



Consultation:

Guidelines on the Distribution of Dividend and Other Distributions for Securities Dealers

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Introduction

The purpose of these Guidelines is to facilitate greater transparency and a standardisation of methodology in relation to the dividend distribution process. The Guidelines set out the minimum criteria and requirements for Securities Dealers prior to declaring dividend payments or other distributions.

Pursuant to Section 76(1) K of the Securities (Amended) Act 2014, no licensed Securities Dealer under the Securities (Amended) Act 2014 shall declare, credit, pay, or transfer abroad, any dividend or other distributions from retained earnings until the conditions set out hereunder are met, to the satisfaction of the Financial Services Commission.

These Guidelines should be adhered to in conjunction with the Securities (Prudential) Regulations, 2014, the Securities (Amended) Act 2014, and any relevant guidelines.

These Guidelines shall apply to all Securities Dealers licensed under Securities (Amended) Act 2014.

Definitions

“dividend” refers to corporate profits allocated, lawfully declared, and approved by the directors to be paid to the stockholders at a fixed time.

“licensee” refers to person (natural/juristic) that is licensed under the Securities (Amended) Act 2014.

“Retained Earnings” refers to the accumulated profits realised out of normal and continuous operations of the licensee after deduction of distributions to stockholders and transfers to capital stock or other accounts. The Retained Earnings shall be the amount as shown in the financial statements audited by the licensees’ independent auditor.

“Unrestricted Retained Earnings” refers to the amount of accumulated profits and gains realised out of the normal and continuous operations of the licensee after the deduction of distributions to stockholders and transfers to capital stock and other accounts which is:

- (1) Not appropriated by the board of directors for corporate expansion projects or programmes;
- (2) Not covered by a restriction for dividend declaration under a loan agreement; and
- (3) Not required to be retained under special circumstances obtaining in the licensee such as which there is a need for a special reserve for probable contingencies.

1. Eligibility Criteria for Declaration of Dividend or Other Distributions

A. Generation of Actual Earnings or Profits

Dividends, whether cash, property, or stock, shall be declared out of unrestricted retained earnings of the Licensee. Accordingly, a licensee cannot declare dividends when it has zero or negative retained earnings (Retained Earnings Deficit). As such, the surplus profits or income must be a bona fide income founded upon “actual earnings or profits”.

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In light of the above, a condition precedent for the declaration of dividend or other distributions is the existence of surplus profits that are appropriated from the operations of corporate business.

B. Prudential Criteria

A licensee will be eligible to declare dividends or other distributions only when it is compliant with the following minimum prudential requirements:

- I. The capital adequacy requirements as per Section 3 (1) and (2)A and liquidity requirements as per Section 16 (1) and (2) of the Securities (Prudential) Regulations 2014.
- II. Its future capital adequacy and/or liquidity remain sound.
- III. Impairment in amounts paid as “stated capital” or “assigned capital” has been made good.
- IV. Adequate provision, to the satisfaction of the FSC, has been made in respect of impaired credits.
- V. The distribution(s) would be made out of the retained earnings after deducting:
 - a. any interim losses incurred since the last financial reporting period;
 - b. losses arising from changes in fair value upon revaluation of assets, including financial assets measured at Fair Value through Other Comprehensive Income (FVOCI), which have not been accounted for in retained earnings; and
 - c. any gains resulting from the revaluation of assets, including financial assets measured at FVOCI, and other unrealised gains, which have been included in retained earnings.

C. Other Criteria

- I. The Licensee should comply with the prevailing regulations/ guideline(s) issued by the FSC.
- II. The proposed dividend should be payable based on the current year's profit.
- III. All proposed special dividend should be subject to a non-objection by the FSC.
- IV. The FSC has not placed any explicit restrictions on the licensee related to the declaration of dividend.
- V. Any other criteria that the FSC may prescribe, from time to time, by amending these Guidelines.

