

# DECLARATION OF DIVIDEND



**Mehta & Mehta Legal and Advisory Services Private Limited**

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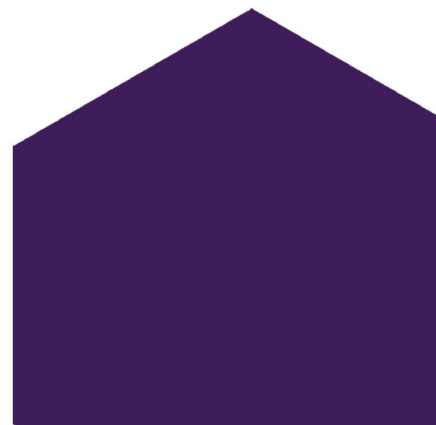
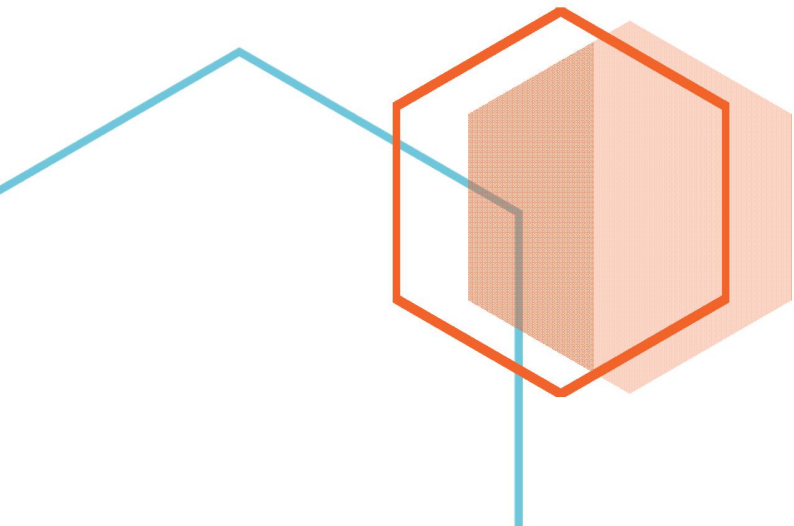
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# DECLARATION OF DIVIDEND

*This Article explains the provisions related to declaration of Dividend. This Article is mainly focused on the provisions of the Companies Act, 2013 ("Act") [including any statutory modification(s) or re-enactment(s) thereof]. However, this Article also gives reference to other laws as well in order to give more clarity and present a holistic view on the matter. This Article is neither an opinion nor interpretation of law(s) referred hereunder. This Article is only expression of view(s) on the provision(s) or law(s) referred herein.*

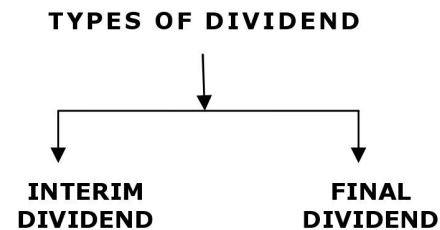
Section 2 sub-section 35 of the Companies Act, 2013 defines the term "dividend" as dividend includes any interim dividend.

In other words Dividend refers to the surplus profits shared by the Company with its Shareholder(s). Shareholder(s) here refers to the Equity Shareholder(s) and Preference Shareholder(s). In other words dividend is the return on capital invested in the Equity or Preference Share Capital of the Company.

Preference Shareholder(s) receive a predetermined fixed rate of dividend. In case of Equity Shareholder(s) the

rate of dividend is not fixed and depends on the surplus available with the company after giving effect making statutory transfer(s) to the Reserve(s) to be maintained by the company under the Companies Act, 2013 or any other specific reserves maintained by the company.

This article specifically covers the dividend declared to the Equity Shareholder(s).



## **INTERIM DIVIDEND**

Dividend is said to be an interim dividend, if it is declared by the Board of Directors between two annual general meetings of the company.

## **FINAL DIVIDEND**

Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the

company. Final Dividend can be declared only if it is recommended by the Board of Directors of the Company. In accordance with Section 134(3)(k), Board of directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.

