

## Dividend payment: Guide for company owners and directors

The end of the financial year is usually when companies take stock of their activities over the year. In most cases, for limited liability companies (OOO) and joint-stock companies (AO), this is done at their annual general meeting of shareholders during which annual financial reports are approved and the matter of dividend payment is settled.

To review this important issue, we have drafted this guide and included in it some tables that we have compiled to highlight all the points relevant to company owners and directors upon payment of dividends.

All things considered, we can draw the conclusion that the dividend payment process should be handled in a comprehensive and timely manner.

For more information, please see below.

	OOO	AO
<b>General rules and requirements</b>	<ul style="list-style-type: none"> <li>- Company charter (bylaws)</li> <li>- Law of Ukraine On Business Entities</li> </ul>	<ul style="list-style-type: none"> <li>- Company charter (bylaws)</li> <li>- Law of Ukraine On Business Entities</li> <li>- Procedure for payment of dividends to joint-stock companies approved by National Securities and Stock Market Commission Decision No. 391 dated April 12, 2016</li> </ul>
<b>Who adopts decisions?</b>	<p><b>Shareholders</b> at the general meeting after approval of annual financial report</p> <p><b>NB:</b> The procedure for dividend payment (as well as the approval of annual performance and the procedure for profit distribution) is the same for OOO and AO and falls under the exclusive competence of the general meeting. Courts may render a decision for collection of dividends only if a decision determining the amount of dividends owed to the plaintiff (shareholder) and their payment terms has been adopted by the general meeting, but they may not compel companies to use their profits to pay out dividends.</p>	<p><b>Shareholders</b> at the general meeting after approval of annual financial report</p>
<b>Who is entitled to receive dividends?</b>	<b>Shareholders</b> upon payment of dividends	<b>Shareholders</b> included in the list of persons entitled to receive dividends as approved by the supervisory board
<b>Base</b>	Net profit as part of balance-sheet profit remaining at the company's disposal after payment of taxes, levies and other mandatory payments, either based on the result of the reporting year, or taking into account retained earnings of previous years.	<p>Net profit as part of balance-sheet profit remaining at the company's disposal after payment of taxes, levies and other mandatory payments, either based on the result of the reporting year, or taking into account previous years' retained earnings.</p> <p><b>NB:</b> Dividends for preferred shares are not dependent on financial result and are paid out from AO reserve capital, profits of previous years (if any) or special fund.</p>
<b>How often?</b>	<b>No restrictions</b>	<b>Once a year, no later than April 30</b>
<b>Form</b>	<b>No restrictions</b>	In cash only
<b>Amount</b>	No fixed amount. Amount to be specified in general meeting decision (as a rule, in proportion to the share).	<p>No fixed amount. Amount to be specified in general meeting decision (as a rule, in proportion to the share).</p> <p><b>NB:</b> The dividend amount for holders of preferred shares is expressly set in the company charter.</p>

	OOO	AO
<b>Meeting convening and holding</b>	All shareholders must be notified of meeting holding and its agenda at least 30 days prior to the meeting. Shareholders not attending the meeting have the same right to receive dividends as those in attendance. It is not required to notify the shareholders (including those who did not attend the meeting) of the adoption of a decision to pay out dividends.	Shareholders entitled to dividends must be notified of meeting holding as prescribed in the company charter. In addition, public companies must, within 10 days of the adoption of a decision to pay out dividends for common shares, inform about the date, amount, procedure and payment terms for such dividends to the stock exchange where they are registered.
<b>Payment terms</b>	None	Dividends for common shares must be paid out within 6 months of the date of adoption of the relevant decision by the general meeting. Dividends for preferred shares must be paid within 6 months of the end of the reporting year.
<b>Liability</b>	If dividends are not paid out in due time, OOO will be required to pay the amount owed taking into account the inflation rate for the entire period of delay, as well as 3% per annum on the overdue amount.	Same as for OOO. <b>NB:</b> If dividends are not paid out in due time, executive officers of AO (director, etc.) could be fined from 300 to 500 times the non-taxable minimum income (i.e. from UAH 5,100 to UAH 8,500) (Article 163 <sup>5</sup> Ukrainian Code of Administrative Offenses).
<b>Restrictions on dividend payment</b>	Dividends may not be paid out if the source of dividend payment is subject to tax lien. And, if bankruptcy proceedings have been initiated against OOO, dividend payment will be need to be agreed upon with the assigned asset manager.	Same as for OOO. <b>NB:</b> AO are not entitled to adopt decisions for payment of dividends and pay them out if: <ol style="list-style-type: none"> <li>1) their share allotment report is not duly registered;</li> <li>2) AO equity capital is smaller than its share, reserve capital, and the liquidation value of preferred shares exceeds their nominal value;</li> <li>3) their share capital is not paid in full.</li> </ol> In addition, AO are not entitled to pay out dividends for common shares if: <ol style="list-style-type: none"> <li>1) AO assume obligations to repurchase shares from shareholders (in cases provided in Article 68 Law On Joint-Stock Companies);</li> <li>2) current dividends for preferred shares are not paid in full.</li> </ol>

	OOO	AO
<b>Restrictions on dividend payment</b>	<p><b>NB:</b> The National Bank of Ukraine has set out the same restrictions for both OOO and AO for currency regulation of dividend payment to non-resident investors. It is still currently prohibited to purchase and transfer abroad foreign currency to return dividends for 2017 to foreign investors. This restriction has been lifted for previous years, but only if the following requirements are met simultaneously:</p> <ul style="list-style-type: none"> <li>the issuer of corporate rights/shares for which dividends are paid out, or a depository institution managing a foreign investor's securities account, or a foreign investor directly purchases/transfers foreign currency to return dividends abroad;</li> <li>foreign currency is purchased/transferred to return dividends for 2014-2016 abroad within a total amount not exceeding USD 5,000,000 (or the equivalent of this amount in another currency based on the UAH official rate against foreign currencies as set out by the National Bank of Ukraine and effective on the transaction date), and for the period up to 2013 inclusive - within a total amount not exceeding the equivalent of USD 2,000,000;</li> <li>foreign currency must be purchased/transferred through an authorized bank.</li> </ul>	

If you have any questions about the above guide, please feel free to contact us. We would be pleased to provide any advice and conduct any detailed analysis you may require. We would also be pleased to prepare all the documents necessary for proper and timely declaration and payment of dividends by your company. We will do so, drawing from our extensive experience in numerous areas of law which we have gained working with various types of company in Ukraine (OOO, AO, etc.)

*We look forward to assisting you with any queries you may have.*

**Maryna Slobodyanuk**

Legal advisor

Office: + 38 044 364 38 68

[maryna.slobodyanuk@accountorgroup.com.ua](mailto:maryna.slobodyanuk@accountorgroup.com.ua)