2. Retained Earnings Available for Dividends

- I. Only realised profits (gains) may be distributed as cash dividend by licensees.
- II. From an accounting purview, the following items detailed below affect the unrestricted retained earnings of Licensees:
 - a) Nominal or temporary or income statement accounts closed to Income and Expense Summary at the end of the period to determine actual results of operations during the period and further closed to Retained Earnings Account;
 - b) Effects of changes in accounting policy;
 - c) Foreign exchange gains and losses;
 - d) Actuarial gains or losses;
 - e) Share in the additional income of associated/ joint venture accounted under equity method of accounting;
 - f) Dividend declaration during the period;
 - g) Appropriation of Retained Earnings during the period;
 - h) Reversals of appropriations;

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- i) Effects of prior period adjustments;
 - j) Treasury shares.
- III. As per these Guidelines, “actual earnings or profits” as outlined in Section 1A above shall be the net income for the year based on the audited financial statements, adjusted for unrealised items as detailed below:
 - a) Share/equity in net income of the associate or joint venture accounted for equity method as the same is not yet actually earned or realised. It is only after the investee company declares such income as dividend that said income is actually realised or the earnings become available for dividend declaration. Given the effect of the investment account, only cash or property dividends declared by the investee-company shall be considered as earnings declarable as dividends by the investor company.
 - b) Unrealised foreign exchange gains, except those attributable to cash and cash equivalents, for the time being that are not yet actual income prior to realisation of such foreign exchange gains.
 - c) Unrealised gains from illiquid asset valuations when the licensee chooses the option of recognising asset valuation gains or losses directly to the profit or loss statement.
 - d) Unrealised actuarial gains when the licensee chooses the option of recognising actuarial gains or losses directly to the profit or loss statement.
 - e) Fair value adjustment or gains arising only from marked-to-market valuation which are not yet realised.
 - f) The amount of recognised deferred tax asset that reduce the amount of income tax expense and increase the net income and retained earnings until realised.
 - g) Adjustment due to deviations from IFRS of the audited financial statements which results to gains.
 - h) Other unrealised gains or adjustments to the retained earnings brought about by certain transactions accounted for under IFRS.
 - i) Other adjustments that the FSC may prescribe, from time to time, by amending the Annex A of these Guidelines.

3. Quantum of Interim Ordinary Dividend

Licensees may also declare and pay interim dividends based on the relevant accounting period's profit if the minimum criteria prescribed in Section 1 above and the other requirements prescribed in Section 2 are satisfied.

Licensees, that fulfil the eligibility criteria set out in Section 1 above, may declare and pay interim dividends, subject to the following:

- I. The licensee's interim dividend payout ratio shall not exceed 50 per cent of their dividend policy.

[Dividend payout ratio shall be calculated as a percentage of 'dividend payable in a year' (excluding dividend tax) to 'actual earnings or profit adjusted for items under Section 2 III during the year'.]
- II. Licensees with interim dividend payout ratio exceeding 50 per cent of their dividend policy are required to submit to the FSC for special approval to declare and pay dividend and other distributions.
- III. In case the profit for the relevant period includes any extra-ordinary profits/ income, the payout ratio shall be computed after excluding such extra-ordinary items for reckoning compliance with the prudential payout ratio.

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- IV. The financial statements pertaining to the financial year for which the licensee is declaring a dividend should be free of any qualifications by the statutory auditors, which have an adverse bearing on the profit during that year. In case of any qualification to that effect, the net profit should be suitably adjusted while computing the dividend payout ratio.

Declaration and payment of interim dividends beyond the prescribed ceiling requires prior approval from the FSC.

