

All about 'DIVIDEND'



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Dividend season is all year round!

Typically, from March to May in Thailand, most companies will pass a resolution in an Annual General Meeting of Shareholders (AGM) to distribute dividends to their shareholders. Besides that, companies may consider distributing what is called '*interim dividend*' during the year through a Board of Directors (BOD)'s approval or by an Extraordinary General Meeting of Shareholders (EGM) (as the case may be).

What is the difference between a normal dividend and an interim dividend?

What to know before making a dividend payment?

To protect the company from non-compliance issues, this list below should be considered:

1. Legal Reserve

A legal reserve is the minimum amount of money deposited as company assets required by law to be kept as reserve, preparing the company for any emergency incident.

Due to the provisions under the Civil and Commercial Code of Thailand (CCC), when resolving a matter by either a shareholders' meeting or a board of directors meeting to pay dividends to shareholders, 5% of company accumulated profit must be allocated to the reserve. This allocation shall be made until the deposit reaches 10% of the company's registered capital.

Although the percentage of allocating legal reserve is the same but different rules apply for public limited companies. Allocating legal reserve can be done as soon as the company has profit without waiting for the dividend distribution as a limited company.



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2. Payment Period

Whenever the decision to pay a dividend is made, the company must complete the payment to shareholders within 1 month from the meeting date.

3. Legal Paper

For the records of a company, preparation of corporate documents cannot be ignored. Each type of company has its specific mandatory documents:

- Limited Company
After passing the resolution in the AGM, EGM, or BOD as the case may be, the notification for dividend payment must be sent to each shareholder. In the case where the shares were issued to unnamed shareholders, such notice shall be published in the local newspaper one time after the meeting day.
- Listed Company (Public Limited Company)
The resolution passed on the AGM, EGM, or BOD meetings together with the record date shall be notified via the SET portal on the date that resolution was passed or latest not over 9 a.m. of the following day so that investors could be well informed. The notification must contain essential details, including payment date, payment rate, date of resolution, how the BOD and shareholders agreed to pay the dividend and the accounting period from which the dividend will be drawn.

In the case of a stock dividend, disclosing information via the SET portal includes:

- number of shares, the ratio of existing shares and stock dividend (new shares from capital increase), and dividend stock value (reflecting a reduction in retained earnings);
 - cash allocation for 10% withholding tax.
- BOI Company (Limited company or Listed Company as the case may be)
For a company enjoying the BOI's benefits, the minutes of meeting should specify where net profits are drawn from, whether from BOI or non-BOI business (If any).

This is because of the tax consequence; if the payment is made from the non-BOI profit, such dividend is subject to 10% withholding tax. On the other hand, if the payment is made from the BOI profit, shareholders can benefit from dividend tax exemption.

4. Legal Requirements

| Description | Company limited | Listed Company |
|------------------------------------|---|--|
| 1. Legal Reserve | 5% of the company accumulated profit must be set aside before paying the dividend until the legal reserve reaches 10% of the registered capital | <p>1. 5% of yearly net profit must be set aside the soonest when the company derives profit.</p> <p>The allocation must be made by net profit less accumulated loss (if any).</p> <p>2. Legal reserve shall be set aside regularly when the company derives profit, even if the dividend is not to be paid until the reserve reaches at least 10% of the registered capital or unless specified otherwise in the Articles of Association of the Company.</p> |
| 2. Type of Dividend | Cash Dividend | Cash or Stock Dividend |
| 3. Legal Compliance before Payment | Sending notification to shareholders and/or publish the notification in the newspaper | Sending notification to shareholders and publish the notification in the newspaper for 3 days continually. |
| 4. Interim Dividend | Allowable | Not allowable unless specified in the Articles of Association of the Company |

Dividend Tax Implications

Although a company does not have a BOI promotion, shareholders can still enjoy dividend tax exemption when the following criteria are met.

- Thai company
Pursuant to the provisions under Section 65 bis (10) of the Thai Revenue Code (“TRC”), when receiving a dividend from a Thai company, a receiving company must be subject to withholding tax at the rate of 10% and the 50% of the dividend received shall be subject to corporate income tax unless:
 - 1) the receiving company is a company listed in the stock market; or

- 2) the receiving company is continually holding at least 25% of the shares in the paying company before and after the payment date **for not less than 3 months**; or
- 3) the paying company is carry on private school, college, or university business; or
- 4) the receiving company continually holds shares in the foreign company of not less than 25% of total shares for at **least 6 months** before receiving a dividend. The offshore dividend must come from net profits already taxed in a foreign country that is corporate tax rate not less than 15% of the net profits. In this case, such dividend is exempt from corporate income tax in Thailand.

Note: If such company is an International Business Centre (IBC), they will be exempt from income tax on a dividend from their affiliated offshore companies.

- Foreign company not carrying on business in Thailand
Under Section 70 of the TRC, when receiving a dividend from a Thai company, a foreign company is subject to withholding tax at the rate of 10%. However, according to the provisions of Double Tax Agreements, dividend tax may be relieved.

Schedule of tax implications

| Receiver | Payer | Exemption |
|--|--|---|
| <p>Thai Limited Company + continually hold shares in the paying company for not less than 3 months before and after the dividend payment</p> | <p>Thai Limited Company or Thai Listed Company (Public Company)</p> | <p>20% of one-half of dividend receivable</p> |
| <p>Thai Limited Company + continually <u>hold shares not less than 25% of total shares</u> in the paying company and for not less than 3 months before and after the dividend payment</p> | <p>Thai Limited Company or Thai Listed Company (Public Company)</p> | <p>Exempt</p> |
| <p>Thai Public Company listed in the stock market</p> | <p>Thai Limited Company or Thai Listed Company (Public Company)</p> | <p>Exempt</p> |

| Receiver | Payer | Exemption |
|--|---|--|
| Thai Limited Company | Thai Limited Company conducting business related to private school/college/ university | Exempt |
| Thai Limited Company | Thai Limited Company promoted under BOI scheme | Exempt |
| Thai Limited/Listed Company (IBC) | Affiliates company Both from Thailand or a foreign country | Exempt |
| Thai Limited Company + continually <u>hold shares for at least 25% of total shares</u> in the paying company for not less than 6 months before the dividend payment | Foreign Company | Exempt |
| Foreign Company | Thai Limited Company | 10% (due to the agreement under DTAs) |

ONE Law Comment's

When speaking of the profits from business, the dividend is the first thing we are thinking about with planning to obtain the privilege under the above options as aforesaid. Nonetheless, dividend might not be the only option for getting profits from the business. Since there is no *'thin capitalization rule'* in Thailand, shareholders might alternatively enjoy the tax benefits from interest without being treated as tax evasion or disguised dividend. However, they will be taxed in Thailand for the interest on loan instead.

In sum, dividend payment as above can be planned by the legal and tax planning for the benefit of shareholders by setting up a holding company in Thailand or applying for IBC as the case may be.

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Keyword: Dividend, Interim Dividend, Stock Dividend, Dividend distribution, Offshore Dividend, Private Company, Public Company, Annual General Meeting of shareholders, Legal Reserve, Net profits, Withholding tax, Deduction, Private school, Tax Exemption, Holding Structure, Disguised Dividend, Thin Capitalization, International Business Center.

ONE Law: In-charge of this article

Yanisa Deevee

Yolapan Seetaraso

Sukanya Singmethakul

Chinapat Visuttiapat

yanisa@onelaw.co.th

yolapan@onelaw.co.th

sukanya@onelaw.co.th

chinapat@onelaw.co.th

For any further information, please contact:

Email: info@onelaw.co.th

Phone: +66(0)8-0554-8111