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# **VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI**

## **INTERMEDIATE LEVEL PAPER 2: CORPORATE AND OTHER LAWS**

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# DECLARATION AND PAYMENT OF DIVIDENDS

Section 123 to 127 of Companies Act, 2013

# DIVIDEND

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A dividend is a part of distributable profits whose payment is made by a company to its shareholders.

The word “Dividend” has origin from the Latin word “Dividendum”. It means a thing to be divided.

Under the Companies Act, 2013 (hereinafter referred to as “**CA ACT 2013**”), **Section 123 to 127** of Chapter VIII deals with the provisions related to the declaration and payment of dividend.

***Acc. To Section 2(35) “dividend” includes any interim dividend.***

It is allocated as a fixed amount, or expressed as a certain percentage of face value of share, with shareholders receiving a dividend in proportion to their shareholding.

# DIVIDEND

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The rate at which dividend needs to be declared is recommended by the Board of Directors in the Directors' Report and is approved by the members at the AGM by passing an ordinary resolution.

The rate of dividend recommended by the Board cannot be increased by the members.

Dividend once declared cant be revoked.

Dividend can be paid on Equity or preference shares both.



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**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?

**Question:** 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?

# TYPES OF DIVIDEND

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## 1. Classification based on time:

- **I. Interim Dividend:** Interim Dividend Section 123 (3) and also section 123 (4) contain provisions regarding interim dividend.
- 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.

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While final dividends are only paid out once, these **interim dividends can be paid more than once and at any point** in the financial year. Usually, most companies prefer to declare and distribute these dividends either quarterly or semi-annually along with the release of the quarterly or semi-annual accounts of the said companies.

Since **interim dividends are usually issued out more frequently** to the equity shareholders of a company, their rate of dividends almost always tend to be lower than that of the final dividend.

Interim dividends are proposed and distributed to the shareholders of the company before the preparation of the final financial statements. Declaration of interim dividend shall be ratified at the ensuing AGM by the members.

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- **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.



# TYPES OF DIVIDEND

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- 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.
- 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.

On 10th July 2018 the Board of Directors of ABC Limited intends to consider and declare Interim Dividend for the following Financial Year (F.Y.):

(i) 2017-18: Out of the profits earned in the F.Y. 2019-2020;

(ii) 2018-19: Out of the profits earned during the first quarter of F.Y. 2020- 2021.

In case of Sl. No. (i) above, the Board may declare Interim Dividend before the approval of financial statements for the F.Y. 2019-2020. If the financial statements are already approved by the Board, then the declaration of Interim Dividend for the F.Y. 2019-20 will not be possible. It is practically not possible to declare any Interim Dividend for the F.Y. 2017- 18, as the books of accounts would be closed for that financial year.


However, in case of Sl. No. (ii) above, the Board may declare Interim Dividend out of the profits earned during the first quarter of F.Y. 2018-19

# ICICI Lombard board approves Rs 4/share interim dividend for FY21



Coal India on Friday said that its board approved payment of second interim dividend of ₹5 per share for 2020-21. The state-owned company has fixed March 16 as 'Record Date' for the purpose of payment of second interim dividend on equity shares for 2020-21, Coal India said in the regulatory filing.

"The board of Directors in its meeting held on Friday, the 5th March' 2021 approved payment of 2nd Interim Dividend for financial year 2020-21 @ ₹5 per share of the face value of ₹10 per equity share," the filing said. The date of payment of interim divi

 Equity Bulls

## [IIFL Securities Ltd board to consider interim dividend on ...](#)

The record date for payment of interim dividend, if declared, will be Thursday, March 18, 2021.

Shares of IIFL Securities Limited was last trading in ...

