Sebi to align governance norms with Cos Act

Proxy advisers split on reducing threshold to 50%, oppose proposal to change related party to interested party

The Securities and Exchange Board of India (Sebi) will align its corporate governance norms in accordance with amendments to the Companies Act legislated in May this year by Parliament.

The ministry of corporate affairs (MCA) wrote to Sebi after the Companies Act was amended asking it to align its norms with the law. In an interview with Business Standard earlier this week, Sebi Chairman U K Sinha said the norms would be changed.

According to the amended Companies Act, 50 per cent of minority shareholders need to vote for a resolution against the 75 per cent required by Sebi under Clause 49 of listing rules.

“In our draft discussion paper on corporate governance, we had provided for a majority of the minority. But when the final Companies Act was in place, it became special resolution. The government has realised this is not practical. So it sought our comments. We recommended that the majority of the minority was the right thing,” Sinha said.

“This will strike the correct balance between interested and disinterested shareholders. While it will not allow interested shareholders to vote at all, at the same time it will only give a simple majority right to disinterested shareholders, thereby stopping them from blocking genuine related- party transactions,” said Lalit Kumar, partner at J Sagar Associates.

"By reducing the threshold, the ministry and regulator seem to have yielded to corporate pressure. This is a retrograde step, as it weakens minority shareholders.

A good company should ideally not have any related- party transaction, and corporate India has abused such transactions for years," said Shriram Subramanian, founder and managing director of InGovern Research Services, a proxy adviser firm.

Amit Tandon, founder, IIAS Proxy Advisors, however, said they could live with the 50 per cent threshold. “Coming down from the staunch 75 per cent does seem like a dilution, but governments are elected with a 50 per cent majority. So, this will ease business,” said Tandon.

Proxy advisers are more concerned about a change in the clause for determining a related party and are urging Sebi not to go through with it.

According to the MCA, the term related party refers only to those related contractually to the resolution being passed.

On the other hand, Clause 49 provides all entities under the definition of related parties must abstain from voting, irrespective of whether they are a party to a particular transaction.

"This provision will make the need for shareholder approval for related- party transactions frivolous, as interse transfers between promoter entities do not need shareholder approval. This will reduce the rights of minority shareholders more than the provision that changes special resolution to ordinary," said Subramanian.

“Most promoter shareholding is held through a series of entities (companies, trusts and partnerships) and is also spread across a catalogue of family members. With the amendments, the family and promoter entities not directly involved in the transaction can vote on the transaction, since they are not interested parties.

This cuts the powers of minority shareholders at the knees,” said Tandon.

On the other hand, lawyers said even if Sebi amended the approval from special resolution to ordinary resolution, the relief would be limited since, according to Clause 49, the related party would still not be able to vote on any resolution irrespective of whether it was a related party in the context of that particular transaction.

(Business Standard)