

Part 1: What is Dividend means?

1. Principles: In the CA 2016, the dividend rule is found in s131. It has two principles – ie (1) the dividend is to be paid out of the company’s profits; and (2) the dividend should not be paid if the payment will cause the company to be insolvent after being solvency test. As the directors are the ones who authorize the payment of dividends, they must be satisfied that the Company will be solvent after the distribution is made.

2. Liability for non-compliance: Section 133(2) provides for the liability of the Director and Manager who wilfully paid or permitted to be paid dividends out of what they knew to be not profit. They are liable to the Company to the extent of the amount exceeding the value of any distribution of dividends that could properly have been made.

3. Recover of Dividend: The CA 2016 also prescribes the new liability imposed on the member. Section 133(1) states that the Company may recover the amount of distribution received by a shareholder which exceeds the amount which could properly have been made unless the shareholder (1) has received the distribution in good faith; and (2) has no knowledge that the Company did not satisfy the solvency test.

Part 2: What Directors and Shareholders should know about the Distribution of Dividend (DOD) process?

1. It is permissible to use preference shares as an instrument to give investors (*i.e. preference shareholders*) priority to receive payment of dividend over ordinary shareholders. This preferential right must be stated in the Constitution of the Company or alternatively Shareholders Agreement with LHDN stamped.

2. A Company may only distribute dividend to the shareholders out of profits of the Company available if the Company is solvent after solvency test.

3. Before dividend is distributed to any shareholder, the distribution must be authorized by the Directors of the company.

4. The Directors may authorize a distribution at such time and in such amount as the Directors consider appropriate, if the Directors are satisfied that the Company will be solvent immediately after the distribution is made. The Company is regarded as solvent if the company is able to pay its debts as and when the debts become due within 12 months immediately after the distribution is made.

5. If, after a distribution is authorized and before it is made, the Directors cease to be satisfied on reasonable grounds that the Company will be solvent immediately after the distribution is made, the Directors must take all necessary steps to prevent the distribution.

6. Every Director of the Company who wilfully pays or authorizes the payment of any improper or unlawful distribution shall, on conviction, be liable to imprisonment for a term not exceeding 5 years or a fine not exceeding 3 million ringgit or to both.

7. The Company may crawl back from a shareholder any amount of distribution paid to the shareholder which exceeds the value of any distribution that could properly have been made, unless the shareholder

a. has received the distribution in good faith; and

b. has no knowledge that the company did not satisfy the solvency test.

8. Every Director of a Company who wilfully pays or permits to be paid any dividend, which he knows from his knowledge is not profits shall also be **personally liable** to the Company to the extent of the amount exceeded the value of any distribution of dividends that could properly have been made.

Part 3: The process of Distribution of Dividend (D.O.D.) worksteps:

- Step 1. Initiate professional fees to HC (*will be written at the invoice*);
- Step 2. Directors to initiate on Distribution Of Dividend details (*Total distribution amount*);
- Step 3. Send us the banking slip of D.O.D. to the respective shareholders;
- Step 4. COSEC will prepare D.O.D. Resolutions, Solvency Statement & send to Directors for signing (*signature can be done through hardcopy or digital signature*);
- Step. Respective Directors to sign D.O.D. resolution and Solvency Statement & email back to COSEC;
- Step 6. COSEC will proceed submission of Solvency Statement & Resolutions to SSM;
- Step 7. Concluded process of a D.O.D.

REMARKS:

- a. The process can be done within 3 to 5 working days with all documentations are signed on time and no disagreement in between.***
- b. Please do not hesitate to contact Ms. Thanursha @ 012- 520 3515 for professional discussion.***