4 hours ago



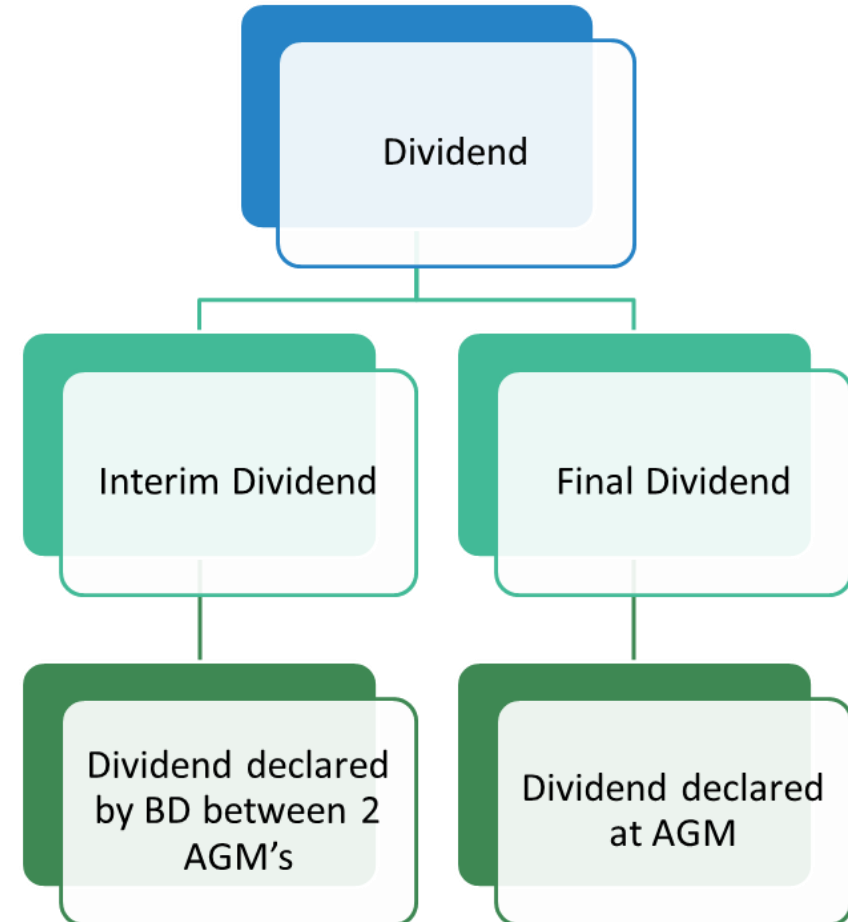
 Economic Times

Marico declares interim dividend of Rs 4.50 per share

# TYPES OF DIVIDEND

## II. Final Dividend

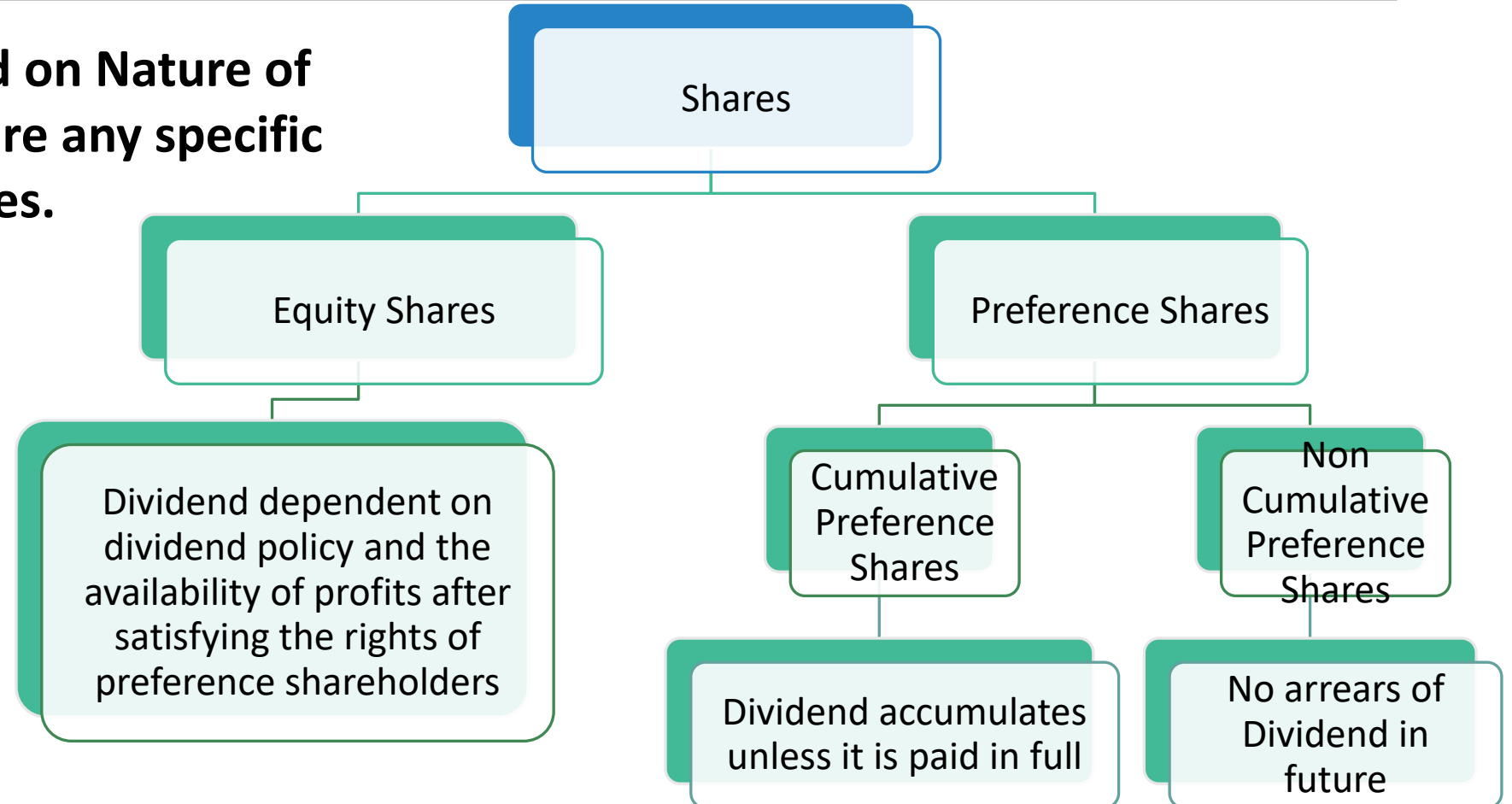
- ◆ When the dividend is declared at the Annual General Meeting of the company, it is known as 'final dividend'.
- ◆ The rate of dividend recommended by the Board cannot be increased by the members.



