Client Alert

Dividends in Ghana: Key Legal and Practical Considerations

Authored By :

Belinda Boahin

Senior Associate

Dividends in Ghana: Key Legal and Practical Considerations

Dividend declaration in Ghana requires careful attention to corporate governance, financial reporting, regulatory compliance, and shareholder rights. This article explains the principal legal and procedural rules governing dividends for private companies, with particular focus on entitlement, declaration, non-cash dividends, unclaimed dividends, tax, remittance, and liens.

The legal framework is primarily set out in the Companies Act, 2019 (Act 992), the Companies Regulations, 2023 (L.I. 2473), and the relevant dividend tax rules under the Income Tax Act, 2015 (Act 896) (as amended). Public guidance from the Office of the Registrar of Companies confirms the statutory treatment of unclaimed dividends, including transfer timelines and publication requirements, while GIPC-related compliance may affect the remittance of dividends to foreign shareholders.

Entitlement to Dividends

Members of a company limited by guarantee are not entitled to dividends. Such companies are prohibited from paying dividends or otherwise distributing company assets to their members. For companies limited by shares, dividends are not payable automatically. A dividend becomes payable only when the company resolves to declare it. The company’s constitution may also create different classes of shares with preferred, deferred, or other special rights or restrictions relating to dividends.

For example, cumulative preference shares usually require arrears to be paid in full before dividends may be paid to any class ranking behind them. Unless the constitution provides otherwise, a class entitled to a preferential dividend is generally presumed not to participate further in additional dividends beyond that preference. Investors should therefore review the rights attached to each class of shares carefully, since those rights directly affect dividend entitlement

Declaring Dividends and the Distribution Test

Not all profits are legally distributable. A company may pay dividends only if it satisfies the statutory distribution test, which requires the following immediately before the distribution is made:

(a) a company is able to pay its debts as they fall due; and

(b) the amount or value of any payment, return or distribution made by the company does not exceed its retained earnings immediately before the making of the payment, return or distribution.

Although the declaration process may vary under a company's constitution, these statutory requirements are mandatory and cannot be waived. In practice, the distribution test is the central legal control on dividend payments. Directors bear primary responsibility for recommending the amount to be paid as a dividend. Shareholders, or any other persons authorised under the company's constitution, may not lawfully declare a dividend in excess of the amount recommended by the directors.

Where a dividend is paid in breach of the distribution test, each defaulting director is jointly and severally liable to restore to the company the amount by which the payment contravened the test, together with interest at the annual rate of the ninety-one (91) day Government Treasury Bill.

If the directors do not restore that amount within twelve months of the payment, each shareholder who received the unlawful dividend becomes liable to repay the amount received in contravention of the law.

Non-Cash Dividends

On the recommendation of the directors, a company may resolve to satisfy a dividend otherwise than in cash in either of the following ways:

i) apply monies standing to the credit of the retained earnings of the company, and which could have lawfully been distributed as cash dividends, to settle unpaid amounts on shares on behalf of members who would have been entitled to receive the amounts if they had been distributed by way of dividend (the amounts are treated as paid up capital); or

ii) satisfy the dividend, wholly or partly, by distributing fully paid debentures of the company, or fully paid shares or debentures of another body corporate, of a nominal amount equal to the amount to be paid as dividend.

Unclaimed Dividends

A declared dividend must be paid within sixty (60) days after the shareholder resolution confirming the payment, or within sixty (60) days after the dividend otherwise becomes payable.

If a declared dividend remains unclaimed for three (3) months, the company must transfer the amount into an interest-bearing unclaimed dividend account opened for that purpose.

If the dividend remains unclaimed for a further twelve (12) months after that transfer, the company must pay the total amount, together with accrued interest, to the Registrar of Companies (the “Registrar”). On the same date, the company must notify the relevant shareholder (or the shareholder’s estate) at the last address known to the company, that the payment has been made to the Registrar.

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The Registrar must publish annually, in the Companies Bulletin and in at least one (1) daily newspaper of national circulation, details of shareholders whose dividends have been transferred for safekeeping.

Claiming Unclaimed Dividends from the Registrar

In practice, a shareholder, or the shareholder's estate, seeking to recover unclaimed dividends from the Registrar should be prepared to provide the following documents, together with any additional information the Office of the Registrar of Companies may request:

- a formal application letter requesting payment of the dividend and any accrued interest with a certified copy of probate or letters of administration attached where applicable;
- valid photo identification of the person making the claim and of the deceased beneficiary (if applicable); and
- bank account details for payment of the claimed dividends and accrued interest.

