

Ease of doing business: Dual control of book closure/ record date of listed entities needs to be simplified

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Every shareholder, debenture-holder, or other security holder (collectively stakeholder) in a company is entitled to certain statutory entitlements and other benefits extended by the company to any of the stakeholder.

Preference shareholder or debenture-holder is entitled to the agreed rate of dividend and interest.

The equity shareholder is entitled to any dividend declared by the company on his holding.



Besides all these, companies do come out with rights issue, bonus shares or issue of shares for conversion of debentures or of rights attached to debentures or for such any other purposes; and these are to be distributed among the eligible stakeholders.

It is, therefore, necessary for the company to identify the name of the stakeholders and their holdings on a particular date so as to distribute the same to the respective stakeholder.

Record date/ book closure date is a very vital date, as it is the date which lets the company to ascertain the names of stakeholders or any beneficial owners who are entitled to receive statutory benefits from the company or who are eligible to participate in a particular corporate action.

Liberalisation and globalisation of businesses encourage corporate to consider merger, de-mergers and to consolidate the enterprises for effective control and cost of savings for better results and market consolidation. Decades ago, companies would fix the nominal value of the share price at rupees ten or rupees one hundred each.

The association of foreign entities with the Indian corporate sector enhanced the value of shares of several companies to greater heights.

This necessitated foreign institutional buyers to join hands with Indian institutional buyers resulting in great demand for shares of well-established companies which adopt good corporate governance.

Small investors are unable to buy the shares of such good companies due to high value of shares in the market. Companies in order to encourage participation of small investors slowly reduced the nominal value of shares which has resulted automatically in lowering the value of shares in the market proportionately. Such a move is termed as spilt in shares. The corporate actions as well as spilt in shares also needed a cut-off period to identify eligible stakeholders.

Therefore, for all the situations discussed above, companies have to decide record date/ book closure dates of the register of members or debenture-holders so as to identify eligible stakeholders for the same.

Besides the two securities, namely, the shares and debentures, companies do consider various methods of raising funds as prevalent in global markets. The Companies Act, 2013 (the Act) rightly added “other security holders” with its earlier provisions for the power to close register of members or debenture-holders.

Minimum period of notice

The Act and the Rules made thereunder provide for all unlisted companies to give at least seven days previous notice, if at all such companies consider closing the register of members or debenture-holders.

Listed companies or companies which intend to get their securities listed have to follow the guidelines prescribed by the Securities and Exchange Board of India (SEBI). SEBI in its recent Listing Obligations and Disclosure Regulations (LODR) which is effective from December 2, 2015 prescribed seven working days excluding the date of intimation and record date.

LODR differs from the Act and requires seven working days plus two days of date of intimation and record date and the Act requires only seven days of notice. That means as per LODR the listed companies shall have to give at least 7+2 days of notice to the stock exchanges also where they are listed or intend to get listed.

Mode of disclosure

LODR requires that the companies have to disclose the date of closure of register of members or debenture-holders to all stock exchanges at which the securities are listed. Besides, it provides that the same need to be uploaded on the company’s web site.

Whereas the Rules under the Companies Act, 2013, require that the intimation has to be given by releasing an advertisement at least once in a

vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated. It also requires that the listed companies do publish the notice on the web site, if any, of the company and publish the same on the website as may be notified by the Central Government.

The Rules, of course, give some concessions for private companies and require that the notice has been served on all members of the private company not less than seven days prior to closure of the register of members or debenture-holders or other security holders.

Private companies whose debt securities or preference share are listed are relieved from publication of advertisement. Such liberal condition can be extended to public companies and all listed companies.

LODR provides that listed companies may consider record date instead of book closure for matters such as: (a) declaration of dividend; (b) issue of rights or bonus shares; (c) issue of shares for conversion of debentures or any other convertible security; (d) shares arising out of rights attached to debentures or any other convertible security; (e) corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available; and (f) such other purposes as may be specified by the stock exchange.

However, for securities held in physical form, the listed entity may announce dates of closure of its transfer books in place of record date for complying with requirements as specified in paragraphs (a) to (d) discussed above. Provided that the listed entity shall ensure that there is a time gap of at least thirty days between two dates of closure of its transfer books.

Maximum number of days of book closure

The Act provides two situations. First, the aggregate period of closure for each year shall not exceed forty-five days. Second, the closure shall not exceed thirty days at any one time.

There is no such condition attached in LODR. However, LODR has a different restriction; thereby, between two book closures there must be a minimum gap of thirty days.

Minimum period of notice in case of IDR

Where listed entity fixes the record date for the purpose of the payments of dividends or distribution of any other corporate benefits to IDR holders, they shall give the notice in advance of at least four working days instead of seven working days to the recognised stock exchange(s) of record date specifying the purpose of the record date.

Penal provisions

The Act has modified the penal provisions to some extent. Earlier, the fine of rupees five hundred was leviable for each day of default continues. But in the Companies Act, 2013 the penal provisions are extended by rupees five thousand for every day of default continues and fixed a maximum fine of rupees one lakh.

However, such a default is one-time offence and it should not be a continuous default. Listed companies are punishable under LODR as per the discretion of SEBI. The company will be liable for penalty if it fails to give proper notice or for a continuous or an aggregate period in excess of the limit as specified in the Act and also in the LODR and, therefore, the Act should not have such a penal provision for listed companies and shall be left to the discretion of SEBI.

Conclusion

The closure of register of members or debenture-holders or other security holders or fixing record date is basically for the stakeholders' benefit and to identify those stakeholders who are entitled to receive such corporate benefits and actions.

The Act has to consider and dispense with the provisions relating to listed entities and the same is to be monitored or directed by SEBI. The Act has rightly introduced the concept to private limited companies; thereby, if the communication of such book closure is available to all stakeholders it would be sufficient compliance.

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