<b>BASIS FOR COMPARISON</b>	<b>INTERIM DIVIDEND</b>	<b>FINAL DIVIDEND</b>
<b>Definition</b>	Interim dividend is declared and paid during an accounting year, i.e. before the finalization of accounts for the year.	Final dividend is the dividend recommended by the board of directors, and approved by shareholders at the company's Annual General Meeting, after the close of financial year.
<b>Announcement</b>	Announced by Board of Directors.	Recommended by Board of Directors and approved by shareholders.
<b>Time of Declaration</b>	Before preparation of financial statements.	After preparation of financial statements.
<b>Revocation</b>	It can be revoked with the consent of all shareholders.	It cannot be revoked.
<b>Provision in Articles of Association</b>	It is declared only when the articles specifically permits the declaration.	It does not require any specific provision in the articles.

# TYPES OF DIVIDEND

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



# TYPES OF DIVIDEND

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**Cumulative Preference Shares:** A cumulative preference share carries the right to a fixed amount of dividend or dividend at a fixed rate. Such a dividend gets accumulated and its arrears are payable from the profits earned in the later years if the profits of current year are insufficient for payment of dividend. Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares

**Non-cumulative Preference Shares:** A non-cumulative preference share carries with it the right to a fixed amount of dividend. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year expires. It implies that holder of such a share is not entitled to arrears of dividend in future.

# TYPES OF DIVIDEND

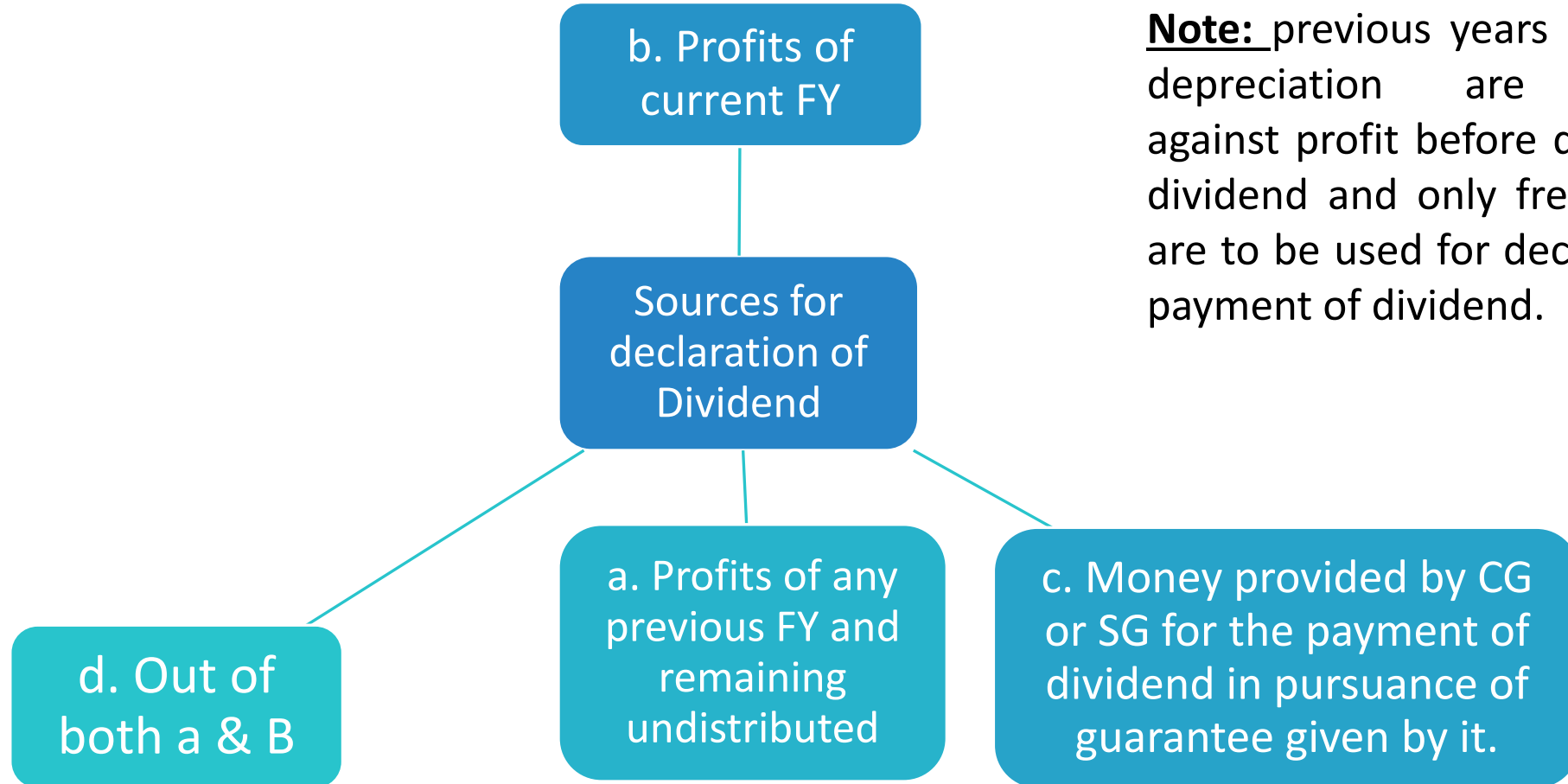
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**Equity Shares:** Equity shares are those shares, which are not preference shares. The rate of dividend on equity shares is recommended by BD and may vary from year to year. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

