

Companies Act 2017 Section 240-245

DIVIDENDS AND TIME OF PAYMENT

DIVIDEND MEANING AND CONCEPT:

- Dividends are payments made to shareholders by a company, out of its distributable profits.
- Unless there are specific restrictions in the company's memorandum and articles, every company has an implied power to use its profits to pay dividends to its shareholders
- The dividends will be either in cash or in shares of listed company held by the distributing company. The power to declare a dividend should be specified in the company's articles of association. The articles should provide for the company to declare a dividend in a general meeting, by means of an ordinary resolution of the shareholders (requiring a majority vote), and should specify the procedures for agreeing to a dividend payment.
- Companies normally make one dividend payments each year, but sometimes number of dividend payments can be more than one. For example, a listed company might pay an interim dividend in the middle of its financial year, and then a final dividend after the end of the financial year.

FINAL AND INTERIM DIVIDEND & TIME RESTRICTION FOR ITS PAYMENT:

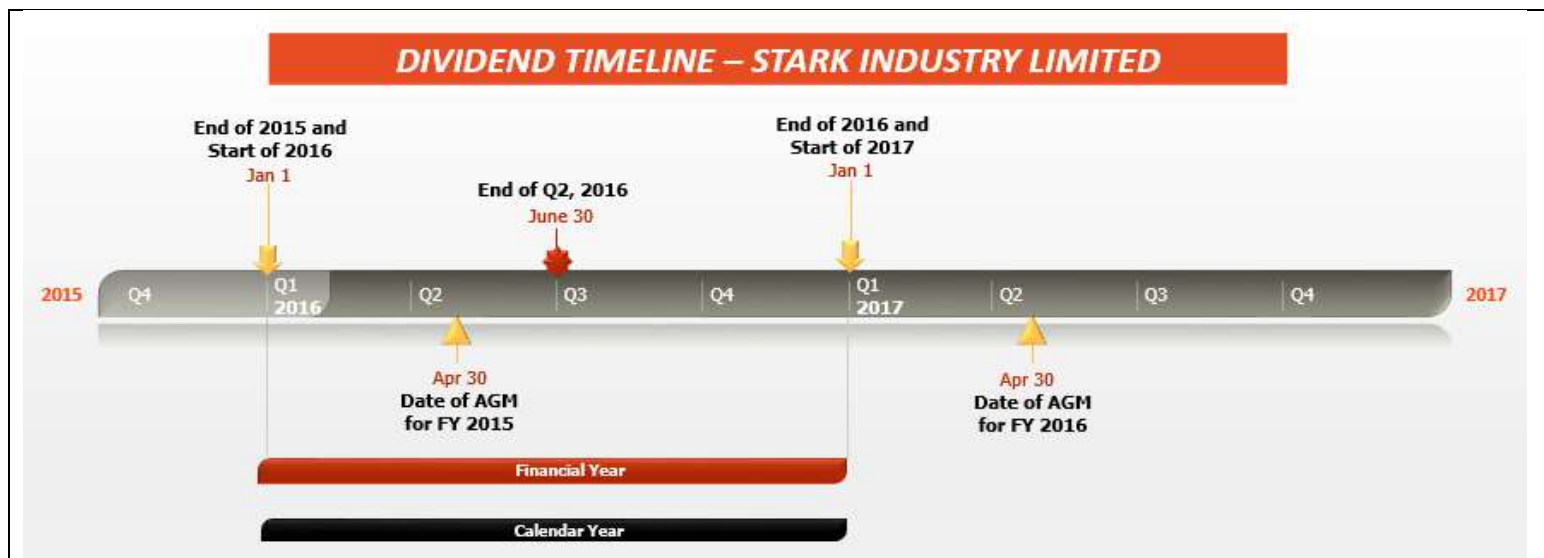
FINAL DIVIDEND

- The amount of final dividend is proposed by directors and approved by members in annual general meeting of the company. The directors propose this amount along with the approval of annual financial statements. The members may reduce, accept or reject the dividend as proposed by the director. However, they cannot resolve to increase the amount as proposed by directors.
- Final dividend is paid within thirty days of the date of annual general meeting for all companies

INTERIM DIVIDEND

- The directors of the company may propose and pay interim dividend before end of the year. This dividend is usually announced with interim results (quarterly or half yearly accounts) of the company in addition to the final dividend.
- The interim dividend must be paid within 30 days of commencement of book closure for this purpose or if share transfer books were not closed for this purpose such dividend shall be paid within 30 days of date of directors meeting.