The Registrar is required to hold unclaimed dividends for seven (7) years, after which the Registrar must take the following steps:

- transfer to Ghana's Consolidated Fund fifty percent (50%) of the total amount of money lodged in the interest-bearing account, and
- donate or apply fifty percent (50%) of the total amount of money lodged in the interest-bearing account, for the purpose of investor education, research, entrepreneurial development and advancement in company law.

Tax, Foreign Transfers and Liens

As a general rule, unless an exemption applies, dividends are treated as investment income and form part of a shareholder's taxable income for the relevant year of assessment. Dividends paid by Ghanaian companies are therefore ordinarily subject to withholding tax in Ghana.

Subject to applicable foreign exchange requirements, foreign shareholders are generally entitled to transfer dividends from their investments in freely convertible currency through an authorised bank.

A company with foreign shareholding is required to register with the Ghana Investment Promotion Centre ("GIPC"). If a company fails to register, the GIPC may advise the Bank of Ghana to temporarily suspend remittances, including dividends.

Where permitted by the company's constitution, the company may exercise a lien over shares carrying unpaid liabilities and over any dividends declared on those shares. This means that a dividend otherwise payable to the shareholder may be applied directly to offset unpaid calls. However, the lien does not extend to shares with no unpaid liability, nor to other debts owed by the shareholder beyond the unpaid liability attached to those shares.

Conclusion

Dividend distribution in Ghana is governed by a detailed statutory framework, but the main practical risks usually arise from weak internal controls rather than from uncertainty in the law. Companies should therefore review their constitutions, confirm compliance with the distribution test before declaring dividends, document director recommendations carefully, track statutory payment timelines and maintain reliable shareholder records. These steps reduce legal exposure and improve readiness for regulatory review.

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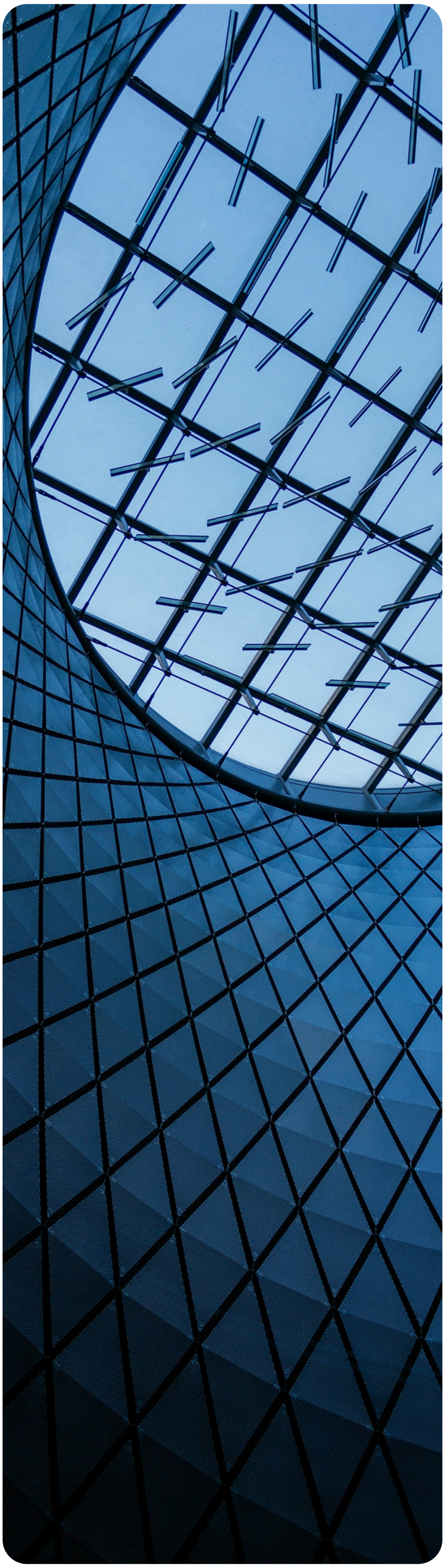

Contact:

JLD & MB LEGAL CONSULTANCY

TEL: +233 (0)302 782711/784298

Email:info@jldmblaw.net