**Q. Can section 8 companies pay dividend to its shareholder?**



# DECLARATION OF DIVIDEND [SECTION 123]



**Note:** previous years losses and depreciation are adjusted against profit before distributing dividend and only free reserves are to be used for declaration or payment of dividend.

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*Section 123 reads as:*

*(1) No dividend shall be declared or paid by a company for any financial year except—*

*(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both:*

***"Provided** that 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; or*

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**Depreciation** is a measure of the loss of value of a depreciable asset arising from use, efflux of time or obsolescence through technological and market changes. Depreciation is allocated so as to charge a fair proportion of the depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is pre-determined.

An **unrealized gain** is a potential profit that exists on paper, resulting from an investment. It is an increase in the value of an asset that has yet to be sold for cash, such as a stock position that has increased in value but still remains open

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*(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:*

***Provided*** that 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:

**<sup>3</sup>Provided further** that where, 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 free reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:

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***Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.***

***Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.***

***(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.***

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*(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:*

***Provided** that in case 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 dividends declared by the company during the immediately preceding three financial years.*

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*(4) 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.*

*(5) 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:*

***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:

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***Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.]***

*(6) 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.*



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**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, 2019. 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

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

Example : 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?

# DECLARATION OF DIVIDEND WHEN THERE IS INADEQUACY OR ABSENCE OF PROFITS [SECOND PROVISO TO S.123]

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Where a company, owing to **inadequacy or absence of profits in any financial year**, 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 be made only in accordance with **provisions contained in Rule 3 of the Companies (Declaration and payment of Dividend) Rules 2014** .

**Exemption:** The above shall not apply to a Government Company.

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**Free Reserves** 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:

- Any amount representing unrealized gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or
- 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.

# RULES TO BE FOLLOWED WHILE DECLARING DIVIDEND OUT OF RESERVES

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**I. Rate of Dividend**  $\leq (RD1 + RD2 + RD3) / 3$  Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year.

However, this rule will not apply if a company has not declared any dividend in each of the 3 preceding financial years.

**II. Total amount** that can be drawn from accumulated profits  $\leq 1/10$  of (Paid up share capital + Free reserves) (as per latest audited Financial statement)

Drawn amount be first utilized to **set off losses incurred in FY** in which dividend is declared

**III. Balance of Reserve** (after withdrawal of Amt.)  $\geq 15\%$  of Paid up capital (as per latest audited Financial statement)

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Example: : Capricorn Industries Limited has a paid-up capital of ` 10 lakhs and accumulated Reserves of ` 12 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- 10% Year 2- 12% Year 3- 5%. What is the maximum rate at which the company can declare dividend for the current year

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Example: 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.

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

- 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.



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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 14th September, 2020, the company declared a dividend of ₹ 2 per share by passing an ordinary resolution. Latest by which date the amount of dividend must be deposited in a scheduled bank in a separate account?

