% p.a.** from the date of such default
 - **Interest accruing** on such amount shall ensure to benefit of members of the co. in proportion to amt. remaining unpaid to them.

4. **Claimant** shall apply to co. concerned for payment of unpaid amount (prior to trf. to IEPF)
5. **Transfer of Unclaimed or unpaid amount** to Investor Education and Protection Fund (IEPF)
- If remains unpaid or unclaimed for 7 years from the date of such transfer
 - It shall be transferred by the company along with interest to the IEPF, and
 - A prescribed statement containing details of such transfer shall be sent to IEPF Authority &
 - Authority to issue receipt as an evidence of such transfer.

6. **Transfer of Shares to IEPF**

All shares in respect of which dividend has not been paid/claimed for ≥ 7 consecutive years shall be transferred by the company in the name of IEPF along with a statement containing such details.

Author's Note - Note that this section is talking about transfer of the "shares" itself and not the unpaid amount of dividend. The trf. of unpaid amount is already discussed u/ss (5)

Provided that any claimant of shares trfd. above shall be entitled to claim the transfer of shares from IEPF with such procedure and on submission of such documents as may be prescribed.

Explanation:

In case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the share shall not be transferred to Investor Education and Protection Fund.

7. **Punishment for Contravention of this section:**

	Company	Officer in default
Penalty	Rs. 1 lakh + Rs. 500/day	Rs. 25,000 + Rs. 100/day
Max penalty	Rs. 10 lakhs	Rs. 2 lakhs



Section 125: Investor Education and Protection Fund

(Read with IEPF Authority (Accounting, auditing, transfer and refund) Rules 2016)

1. The CG shall establish a Fund to be called the Investor Education and Protection Fund (IEPF)
2. There shall be credited to the Fund—
 - a) the amount given by the CG 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 CG, SG, cos. or any other institution;
 - c) the amount in Unpaid Dividend Account of companies transferred to Fund u/s 124(5)
 - d) the amount in general revenue account of the CG which had been transferred to that account u/s 205A (5) of Companies Act, 1956 and remaining unpaid on commencement of this Act;
 - e) the amount lying in IEPF u/s 205C of the Companies Act, 1956;
 - f) the interest or other income received out of investments made from the Fund.
- (fa) all shares held by IEPFA u/s 90(9) of the Act and all resultant benefits out of such shares
- g) the amount received u/s 38(4) ie. disgorged fund;
- h) the application money received for allotment of any securities and due for refund;

- i) **matured deposits** with companies **other than banking** companies;
- j) **matured debentures** with companies;
- k) **interest accrued** on the amounts referred to in clauses (h) to (j);
- l) **sale proceeds** of fractional shares arising out of bonus shares, merger, etc. **for ≥ 7 yrs**
- m) **redemption** amount of **preference shares** remaining unpaid or unclaimed **for ≥ 7 yrs**; and
- n) such **other** amount as may be prescribed.

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained **unclaimed and unpaid** for **7 years** from date it became **due** for payment.

Summary da Summary

CG grants	Donation by CG/SG/Cos.	Amt. of UDA u/s 124	General Revenue A/C	IEPF in Co. Act 1956	Other income from investment
Amount disgorged u/s 38(4)	Application money (≥ 7 years)	Matured deposit or debenture + Intt. (>7 yrs)	sale proceeds of fractional shares (≥ 7 yrs)	Redemption of pref. shares (≥ 7 yrs)	Shares held by IEPFA + Benefits thereon

3. The Fund shall be **utilised for**: [CD PRO]
 - 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 amount** among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who suffered losses due to wrong actions by any person, in accordance with orders made by the Court which had ordered disgorgement;
 - d) **reimbursement** of legal expenses incurred in pursuing **class action suits** u/s 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:

Provided that, where, as per provision of Sec 205C of Co. Act, 1956, amount is transferred **to IEPF**, after the expiry of **7 yrs**, such person shall be **entitled to get refund** out of IEPF (constituted under Co. Act 2013)

4. Any person **claiming** to be entitled to amt referred u/ss (2) may apply to **IEPFA** for payment thereof.
5. **CG** to **constitute**, by notification, an **authority** for **administration** of Fund consisting of:

Chairperson [Ex-officio - Secretary, MCA]	a CEO (appt. by CG)	Members not > 7 (including CP)
--	---------------------	-------------------------------------