In addition to the aforesaid two types of dividend(s) any money or loan advanced in the below mentioned manner will be considered as "**DEEMED DIVIDEND**" in accordance with the Income Tax Laws;

Any loan or an advance made by a company in which public are not substantially interested to any of its shareholder(s) (*being a person who is the beneficial owner of shares and such person is not entitled to receive any fixed rate of dividend*) who has more than 10% (Ten Percent) voting power in the company or to any concern in which such shareholder has is a member or a partner and is substantially interested in the said concern or for the individual benefit of such shareholder or on behalf of such shareholder. However, this shall not include money distributed in the event of liquidation, bonus shares allotted, any advance or loan in the ordinary course of business, buy back of shares, any amount set off against the dividend or shares issued in the event of demerger or reduction of share capital.

According to the provisions of Section 123 of the Companies Act, 2013 read with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 [*including any amendment(s) thereof*], a company may declare a dividend out of the profits of the company for that year arrived at after providing for depreciation or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed, or out of both; or 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. Depreciation shall be provided in accordance with the relevant provisions. It is utmost important to ensure 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, dividend shall be paid out of the free reserves only and no dividend shall be declared 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.

Further, in the event of inadequacy or absence of profits in any year, a company may declare dividend out of free reserves provided the rate of dividend shall not exceed the average of the rates of the last 3 (three) years *[not applicable in case where the company has not declared in the past year(s)]*, the total amount of dividend shall not exceed one tenth of the paid-up share capital and free reserves as per the latest audited financial statement, amount withdrawn shall be first utilized to set off the losses before declaring the dividend and the balance in the reserves shall not fall below 15% (Fifteen percent) of its paid up share capital.

Once the source is identified out of the above mentioned source(s) and necessary provision(s) have been made the Board of Directors ("Board") of the Company can proceed with the declaration of the dividend. However, before declaration of dividend the Board shall fix the record date and in case of listed company shall give notice in advance of atleast seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date and it shall recommend or declare all dividend and/or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose *[Regulation 42 of the Securities And*

*Exchange Board Of India (Listing Obligations And Disclosure Requirements) Regulations, 2015 ("LODR 2015")]*.

The listed company shall declare on per share basis in accordance with *Regulation 43 of LODR 2015*. Top 500 (Five Hundred) listed companies based on market capitalization *(calculated as on March 31 of every financial year)* shall declare and pay dividend in accordance with the dividend distribution policy *(Regulation 43A of LODR 2015)*. The said policy shall be disclosed in the Annual Report and website of the listed company.

The Board of Directors can declare and pay the interim dividend in the Board Meeting and later confirmed from the Shareholders of the Company at the Annual General Meeting ("AGM"). In case of Final Dividend the Board of Directors at their Meeting shall recommend to the shareholders for declaration of the final and the shareholders/ Members at the AGM shall approve the same at the AGM. *[The Members may grant their approval either through e-voting or voting at the venue of the AGM vide e-voting facility at the venue or ballot paper(s)]*

Once the dividend is declared the total amount of dividend shall be deposited in a scheduled bank in a

separate account within 5 (five) days from the date of declaration of such dividend. It is to be noted that the dividend cannot be paid in cash and can be paid through cheque or warrant or in any electronic mode. (*Section 123 of the Companies Act, 2013*)

A company which has violated the provisions in relation to the accepted deposits then such company cannot declare the dividend.

Where the amount of dividend deposited in a separate bank account is not claimed by the shareholder within 30 (Thirty) days, then such amount shall be transferred to another special account in any scheduled bank to be called the Unpaid Dividend Account within 7 (Seven) days from the expiry of 30 (Thirty) days. (*Section 124 of the Companies Act, 2013*)

The company shall within 90 (Ninety) days from the date of transferring the amount to Unpaid Dividend Account shall prepare a statement containing the names, their last known addresses and the unpaid dividend to be paid to each person and place it on the web-site, if any and also on any other web-site approved by the Central Government for this purpose. (*Section 124 of the Companies Act, 2013*)

If any default is made in transferring the total amount, then such company from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of 12% p.a. (Twelve per cent per annum) and the interest accruing on such amount shall ensure to the benefit of the members of the company in proportion to the amount remaining unpaid to them. (*Section 124 of the Companies Act, 2013*)

The amount transferred to the special account shall be retained there upto 7 (Seven) years. If any Member/ Shareholder is willing to claim the dividend which he had not withdrawn during the period of 30 (Thirty) days then such Member/ Shareholder may apply to the company and claim the dividend during the said 7 (Seven) years. (*Section 124 of the Companies Act, 2013*)

The unclaimed amount lying in the special account for 7 (Seven) consecutive years shall be transferred to Investor Education and Protection Fund ("IEPF").