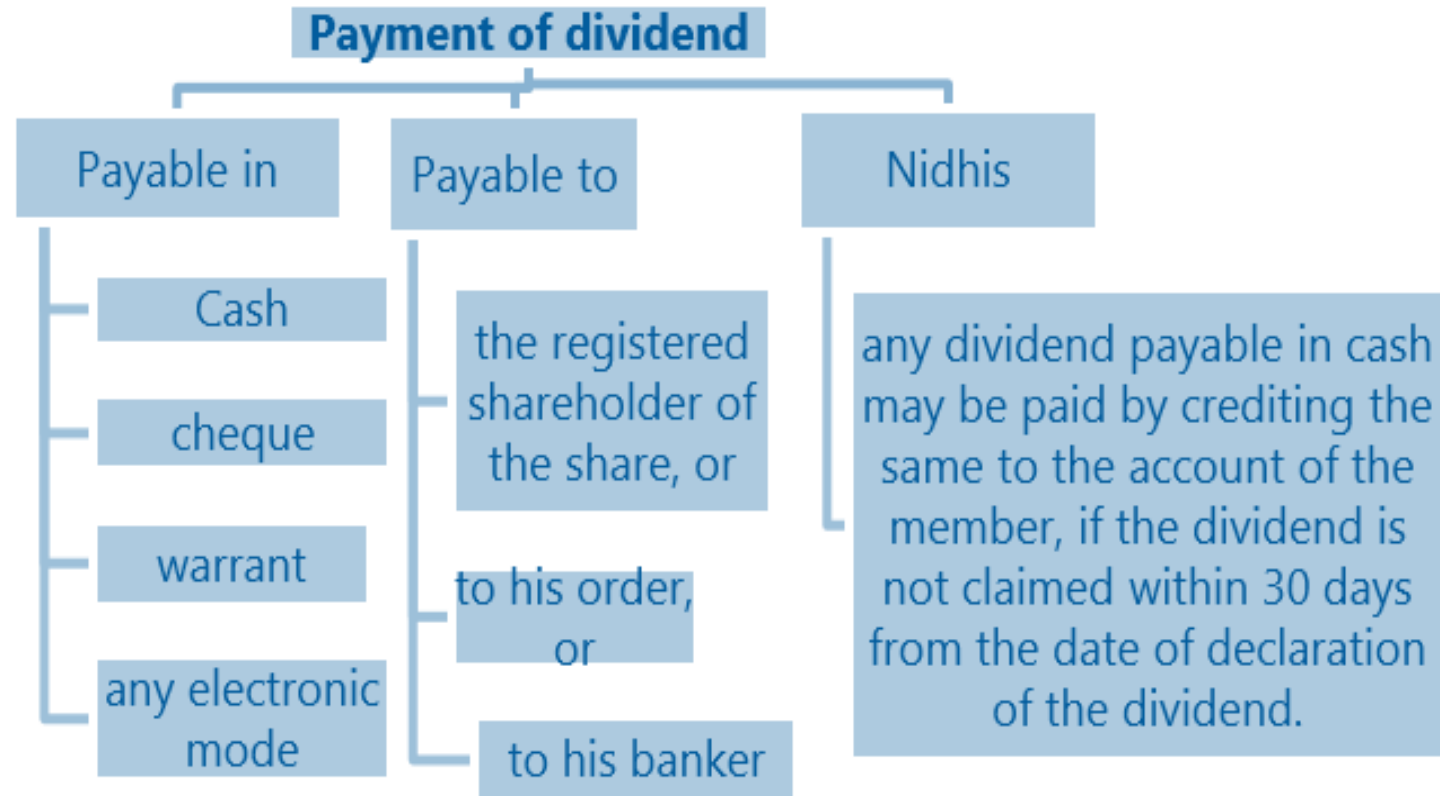
**Note:** In terms of Section 51, a company may, if so authorised by its articles, pay dividend in proportion to the amount paid-up on each share. Suppose, some of the shareholders have paid only ₹ 5 (face value ₹ 10) on each share held by them. In case of declaration of dividend at the rate of ₹ 5 per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

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**Example:** The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2018-2019. The same was approved in the Annual general body meeting held on 24th October 2019. The Directors declared the approved dividends. Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2019, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2019. Who will be entitled to the above dividend ?

# PAYMENT OF DIVIDEND

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# PAYMENT OF DIVIDEND

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

**Example:** The Board of Directors of Som Mechanical Toys Limited proposed a dividend at 12% on equity shares for the financial year 2019-20. The same was approved at the Annual General Meeting of the company held on 25th June, 2020. Mr. Nitin Jha was holding 1,000 equity shares as on 31st March, 2020, but the same were transferred by him to Mr. Raj, whose name was registered on 20th April, 2020 in the Register of Members. State as to who will be entitled to the dividend declared by the company.

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**Answer:** 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, 2020. 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, 2020, he will be entitled to the dividend.

