

Punishment for failure to distribute dividends (Sec 127)

1. Legislative Background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 127 – This clause corresponds to section 207 of the Companies Act, 1956 and seeks to provide that where the dividend has been declared but has not been paid or the warrants have not been posted within thirty days of declaration, every director who is knowingly party to the default shall be punishable with imprisonment up to two years and with fine and the company shall be liable to pay interest of eighteen per cent per annum thereon.”

2. Punishment for failure to distribute dividend

Every company is required to pay dividend within a period of 30 days from the date of its declaration. In case the dividend has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18 % per annum during the period for which such default continues. However, no offence under this section shall be deemed to have been committed: –

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder 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;
- (c) where there is a dispute regarding the right to receive the dividend;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- (e) where, 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 any default on the part of the company.

3. Exemption to the Nidhi companies

Vide Notification G.S.R. 465(E) dated 05.06.2015, Nidhi companies are exempted to the extent that when the dividend payable to a member is Rs. 100 or less, a declaration of dividend is to be announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is to be displayed on the notice board of the Nidhi's for at least 3 months. Such announcement is sufficient compliance of this section.

4. Power of SEBI & Central Government:

In case of listed companies, section 24 confers on SEBI, the power of administration of the provisions pertaining to non-payment of dividend. In any other case, the powers remain vested in Central Government.

5. Punishment and Compoundability:

Every director of the company shall be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues. The offence by the director of the company is not compoundable as the same is punishable with fine and punishment as provided under the clause (b) of sub-section (6) of section 441 of the Act.

Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30th September, 2016.