4. Affirmation Process for Declaration of Dividend or Other Distributions from Retained Earnings

Licensees seeking to declare dividend or other distributions from retained earnings shall submit to the FSC a written application, together with the following documents:

- I. A resolution from its board of directors authorising the payment of dividend or other entitlements from retained earnings. The amount to be paid or transferred shall be clearly specified.
- II. The latest audited financial statements of the licensee which have been approved for issue by its board of directors, including the External Auditor's.
- III. Management Letter and the External Auditor's Report on Maintenance of Accounting and Other Records and Internal Control Systems, which have been signed.
- IV. A report from the External Auditors of the licensee, in accordance with the Public Accountancy Board confirming:
 - a. the solvency, capital adequacy and liquidity position of the licensee post payment of dividend or other distributions from retained earnings;
 - b. a financial forecast (under baseline and stress scenarios) and assumptions for a period of 12 months from the date of distribution of dividend; and
 - c. a certified copy of the certificate of solvency test duly signed by the members of its board.

5. Reconciliation of Retained Earnings for Dividend Declaration

For Licensees under the Securities Act 2014, the reconciliation of retained earnings under Annex A of these Guidelines shall be submitted as part of the audited financial statements as well as part of the application to the FSC.

The Licensee is also required to provide in their financial statements a description of any appropriation or restriction on their retained earnings.

6. Board Oversight

The board of the licensee shall establish a dividend policy using conservative and prudent assumptions such that the applicable regulatory requirements are still adhered to after any distribution of profits.

Dividend payments or other distributions from retained earnings by licensees shall be based on its dividend policy.

The board of the licensee shall, among other things, take into consideration the following aspects while deciding on the proposals for declaring dividend or other distributions from retained earnings:

- i. adherence to the eligibility criteria set out in Section 1;

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- ii. the potential losses as well as the potential impact on capital due to anticipated changes in the legal, regulatory and accounting frameworks;
- iii. the latest audited accounts and interim financial statements of the licensee;
- iv. other risks that may affect the financial condition of the licensee;
- v. the financial forecasts (under baseline and stress scenarios) for a period of 12 months from the date of distribution of profits;
- vi. any interim dividend paid; and
- vii. the Licensee's long term growth plans.

7. Enforcement

A failure to comply with the requirements outlined in these Guidelines may result in the FSC taking enforcement actions.

8. Transitional Arrangements

Licensees shall fully implement the requirements of these Guidelines within three months from its effective date.

Consultation Period

The FSC invites comments on all aspects of this paper. Comments should be submitted in hard copy or via email, on or before August 22, 2023.

Comments may be submitted to:

The Senior Director, Securities
Financial Services Commission
39-43 Barbados Avenue
Kingston 5

Or by email to:

securities@fscjamaica.org

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Annex A: Return – Reconciliation of Retained Earnings for Dividend Declaration

Name of Licensee Address of Licensee Nature of Dividend Declared		(Figures based on functional currency audited financial statements)	
Unappropriated Retained Earnings, as adjusted to available for dividend distribution, beginning		XXX	
Add: Net income actually earned/ realised during the period			
Net income during the period closed to Retained Earnings		XXX	
Less: Non-actual/unrealised income net of tax			
Equity in net income of associate/joint venture		XXX	
Unrealised foreign exchange gain – net (except those attributable to Cash and Cash Equivalents)		XXX	
Unrealised actuarial gain		XXX	
Fair value adjustment (M-t-M gains)		XXX	
Fair value adjustment of Investment Property resulting to gain		XXX	
Adjustment due to deviation from IRFS - gain		XXX	
Other unrealised gains or adjustments to the retained earnings as a result of certain adjustments to retained earnings as a result of certain transactions accounted for under IFRS		XXX	
Sub-total		XXX	
Add: Non-actual losses			
Depreciation on revaluation increment (after tax)		XXX	
Adjustment due to deviation from IFRS - loss		XXX	
Loss on fair value adjustment of investment property (after tax)		XXX	
		XXX	
Net income actually earned during the period			XXX
Add (Less):			
Dividend declaration during the period		(XXX)	
Appropriations of Retained Earnings during the period		(XXX)	
Reversals of appropriations		XXX	
Effects of prior period adjustments		XXX	
Treasury shares		(XXX)	

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TOTAL RETAINED EARNINGS, END
AVAILABLE FOR DIVIDEND

XXX

XXX