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**(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.

Once posted, it is immaterial whether the same are received within thirty days by the shareholders or not.

# PROHIBITION ON DECLARATION OF DIVIDEND

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

- **(i) Prohibition in case of any Defaulting Company:** 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.

A company shall not declare Dividend on its equity shares in case of non-compliance of provisions relating to the acceptance of deposits under the Act, till such time the deposits accepted have been repaid with interest in accordance with the terms and conditions of the agreement entered with the depositors.

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**A company shall also not declare any Dividend, if it has defaulted in –**

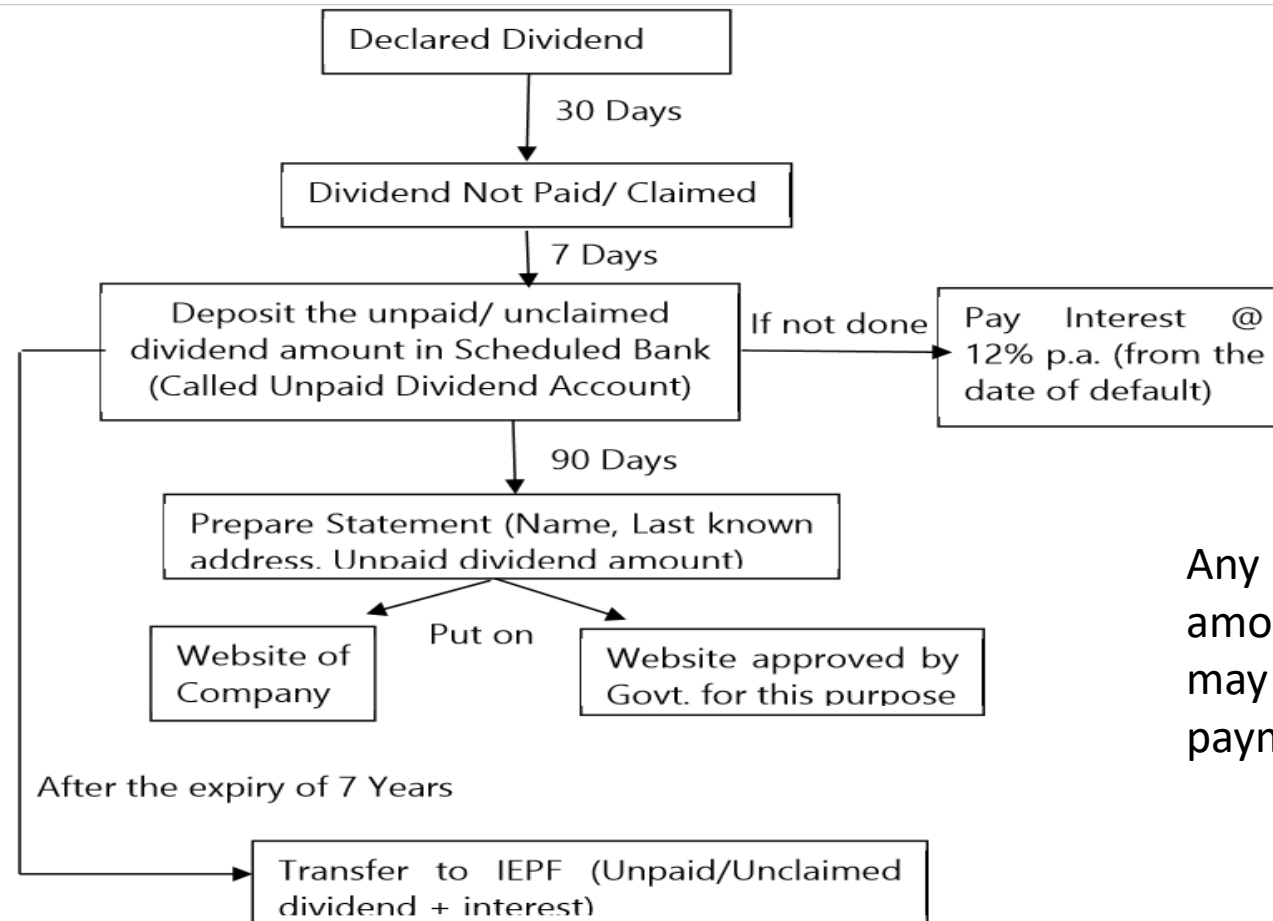
- (a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,
- (b) Redemption of preference shares or creation of capital redemption reserve,
- (c) Payment of Dividend declared in the current or previous financial year(s), or
- (d) Repayment of any term loan to a bank or financial institution or interest thereon, till such time the default is subsisting.

