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## Distribution of dividend by private and public companies in Cyprus

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Dividend distributions by a Cyprus company can be either interim or final. Interim and final dividends are treated differently under Cyprus law.

Interim dividends are approved and paid by board resolution from available distributable profits during the year unless restricted by the articles of association.

Final dividends are paid annually and are determined based on the company's financial statements. Final dividends are declared by the shareholders of the company and may not exceed the amount recommended by the Board.

Dividends may only be distributed from 'profit available for distribution', which is narrower than the accounting or business notion of profit.

The term 'profit' is not defined in the Companies Law, Cap. 113, as amended (the "Law"). The Cyprus Supreme Court has nevertheless adopted the definition of profit set out in English judicial precedent: namely that profit implies a comparison between the state of a business at two specific dates usually separated by the interval of one year. For practical purposes, profit is the gain made by a business during an accounting year.

The articles of association of a company set out when and how dividend can be distributed. For instance, the articles may vary dividend rights attaching to classes of shares, include special arrangements regarding the distribution of dividend to shareholders or establish priorities of dividend payments.

When recommending or making a dividend distribution, the directors of a company must take into account their common law and statutory duties. Directors must have regard to the company's best interests generally and may be personally liable for dividend paid in an imprudent manner.

Additional criteria apply to distributions by a public company under the Law as a result of the transposition of EU legal instruments into Cyprus law. The Court of Justice of the European Union in *Hirrmann v. Immofinanz* held that the intent of applicable EU law is to prevent inappropriate distributions from subscribed capital to shareholders to which they are not entitled as shareholders.

Because creditors have no recourse to shareholders in a limited liability company beyond the paid-up share capital, the general intent of the legal regime in Cyprus is to give priority to the interests of creditors over those of shareholders.

Further considerations apply to distributions by public companies. In addition to the general distribution principles highlighted above, dividend distributions by Cyprus public companies, must also comply with the statutory requirements set out in the Law. A distribution made by a Cyprus public company in contravention of applicable law is liable to be returned by shareholders under certain circumstances.

The role of directors in the recommendation, declaration and distribution of dividends by Cyprus companies is defined by law and requires careful evaluation of all circumstances prevailing each time.

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