PRACTICAL IMPLICATIONS OF DIVIDEND: Let's take an example of "Stark Industry Limited":



FINAL DIVIDEND FY, 2015: The Company will close its financial statements for FY 2015 at the end of Q4 for 2015. The company will hold its AGM for FY 2015 maximum by Apr 30, 2016 and approval of final dividend from the profits of year 2015 will be one of agenda item as ordinary business. This dividend is proposed by directors to the members and members can approve, decline or reduce the amount proposed in AGM. Approved amount of dividend of FY 2015 will be paid in year 2016 within 30 days of AGM.

INTERIM DIVIDEND Q2, 2016: The Company will close its semi-annual financial statements for FY 2016 at the end of Q2 for 2016. The company will hold its AGM for FY 2016 in 2017 maximum by Apr 30, 2017, however if the directors want to pay interim dividend from the profits earned in first two quarters of FY 2016, they may do so and the approval of members will not be required for interim dividend. Approved amount of interim dividend will be paid in year 2016 within 30 days of approval of directors or book closure for this purpose.

CERTAIN RESTRICTIONS ON DECLARATION OF DIVIDEND (Section-240):

RECOMMENDED DIVIDEND NOT TO BE INCREASED: The amount of final dividend is recommended by the board for approval of members in Annual General Meeting and members cannot increase the recommended amount at the time of approval.

GAIN ARISING OUT OF SALE OF IMMOVEABLE PROPERTIES AND ITEMS OF CAPITAL NATURE: For any financial year, dividend is not declared out of the profits from sale of immovable property or item of capital nature; except after such profits are adjusted against losses on sale of immovable properties or assets of capital nature sold by the company and only a company which is in the business of buying and selling items of capital nature can pay dividend out of such profit.

DIVIDEND FROM GAIN ARISING OUT OF INVESTMENT PROPERTIES: Investment property can be recognized and carried in books of accounts on fair value basis as per relevant IFRS. Any gain arising out of re-measurement of investment property directly credited to Income statement shall also be excluded for the purpose of declaration of dividends.

DIVIDEND TO BE PAID ONLY OUT OF PROFITS (Section-241): Any dividend will be only out of distributable profits by a company either in cash or in kind (in the form of shares of listed company held by the distributing company).

DIVIDEND NOT TO BE PAID EXCEPT TO REGISTERED SHAREHOLDERS (Section-242):

DIVIDEND BY COMPANY OTHER THAN LISTED COMPANY: Any dividend declared by a company which is payable in cash must be paid to its registered shareholders or to their order within specified period by:

- cheque or
- warrant or
- in any electronic mode.

DIVIDEND BY LISTED COMPANY: In case of a listed company, any dividend payable in cash shall only be paid through electronic mode directly into the bank account designated by the entitled shareholders.

DIRECTORS NOT TO WITHHOLD DECLARED DIVIDEND (Section-243):

DIVIDEND PAYMENT NOT TO BE WITHHELD: When a dividend has been declared, it shall not be lawful for the directors of the company to withhold or defer its payment and the chief executive of the company shall be responsible to make the payment.

FINAL DIVIDEND: Final dividend shall be deemed to have been declared on the date of the general meeting when approved by members via ordinary resolution.

INTERIM DIVIDEND: Interim dividend shall be deemed to have been declared on the date of commencement of closing of share transfer for purposes of determination of entitlement of dividend and if register of members is not closed, on the date on which such dividend is approved by the board.

LIABILITY OF CEO IN CASE OF NON-PAYMENT OF DIVIDEND:

Where a dividend has been declared by a company but is not paid within the specified period, the chief executive of the company shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to five million rupees.

Further, CEO shall also cease to hold office of CEO of the company from the day of the conviction and shall not be eligible to be CEO or director of that or any other company, for a period of five years from that day of conviction.

PERMISSION TO WITHHOLD OR DEFER PAYMENT OF DIVIDEND:

The company may make an application to the Commission within 45 days for the date of declaration of dividend to withhold or defer payment.

The Commission will satisfy itself that any of the below mentioned reasons exist and will allow the company to withhold or defer dividend payment without committing any offence:

1. where the dividend could not be paid by reason of the operation of any law;

2. where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
3. where there is a dispute regarding the right to receive the dividend;
4. where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
5. where, for any other reason, the failure to pay the dividend or to post the warrant within the period was not due to any default on the part of the company; and
6. where, the member has not provided the complete information or documents for payment of dividend.

UNCLAIMED SHARES, MODARABA CERTIFICATES AND DIVIDEND TO VEST WITH THE FEDERAL GOVERNMENT (Section-244):

This section shall be applicable to following:

- Shares or modaraba certificates which have been issued, and remain unpaid for 3 years from the date it is payable; or
- Where dividend (or any bonus shares or certificates) has been declared by a company or Modaraba, and remain unclaimed for 3 years from the date it is due;
- Any other instrument or amount which remain unclaimed or unpaid, having such nature and for such period as may be specified.