No Dividend shall be declared by the company during the extended time, if any, granted by the Tribunal/Court for repayment of above liabilities



# UNPAID DIVIDEND ACCOUNT(UDA)[S. 124]

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



Any person claiming for the amount transferred in UPA may apply to Co. for the payment of money claimed

# INVESTOR EDUCATION AND PROTECTION FUND (IEPF)

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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.

*S.125 (1) The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).*

# CREDITS TO THE FUND

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Following specified amounts shall be credited to the Fund:[S.125(2)]

- **(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);

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- **(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;

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- **(g) Amount received through disgorgement or disposal of Securities-** The amount received under section 38(4) i.e. amount received through disgorgement [When a person or entity in the securities market makes a profit by fraudulent means, a 'disgorgement' order is issued to repay those gains to affected investors with interest]. 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);

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- **(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 (j);
  - **(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:

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- (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;

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- (f) all income earned by the Authority in any year;
  - (g) all amounts payable as mentioned in section 10B (3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 10B of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; 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.



# UTILIZATION OF THE FUND

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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;

# UTILIZATION OF THE FUND

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- (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.

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**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.

# OTHER PROVISIONS GOVERNING IEPF

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**(i) Constitution of the Authority for Administration of** For administration of Investor Education and Protection Fund Government of India has on 7th September, 2016 established Investor Education and Protection Fund Authority under the provisions of section 125 of the Companies Act, 2013.

The Authority is entrusted with the responsibility of administration of the Investor Education Protection Fund (IEPF), make refunds of shares, unclaimed dividends, matured deposits/debentures etc. to investors and to promote awareness among investors.

*S.125 (5) The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.*

*(6) The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.*

# OTHER PROVISIONS GOVERNING IEPF

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**(ii) Provision of required Resources by the Central Government for Administration of the Fund(S.125(7))-** 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(s.125(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 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.

# OTHER PROVISIONS GOVERNING IEPF

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**(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

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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).

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Merely because a person may have purchased or been in receipt of shares, in the absence of the shares being registered in his name in the books of account of the company, such a person is not entitled to receive the dividend, unless the shares lodged for transfer. The dividend has to be paid by the company in the name of the registered shareholders and it is the registered shareholders alone who claim dividend under section 27 of the Securities Contracts (Regulation) Act, 1956. [*CIT v Aatur Holdings Pvt. Ltd. (2008) 146 Comp Cas 152 (Bom)*]

Section 126 provides that where valid transfer deed has been lodged which has not been registered by the company, it shall withhold payment of the dividend on such shares till the shares are registered. This section does not apparently apply to a transfer, which has been refused. But where the rejection is on account of reasons like difference in signature, insufficient stamp, etc., it will be desirable for the company to wait and keep in abeyance the dividend till the irregularity is removed to enable the company to register the transfer and pay the dividend to the transferee.

