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The Companies Act, 2013 has provided various new definitions and new provisions which did not exist in the erstwhile Companies Act, 1956. Such new concepts have been introduced in view of the global corporate governance trends and to make the Companies accountable for their stakeholders.

This issue of **InSync** aims at explaining few such concepts introduced for the first time in the Companies Act, 2013.

Dividend

You can claim your unpaid dividend transferred to IEPF!

The term dividend was neither defined in the erstwhile Companies Act, 1956 nor in the present Companies Act, 2013, and merely provides that *dividend includes interim dividend*. Dividend is profit of the Company distributed amongst the shareholders. The major difference brought out by the new statute is the provisions of transfer to the Investor Education and Protection Fund (IEPF).

Pursuant to the erstwhile **Section 205C of the Companies Act, 1956** any dividend which is unclaimed and unpaid for a period of 7 years from the date they became due for payment shall be transferred to the IEPF

No specific definition of dividend the Companies Act, 1956 as well as the Companies Act, 2013.

Dividend includes interim dividend. Dividend is profit of the Company distributed amongst the shareholders.

Section 205C of the Companies Act, 1956 provided that any dividend which is

account of the Central Government. Further, the **explanation to the Section 205C(2)** clearly stated that subsequent to the transfer of unpaid dividend to the IEPF Account no claims shall lie against the Fund or the company and no payment shall be made in respect of any such claims. This limitation period posed difficulties for persons having huge sums of money transferred in IEPF Account. At present thousand of crores are being kept in IEPF and seems a huge prejudice against the persons who were unable to claim it within the limitation period.

To counter this anomaly, proviso to **Section 125(3) of the Companies Act, 2013** grants a liberty to persons whose dividends have been transferred to IEPF to claim the refund of the said dividend. One of another major change in the provisions relating to dividend is the transfer of 'Shares' in respect of which no dividend is claimed or paid for a consecutive term of Seven years. **Section 124(6)** clearly states the fact that all shares in respect of which dividend has not been paid or claimed for seven consecutive years or more shall be transferred in the name of IEPF. However, the shareholder shall have the right to claim the shares and the dividend thereon from the Fund in accordance with rules made therein. The provisions of IEPF under the new Act are not yet enforced and will change the scenario of the procedures and hardships involved with the management of the huge data of investors at the end of the Company

unclaimed and unpaid for 7 years from the date they became due for payment shall be transferred to the IEPF account of the Central Government

Explanation to the Section

205C(2) stated that subsequent to the transfer to IEPF Account, no claims shall lie against the Fund or the company.

Section 125(3) of the Companies Act, 2013 grants a liberty to persons whose dividends have been transferred to IEPF to claim the refund of the said dividend. However, the same is yet to be enforced.

Companies Act, 1956 did not specifically provided any restriction on the Insider Trading of Securities and the same was governed

Prohibition on Insider Trading of Securities

The erstwhile Companies Act, 1956 did not prescribe any restriction on the Insider Trading of Securities. The said restriction was expressly stated through the Insider

by the Insider Trading Regulations prescribed by SEBI.

SEBI guidelines on Insider Trading applicable only on listed companies.

Section 195 of the Companies Act, 2013 restricts every company from entering into Insider Trading.

Section 195 prohibits directors and the key managerial personnel of every company from entering into any insider trading.

The term price sensitive information shall mean any information which relates to a company and which if published is likely to materially affect the price of securities of the company.

Any contravention of Section 195 shall make the person punishable with an imprisonment for a term up to 5 years or

Trading Regulations prescribed by SEBI. However, the same was mandated only on the listed companies. For unlisted and private companies the same acted as a fiduciary duty on its directors and senior managerial personnel. Section 195 of the new Companies Act, 2013 prohibits directors and the key managerial personnel of every company from entering into any insider trading.

Section 195 defines the term *Insider Trading* as:

- a. an act of subscribing, buying, selling, dealing or agreeing to subscribe, buy, sell or deal in any securities by any director or key managerial personnel or any other officer of a company either as principal or agent if such director or key managerial personnel or any other officer of the company is reasonably expected to have access to any non-public price sensitive information in respect of securities of company; or
- b. an act of counselling about procuring or communicating directly or indirectly any non-public price-sensitive information to any person.

The term *price sensitive information* shall mean any information which relates, directly or indirectly, to a company and which if published is likely to materially affect the price of securities of the company.

Any contravention of said section shall make the person punishable with an imprisonment for a term which may extend to 5 years or with fine which shall not be less than Rs 5 Lacs but which may extend to Rs. 25 Crores or three times the amount of profits made out of insider trading.

However, it grants a blanket exemption from the prohibition on the trading of securities if the trading is made after or during the communication required in the ordinary course of business or profession or employment or under any law.

with fine of Rs 5 Lacs but which may extend to Rs. 25 Crores or three times the amount of profits made out of insider trading.

The new Act do makes a superior attempt to counter insider trading in securities of the companies by its directors and KMP, however, in the current scenario when it merely prohibits the same without any adjoining rules or procedures in this behalf, it makes it impossible to judge the compliance of the said provision. We may see certain concrete rules in future which may act as a guiding principles for the compliance of the said provision.

For any clarification or delineation, feel free to contact us.



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