NOTICE TO THE SHAREHOLDER / CERTIFICATE HOLDER

- Company shall give a 90 days notices by a registered post acknowledgement due on his last known address to shareholders, certificate holders or owner to file a claim
- After expiry of 90 days, final notice in specified form shall be published in 2 daily newspapers, one in Urdu and one in English, having wide circulation.

TRANSFERRING TO THE FEDERAL GOVERNMENT

- If no claim is made, company shall after 90 days from date of publication of 2nd notice:
 - Deposit any unclaimed or unpaid amount to the credit of FG (in case of sum of money)
 - In case of shares, modaraba certificates or other instrument; Report and deliver these to SECP and the SECP shall, after selling these in specified manner and period, deposit the proceeds to the credit of FG
- After transferring company shall preserve and continue to preserve all original record pertaining to those and provide copies of relevant record to the SECP (until it is informed by SECP in writing that they need not to be preserved any longer).
- Such amounts shall be maintained in a profit bearing account with SBP or NBP to be called "Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account" as may be notified by concerned Minister of FG.
- It shall be deemed to be part of public accounts and interest/profit accumulated on it shall be credited on quarterly basis to the "Investors Education and Awareness Fund" (u/s 245).

PROCEDURE TO CLAIM AFTER THE TRANSFER

- Any claimant may apply to SECP in such manner with such documents as may be specified.
- SECP after necessary verification from company concerned, forward claim to SBP/NBF for making payment (equivalent to his unclaimed or unpaid dividend or amount of proceeds).
- Payment shall be made within a 30 days from date of verification by the company.
- While making payment, expenses incurred for sale of those shares etc shall be deducted.
- If the relevant shares/certificates have not been sold as on date of claim, the person shall be entitled to receive those shares/modaraba certificates/ other instrument.
- Where any dispute regarding those arises or is pending adjudication before the competent authority or Court, SECP shall process claim in accordance with the final decision.
- No claim shall be entertained after 10 years from the credit of any amount FG.
- Every company, within 30 days of close of each financial year, shall submit to SECP a return of all unclaimed shares certificates, instruments or dividend in manner specified by SECP.
- Contravenes of this section shall attract a penalty of level 3.
- “Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account” shall be available on direction of Minister to serve as a collateral in order to facilitate the provision of credit facility to clearing house to address any systemic risk in the capital market.
- This option shall only be exercised where, in opinion of SECP, resources of clearing house are or likely to be insufficient for timely settlement of trades executed at the exchanges.

ESTABLISHMENT OF INVESTOR EDUCATION AND AWARENESS FUND (Section-245):

A fund will be established naming “Investor Education and Awareness Fund (Fund)” to be managed and controlled by the Commission.

THE FUND SHALL BE CREDITED WITH:

1. the interest/profit earned on the “Companies Unclaimed Instruments and Dividend and Insurance Benefits and Investors Education Account”;
2. forfeited amounts for offering application under section 87 of the Securities Act, 2015;
3. grants or donations given by the Federal Government, Provincial Governments, companies, or any other institution or person for the purposes of the Fund;
4. the interest or other income received out of the investments made from the Fund;
5. the amount realized in case of company licensed under section 42, if on winding up any of the

assets is not transferred to another company with similar objectives, all such assets shall be sold and proceeds thereof credited to the Investor Education and Awareness Fund; and

6. such other amounts as may be prescribed.

THE FUND SHALL BE UTILIZED FOR:

1. the promotion of investor education and awareness in such manner as may be prescribed;
2. the Fund may be used for any of the the following purposes:
 - i. educational activities including seminars, training, research and publications aimed at investors;
 - ii. awareness programs including through media – print, electronic, social media, aimed at investors;
 - iii. funding investor education and awareness activities approved by the Commission; and
 - iv. to meet the administrative expenses of the Fund.

INVESTORS means investor in securities, insurance policyholders and customers of non-bank finance companies and Modarabas.

ADVISORY COMMITTEE: The Commission shall constitute an advisory committee for recommending investor education and awareness activities that may be undertaken directly by the Commission or through any other agency, for utilization of the Fund.

AUDIT OF FUND: The accounts of the Fund shall be audited by auditors appointed by the Commission who shall be a firm of chartered accountants. The Commission shall ensure maintenance of proper and separate accounts and other relevant records in relation to the Fund giving therein the details of all receipts to, and, expenditure from, the Fund and other relevant particulars.