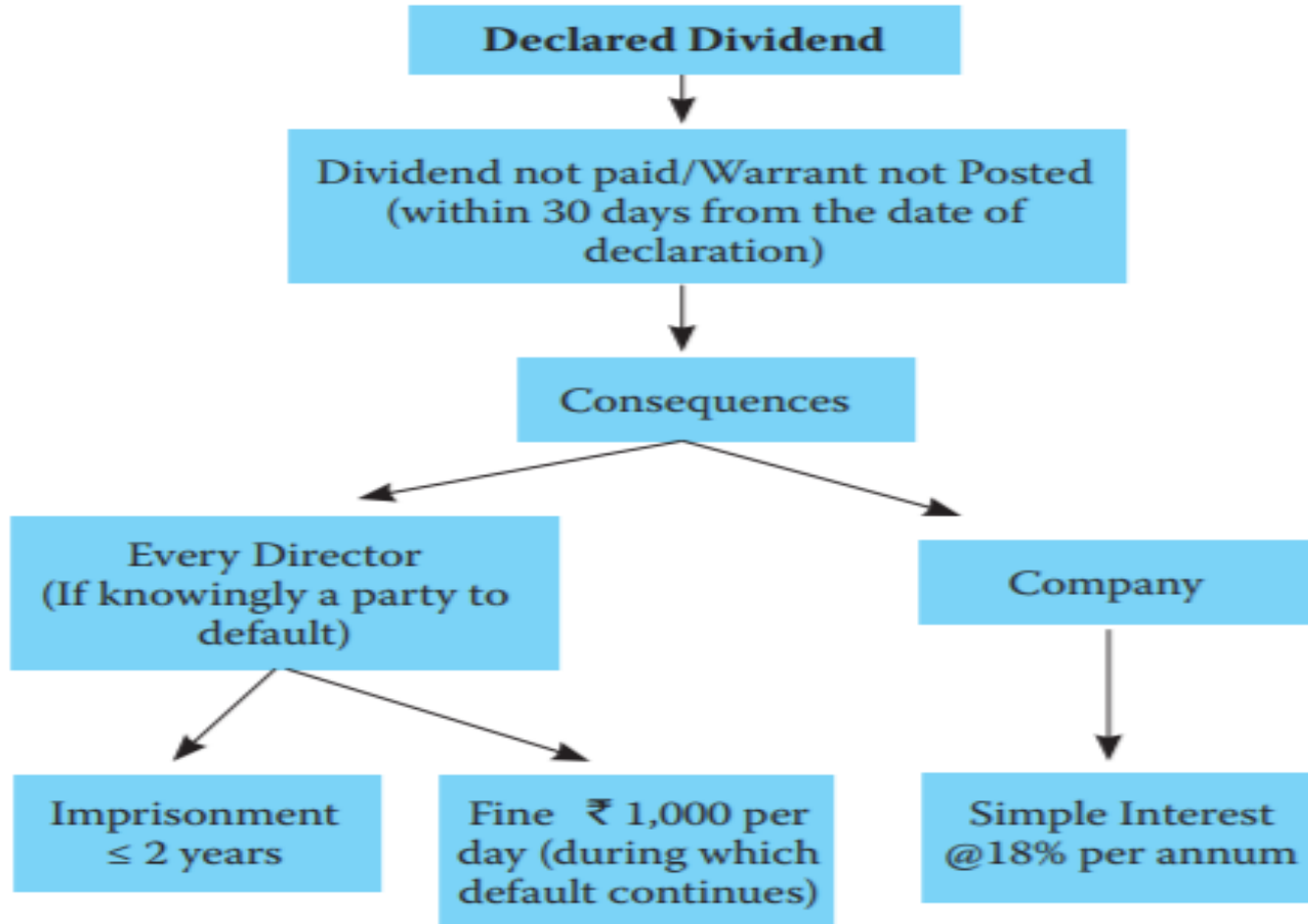


# In case of joint share holder who will be entitled to receive dividend?

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In the case of Joint Holdings, the dividend shall be paid to the person whose name is registered first in the books. It may be noted that the person whose name is named first in the application for shares is entered first in the Register of members. There will be no objection to send the dividend to any other joint holder, if a request is made to the company signed by all the joint holders

# PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN 30 DAYS [S.127]



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 at the registered address of the members within 30 days of declaration of dividend.

# EXEMPTION FROM PUNISHMENT

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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:

- dividend could not be paid by reason of the operation of any law;
- SH 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;
- there is a dispute regarding the right to receive the dividend;
- the dividend has been lawfully adjusted by the company against any sum due to it from the SH;
- 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.

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

# APPLICABILITY OF S .127 TO NIDHI CO.

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In terms of Notification No. GSR 465 (E), dated 05-06-2015, Section 127 dealing with punishment shall apply to the Nidhis, 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 .

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**Dividend, once declared, becomes a debt and shall not be revoked** – Dividend when proposed does not become a debt. The right of shareholders to claim dividend arises only after the dividend is declared either by the company in an Annual General Meeting or, in the case of interim dividend, by the Directors in a Board Meeting.

*In **Bacha F. Guzdar v Commissioner of Income Tax 1955 AIR SC 740**, the rights of members to claim dividend was questioned, wherein it was decided the dividend, once declared, becomes a debt and shall not be revoked. Dividend when proposed does not become a debt. The right of Members to claim Dividend arises only after the Dividend is declared either by the company in an Annual General Meeting or, in the case of Interim Dividend, by the Directors in a Board Meeting. Until and unless it is so declared, no Member has any claim against the company in respect thereof, even though the company may have sufficient*

# PRACTICE QUESTIONS

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QUESTION: ABC Private limited, a domestic company declared a final dividend of Rs. 10,00,000 in its Annual general meeting held on 30.09.2020 to be paid to the shareholders of the company. what are the applicable provisions as per the companies Act?

Question: The shareholders at an AGM passed a resolution for payment of dividend at a rate higher than recommended by the directors. Discuss the validity of resolution under companies act.

Question: Where a dividend is declared by a company and remains unpaid for .....days, the company shall transfer the amount to unpaid dividend account within another .....days

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Question: For declaration of dividend out of accumulated profits, the total amount to be drawn from such accumulated profits shall not exceed..... of the sum of its paid up share capital and free reserves as appearing in the latest audited financial statement.



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Answer1: The company is required to deposit the amount of dividend so declared within 5 days from the date of declaration of Dividend i.e. 30.09.2020 (up to 04.10.2020)

Further, the company is required to make the payment within 30 days of declaration of dividend (up to 29.10.2020), failing which company will be liable to pay interest @18% p.a. for the period of default. Moreover, it is required to deposit the unpaid dividend amount in the special account within 7 days from expiry of 30 days (i.e. 05.11.2020).



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# THANK YOU