6. Manner of **administration, appt.** of members, holding of IEPFA **meetings**- As per prescribed rules
7. **Resources** - CG may provide to IEPFA such offices, officers, employees, etc. - as prescribed.
8. 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 **C&AG**.
9. It shall be **competent** for IEPFA to **spend money** out of Fund **for carrying out the objects** of IEPF.
10. Accounts of the Fund shall be **audited by the C&AG** of India (at specified intervals). Audited accounts + **audit report** to be forwarded **annually** by IEPFA to the CG.
11. Annual Report:
 - IEPFA to **prepare** its **annual report** (prescribed form and time for each **FY**)
 - Giving **full account** of its activities during the FY and
 - **Forward** a copy thereof to the **CG** and
 - **CG** shall cause annual report + audit report to be **laid** before **each House of Parliament**



126. Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares

- Notwithstanding anything contained in any other provision of this Act,
- Where any **instrument of transfer** of shares has been **delivered** to any co. for registration **and**
- Such transfer has **not been registered** by the co.,
- Such company shall:

Transfer the dividend w.r.t. such shares to **UDA** account (unless the co. is authorised, in writing, by registered holder to pay such dividend to transferee specified in transfer instrument)



Keep in abeyance - Any offer of **right** shares u/s 62(1)(a) or issue of fully paid up bonus shares



127. Punishment for failure to distribute dividends

7 8 9 11 13 16 19

- **Where** a **dividend** has been **declared**
- But, within 30 days of such declaration, it has not been paid or warrant has not been posted, to entitled SH,
- The punishment shall be:

	Every Director who is knowing a party to default (not OID)	Company
Imprisonment	Extend to 2 years AND	NA
Fine - During the period where default continues	Not < Rs. 1k / day - Default continues	Simple Interest 18% p.a.

Provided that **no offence** u/s 127 shall be deemed to have been committed where [LADDO]:

- the dividend could not be paid by reason of the **operation of any law**.
- SH has given **directions** to co. regarding payment of dividend and those directions **cannot** be **complied** with and the same has been **communicated** to him
(3 conditions - Given directions + cannot comply + communicate)
- there is a **dispute** regarding right to receive the dividend;
- the dividend has been **lawfully adjusted** by the company against **any sum due from shareholder**;
(for example - adjustment of **calls in arrears**), or
- 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 default on part of company**.

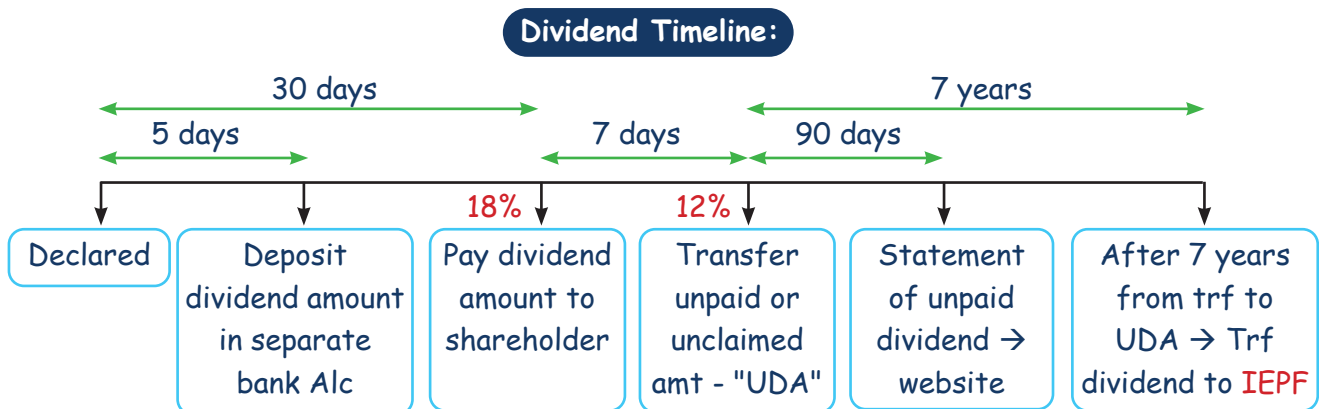
Modification for Nidhi Company (w.r.t. Sec 127):

In case of Nidhi Co., where dividend payable is \leq Rs 100, it shall be **sufficient** compliance of sec 127 if:

- declaration of dividend is announced in local language in **one local newspaper** of wide circulation.
- announcement is also displayed on the **notice board** of the Nidhi for at **least 3 months**.

Concept clarity check:

The company is responsible to post the dividend warrant within 30 days of declaration of dividend. However, if such post doesn't reach SH within 30 days, it's not the responsibility of the co. Hence, company cannot be penalised if warrant doesn't reach before 30 days.



—... The End ...—