

## **IC 28-13-4**

### **Chapter 4. Dividends and Other Distributions**

#### **IC 28-13-4-1**

##### **Power of board of directors to make distributions**

Sec. 1. A board of directors may authorize and the corporation may make distributions to the corporation's shareholders subject to restriction by the articles of incorporation and the limitations in section 3 of this chapter.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-4-2**

##### **Share dividend or distribution dates of record, declaration, and payment**

Sec. 2. The board of directors may fix a record date, declaration date, and payment date with respect to any share dividend or distribution to the shareholders of the corporation. If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a repurchase or reacquisition of shares, the record date is the date the board of directors authorizes the distribution.

*As added by P.L.14-1992, SEC.163.*

#### **IC 28-13-4-3**

##### **Dividends; approval of department required; retained net income; exemption from approval requirements**

Sec. 3. (a) A corporation may declare a dividend of so much of the undivided profits of the corporation as is considered expedient by the board of directors.

(b) A corporation must obtain the approval of the department for the payment of a dividend if the total of all dividends declared by the corporation during the calendar year, including the proposed dividend, would exceed the sum of the net income for the year to date combined with its retained net income for the previous two (2) years.

(c) As used in subsection (b), "retained net income" means the net income of a specified period, calculated under the consolidated report of income instructions, less the total amount of all dividends declared for the specified period.

(d) The department may establish criteria for a corporation to be exempt from the dividend approval requirements of this section. In establishing the criteria, the department shall consider:

- (1) the corporation's composite uniform financial institutions rating assigned as a result of the corporation's most recent federal or state examination, or in the case of a corporate fiduciary, the corporate fiduciary rating assigned as a result of the corporate fiduciary's most recent state examination;
- (2) the resulting Tier 1 leverage capital ratio; and
- (3) the existence of any corrective or supervisory order or agreement.

*As added by P.L.14-1992, SEC.163. Amended by P.L.122-1994, SEC.119; P.L.262-1995, SEC.84; P.L.176-1996, SEC.28; P.L.11-1998, SEC.22; P.L.90-2008, SEC.77.*

#### **IC 28-13-4-4**

##### **Withdrawal of capital stock prohibited**

Sec. 4. A corporation may not, during the time it continues in business as such, withdraw or authorize or permit to be withdrawn any portion of the capital stock in the form of dividends or otherwise. *As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.85; P.L.258-2003, SEC.25.*

#### **IC 28-13-4-5**

##### **Impairment of capital prohibited; maximum dividend**

Sec. 5. (a) A corporation may not declare or pay any dividends to its shareholders in any form if, by the payment of the dividends, its capital stock will be thereby impaired.

(b) A corporation may never pay a dividend in an amount greater than the remainder of undivided profits then on hand after deducting losses, bad debts, or depreciation that the department may have determined, and all other expenses.

(c) A corporation must obtain department approval before reducing the corporation's capital stock, capital surplus, or preferred stock.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.86; P.L.258-2003, SEC.26.*

#### **IC 28-13-4-6**

##### **Bad debts**

Sec. 6. All debts due to a corporation on which interest is past due for a period of six (6) months are bad debts unless, in the opinion of the department, the debts are well secured.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.87; P.L.258-2003, SEC.27.*

#### **IC 28-13-4-7**

##### **Protective order for increase of capital and surplus or reduction of deposits; time period for compliance; increase in capital by corporate fiduciary**

Sec. 7. (a) The department may, if the department considers it necessary for the protection of the depositors, require any bank or trust company, savings bank, or savings association to increase the capital and surplus or to reduce the amount of the deposits of the bank or trust company, savings bank, or savings association. The department shall, in arriving at a decision whether to order a bank or trust company, savings bank, or savings association to increase the capital and surplus or reduce the amount of the deposits for the protection of the depositors of the bank or trust company, savings bank, or savings association, take into consideration the following:

- (1) Quality of management.

- (2) Liquidity of assets.
- (3) History of earnings and the retention of earnings.
- (4) Quality and character of ownership.
- (5) Burden of occupancy expenses.
- (6) Potential volatility of deposit structure.
- (7) Quality of operating procedures.
- (8) Capacity to meet present and future needs of the area served, considering its competition.

(b) If the department determines that an increase in the capital and surplus or decrease in the deposits is necessary, the department shall enter an order fixing the amount of the increase or decrease. The order shall be complied with within the time period fixed by the order.

(c) The department may require a corporate fiduciary to increase its capital. In deciding whether to order a corporate fiduciary to increase its capital, the department shall take into consideration the following:

- (1) Quality of management.
- (2) Liquidity of assets.
- (3) History of earnings and the retention of earnings.
- (4) Quality and character of ownership.
- (5) Burden of occupancy expenses.
- (6) Quality of operating procedures.
- (7) Ability to administer fiduciary accounts in a prudent manner consistent with applicable laws or regulations.

(d) If the department determines that an increase in capital under subsection (c) is necessary, the department shall enter an order fixing the amount of the increase. The order must be complied with within the period fixed by the order.

*As added by P.L.14-1992, SEC.163. Amended by P.L.262-1995, SEC.88; P.L.258-2003, SEC.28; P.L.213-2007, SEC.103; P.L.217-2007, SEC.101.*

#### **IC 28-13-4-8**

##### **Repealed**

*(Repealed by P.L.79-1998, SEC.112.)*

#### **IC 28-13-4-9**

##### **Parity of shareholder distribution with corporate indebtedness to unsecured creditors**

Sec. 9. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this chapter is on a parity with the corporation's indebtedness to the corporation's general, unsecured creditors except to the extent subordinated by agreement.

*As added by P.L.14-1992, SEC.163.*