

*Dividends*

**Dividend Payment : Protection of shareholders' interests**

*The Companies (Amendment) Act, 2000 has brought about several major changes in the provisions of the Companies Act, 1956, including provisions for declaration and payment of dividend, both interim and final. In this article, the author critically examines the changed legal position with regard to declaration and payment of dividend and shows how now greater protection has been accorded to shareholders' interests - EDITOR*

**Introduction**

1. In order to safeguard the interests of shareholders, the Companies (Amendment) Act, 2000 has made changes in the Companies Act, 1956 ('the Act') which have far reaching effects as far as payment of dividend is concerned. The new provisions are to be whole-heartedly welcomed as they are for the benefit of shareholders, specially the provision relating to, deposit of dividend including interim dividend amount in a special bank account within five days of declaration, which has been introduced in the act for the first time.

**Interim dividend at par with final dividend**

2. Until now there was no provision in the Act dealing with interim dividend and companies used to pay interim dividend only on the basis of the powers vested in the Board of Directors by their articles of association but now the Act has for the first time recognised the term 'interim dividend', as a new clause (14A) has been inserted in section 2 of the Act which says that 'dividend' includes interim dividend. The implication of this change is that the provisions which were till now applicable to final dividend only have been made applicable to interim dividend also.

**Period allowed for payment of dividend reduced**

3. Earlier section 205A(1) of the Act provided a period of 42 days for payment of final dividend but no time limit was prescribed for payment of interim dividend, therefore companies took their own time for payment of interim dividend after approval of the same at a board meeting.

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Therefore, in certain cases shareholders had to wait for even four to five months for receiving interim dividend warrants, but now section 205A(1) has been amended as a result of which the period for disbursing dividend has been reduced from 42 days to 30 days, and as 'dividend' includes 'interim dividend', this means that interim dividend also needs to be paid within 30 days. This is likely to solve the problems of shareholders to a great extent as now they will know with certainty the date up to which they will receive interim dividend payments.

#### **Dividend amount to be kept in separate bank account**

4. Moreover, a new sub-section (1A) has been inserted in section 205 which provides that the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration. As we know that decision to pay interim dividend is taken at a board meeting whereas final dividend is declared at the Annual General Meeting (AGM), this means that interim dividend will have to be deposited in a bank account within five days of the board meeting whereas final dividend will have to be deposited within five days of the AGM.

Sub-section (1B) further provides that the amount of dividend including interim dividend so deposited shall be used for payment of dividend. In other words this amount is not to be utilised for any other purpose. This is a very welcome move as now companies have been restrained from revoking dividend once it has been decided to be paid. Earlier some of the companies used to announce interim dividend in order to give an impression in the market that their performance is good as a result of which share prices of such companies started moving upwards which gave an opportunity to their promoters to offload their shares in the market and afterwards they revoked dividend by passing a resolution rescinding the earlier resolution.

#### **Loophole plugged**

5. The new provisions have effectively plugged this loophole, as now within five days of declaration the whole amount of dividend has to be deposited in a separate bank account. In other words, one of the interpretations of the new provisions is that if at all the management wants to revoke any interim dividend, it must do the same within four days of declaration of dividend, because in any case the amount must be deposited in the bank account on the fifth day. However, in this respect it may be noted that companies may find it somewhat difficult to comply with the provisions at the time of payment of interim dividend, since a bank account has to be opened within five days of the decision to pay interim dividend at a board meeting and the entire amount of dividend has to be deposited in the bank account at such a short notice. As a result of this change, it is expected that although the time permitted under the Act for postage of dividend warrants is 30 days, but companies will try their best

to post dividend warrants as soon as possible, otherwise the amount will lie unutilised in bank account till the dividend warrants are despatched.

### **Punishment/other adverse consequences in case of default**

6. Section 207 of the Act has been substituted by a new section which provides that where dividend has been declared by a company but dividend warrant has not been posted to any shareholder within 30 days from the date of declaration of dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to fine of one thousand rupees for every day during which such default continues. In addition to this, the company shall be liable to pay simple interest at the rate of 18 per cent per annum. This is in sharp contrast to the earlier provisions of section 207 which provided for imprisonment of 7 days in case of default and had no provision for penalty or interest. However, the provision introduced is not one-sided as certain defences are available to the directors of the companies as a company has a right to detain dividend payments in some specified cases without attracting penal provisions of the Act. One of the aspects which has been ignored completely by the act is that there is no provision in the new section regarding the consequences that will follow if a company makes a default in depositing the dividend amount in bank account within five days of declaration but posts the dividend warrants within the prescribed period of 30 days.

A new sub-section (g) has been inserted in section 274(1) of the Act and according to the provisions of this sub-section, if a public company fails to pay dividend and such failure continues for one year or more, then any person who is a director of the company at the time when default is made, shall not be eligible to be appointed a director of any other public company for a period of five years.

### **Conclusion**

7. It is expected that the introduction of these stringent provisions, fraudulent promoters will stay away from making false declarations of dividend to push up their share prices which will pave way for development of a healthy capital market. The directors of companies need to be a lot more careful while declaring dividend, lest any default is committed which can put them in trouble.

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