

Intricacies and Issues in declaration and payment of Dividend-Role of company Secretary

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Dividend -Concept

- Dividend-From Latin –*Dividendum*-
- Total divisible sum-Share of company's profits distributed among members.
- Quotient forming share of divisible profit payable to recipients.
- Conceptually narrower than dividend under IT Act.
- Profit-by accounting convention-amount of gains made in an accounting period.
- No distinction between capital and revenue profits.

Conceptual Change –Post 2000

- Dividend defined under Section 2(35)- Inclusive to cover interim dividend.
- Corresponds to Section 2(14A) of old Act amended effective 13.12.2000 to include interim dividend.
- No specific provision under old Act relating to interim dividend-Enabling provisions only in Table A for declaration.

Pre-requisites to declaration

- Pre-conditions to declaration of dividend:
- A)provision of depreciation including arrears
- B)Set off past losses.
- Loss includes depreciation .otherwise terminology would be **cash loss**.

Sources of dividend

- Sources of dividend-Section 123(1):
- Out of profits for year after depreciation or
- Out of profits of earlier years remaining undistributed after depreciation for the year or
- Out of combination of both the above or
- Out of money provided by Govt (Central or State)for dividend as per guarantee provided by them

Changes in new Act

- No mandatory transfer to Reserve under new Act out of profits –May encourage excessively aggressive policy on dividend
- **Declaration in case of absence or inadequacy of Profit-Second proviso under section 123(1)**
- Rule 3
- Rate not to exceed average rate three years. No average in case of absence of track record.
- Withdrawal from Free Reserves not to exceed $1/10^{\text{th}}$ of aggregate capital and free reserves.

Legal issues to introspect

- Out of withdrawal from Free Reserves, first set off current years' losses.
- Residual free Reserves not to fall below 15% of paid up capital.
- **Legal issues to ponder**
- Does interim dividend provide vested right to receive upon declaration by board.
- Interim dividend could be rescinded by general body.(Lagunas Nitrate -1901)Kothari Textiles (1963)
- No binding effect ,no vested right till declaration.(Express Newspapers)

Legal issues

- Does interim dividend require regularization at AGM.
- Section 102(2) speaks of items of ordinary business.
- Can dividend be declared in EGM?.
- Refer to Raghunandan Neotia v Swadeshi Cloth Dealers Ltd.-Declaration only at AGM.
- Declaration of dividend appropriate only after adoption of Accounts

Points to Ponder

- For current year –no DDT if declaration after March 31, 2020.
- Deduction of Tax at source under section 194
- Declaration of dividend by subsidiary if exceeds materiality threshold under LODR-Specific approval for RTP?
- Refer to Working Group's draft Report on RPT.
- What about transactions of same genre already concluded. SEBI's response?

Interim Dividend-Rules

- **Interim dividend** -Rules-Section 123(3)
- Declaration midstream during course of FY or
- After conclusion of FY during period prior to conclusion of AGM
- No non-compliance with Section 73 and 74.
- Distribution out of surplus in P&L
- Out of profits for year for which declared
- Out of profits for FY till Quarter preceding date of declaration.
- In case of loss, can dip into past profits but rate not to exceed average rate for last three years.

Procedure to comply

- **Procedure**
- Internalize proposal for Board's consideration of recommendation of dividend including interim.
- Reference to company's dividend distribution policy.
- Make internal arrangements with bankers for opening dividend Account, finalization of record date-No book close any more. Ensure period of notice for record date -Reg .42

Procedure continued

- Prior intimation to SE under Regulation 29 regarding meeting of Board for recommendation of dividend.-at least two working days excluding date of notice and date of meeting.
- Issue notice as per SS1
- Agenda to include dividend recommendation
- Inform SE immediately after recommendation by board.
- Dividend to be declared on per share basis
- Include recommendation of dividend including Interim in AGM Agenda and comply with SS2 as regards notice for AGM.

- For interim dividend ensure enabling authority in Articles.
- Comply with SS3 regarding dividend.
- Transfer amount to dividend account within 5 days of declaration(Section 123(4)).
- No payment except to registered holder .
- No cash payment at all.
- Payment to ensure by 30 days of declaration(Section 124(1))

IEPF Transfer

- Amount remaining unpaid after 30 days to be transferred to unpaid dividend Account.(124(2))
- **Transfer of unpaid dividend to IEPF(Section 124(5))**
- Transfer from unpaid Account –unpaid or unclaimed-seven years from the date of such transfer –to IEPF.IEPF 1 within thirty days of due date. Rule 5 of IEPF rules
- Where entitlement to dividend in dispute-No transfer to IEPF
- Rule 8 –within 60 days of AGM –provide details of unpaid amount with full details . IEPF 2 .Upload on website and also on IEPF statement of unpaid dividend with details as specified.
- Appointment of nodal officer and assistant Nodal officer. Intimation thereon-Website upload. Intimation to IEPF

Role of CS in Dividend Process

- **Role of company secretary**
- **He is the lynch pin in the exercise**
- Keep ready for discussion past history of dividend, Market sentiments/expectations, rates by other competitors in industry.
- Consider DD policy and put forward note to CEO on legal aspects associated.
- Advocate conservative payouts.
- Co-ordinate with Accounts team, Bankers for bank account, fixation of record date, RTA ,printing warrants ,Depositories etc.

CS'S Role

- Ensure timelines for notices regarding board meeting for recommendation, record date.
- Organise benpost download as of record date for preparation of dividend list and printing of warrants/ letters for ECS/NEFT credits.
- Intimation to exchanges upon approval of recommendation.

- Thank you