IN-DEPTH

Shareholder Rights And Activism

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Shareholder Rights and Activism

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Contributing Editor

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In-Depth: Shareholder Rights and Activism (formerly The Shareholder Rights and Activism Review) is an invaluable primer on these aspects of shareholder activism worldwide. As both shareholder activists and the companies they target have become more geographically diverse, it is increasingly important for legal and corporate practitioners to understand the legal framework and emerging trends of shareholder activism in the various international jurisdictions facing activism.

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Summary

Introduction

As recently as 15 years ago, shareholder activism in India was limited, but that picture has significantly changed.

At that time, the institutional investors' base was more passive and 'promoters' (i.e., the original founders of companies and their families) exerted control over listed companies with little fear of challenge. However, much has changed over this period. Legislative and regulatory changes have improved corporate governance standards, enhanced minority shareholder rights, created new shareholder remedies, codified directors' duties and encouraged greater institutional shareholder engagement. Furthermore, succession issues and overleveraged balance sheets have weakened the promoters of listed Indian companies, leading to the loss of control by promoters in certain cases. Also, international investors have been more willing to challenge management in such circumstances. The emergence of judicial support for shareholder rights, particularly in recent landmark judgments, has helped in this regard. Finally, proxy advisers are now active in the Indian market. All of these issues have led to the rise of shareholder activism in India.

Legal and regulatory framework

The ability of shareholders to appoint and remove directors

In India, directors of public companies are appointed by shareholders, just as they are in many other common law jurisdictions. However, there is no mandatory annual re-election requirement for directors of public companies (whether listed or otherwise). Independent directors are appointed for a term of up to five years,[1] and at least two-thirds of all non-independent directors are subject to rotational retirement and re-election (unless the articles require this for all the non-independent directors).[2] There have been some instances of investors being more active with respect to their rights in this regard.

An investor can also seek board representation as a 'small shareholder' by acquiring a small number of shares and then petitioning the company with the support of the lower of 1,000 other small shareholders or 10 per cent of the total number of small shareholders,[3] but this is hard to achieve in practice.[4] Normally, in relation to unlisted companies, the pre-term removal of a director requires an ordinary shareholders' resolution (i.e., approval by a simple majority), and the director must first have been given an opportunity to be heard.[5] For listed companies, there are incremental special resolution requirements in relation to the appointment, reappointment and removal of independent directors.[6] This power was used in May 2018, when institutional investors and certain funds were able to remove a director of Fortis Healthcare in this manner.

The removal of non-statutory responsibilities or designations conferred upon directors does not require shareholder approval. For instance, as discussed further in the subsection on Shareholders' influence over corporate strategy, the articles of Tata Sons did not require shareholder approval for the removal of Cyrus Mistry from his role as chair of the board (although the removal of his directorship required shareholder approval).

Control over executive remuneration

Shareholders have voiced their dissent in many instances by voting down executive remuneration packages. For example, Tata Motors (2014), Apollo Group (2018), Kinetic Engineering, Cyient and Balaji Telefilms (all in 2021), PVR (2021), and Shoba and Havells India (both in 2023). In 2021, the shareholders of Lupin voted down changes to a stock option plan. In May 2024, the majority of Wipro's public shareholders (around 78.4 per cent) comprising 10.31 per cent of the total shareholders voted against giving the CEO a US$4.33 million cash compensation payment. Despite the significant public shareholders' votes, Wipro still secured an overall vote (with 89.69 per cent of total shareholders) in favour of giving the cash compensation to Mr Delaporte.

The ability to requisition shareholders' meetings and postal ballots

Shareholders holding at least one-tenth of voting paid-up share capital can notify the board to requisition an extraordinary general meeting (EGM),[7] and if the board does not call the EGM within 21 days of a 'valid' requisition notice, the shareholders may themselves call the EGM (to be held within three months).[8] If the directors fail to convene an EGM following a valid requisition notice, they become liable for any requisition-related expenses.[9] A recent judgment of the Bombay High Court,[10] following earlier Indian case law, held that 'validity' is determined by reference to compliance with the relevant procedures rather than the object of the resolution. This is a departure from English and Australian law.[11] Ultimately, other developments led to the investors withdrawing their requisition, but the case is seen as significant in the context of establishing judicial support for shareholder activism in India.

Indian company law does not provide for shareholder written resolutions, but postal ballots are permitted.[12]

Shareholders' influence over corporate strategy

Under Indian company law, directors have the authority to manage company affairs. Public campaigns for a change of strategic direction are uncommon, but certain shareholder approval requirements do keep management and promoters in check.

Although there is no Indian equivalent as comprehensive as the 'class tests' under the UK Listing Authority's Listing Rules, the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations 2015 (the Listing Regulations) require shareholders' special resolutions (i.e., a 75 per cent approval threshold) for any disposal of a controlling interest in a 'material subsidiary' or any transfer of a significant portion of the subsidiary's assets.

Regardless of listing status, as a result of statutory special resolution approval requirements, minority shareholders holding more than 25 per cent of a company's voting power can influence certain key corporate actions, such as the issuance of new shares,[13] on a non-pre-emptive basis (which will affect non-cash consideration in M&A transactions), any transfer of an undertaking by a public company[14] (which is the most direct statutory control over M&As) and any borrowing by a public company in excess of certain thresholds (which will affect the financing of M&A transactions).[15]

Additionally, qualifying related-party transactions require shareholder approval (simple majority) under both company law[16] and the Listing Regulations[17] with no related parties voting.[18]

Finally, the Listing Regulations provide for the rights of shareholders to 'participate in, and to be sufficiently informed of, decisions concerning fundamental corporate changes' and a principle requiring the 'protection of minority shareholders from abusive actions by, or in the interest of, controlling shareholdings either directly or indirectly, and effective means of redress'. Boards of listed companies do need to be wary of potential investor complaints to SEBI in this regard.

The position of shareholders and boards in public M&A situations

Indian law confers various protective rights to shareholders in public M&A situations. There are restrictions on the board taking frustrating action,[19] and defences such as poison pills are difficult to implement. In addition, although there is no formal obligation under Indian takeover regulations to treat shareholders equally in a bid situation, equality of treatment is a guiding principle under the Listing Regulations, and thus it would be difficult for a target to provide selective information to certain bidders.[20]

Furthermore, just as in England and Wales, M&A transactions can be structured through court schemes, which need to be approved by a majority of shareholders holding 75 per cent in value of the shares.[21] SEBI also requires the approval of a majority of public shareholders in certain schemes, which increases their influence. SEBI has recently amended this circular to include additional shareholder safeguards, including recommending independent directors so that schemes involving listed companies are not detrimental to the interests of shareholders and require greater audit committee scrutiny.-[22]

Although hostile takeovers are uncommon,[23] shareholders are now more willing to exercise their rights in public transactions. For instance, in 2024, the proposed delisting of ICICI Securities was opposed by 6 per cent of the retail shareholding base on account of concerns around valuation and independence of the voting process and an attempt was made to use the 'class action' route to oppose this transaction. Although the National Company Law Tribunal ultimately dismissed the objections and approved the delisting scheme in October 2024, the prominence of the shareholder opposition is notable. Also, while the litigation was pending, SEBI issued a warning to ICICI Bank on the outreach undertaken by several of its executives to shareholders to vote in favour of its delisting, suggesting a greater regulatory focus on the protection of public shareholders' interests.

Legal remedies available to shareholders

The Companies Act 2013 (CA 2013) is perceived as having significantly improved shareholders' legal remedies, although the litigation process in India can be lengthy.

Minority shareholders (comprising 100 members, or shareholders holding 10 per cent voting power) can claim relief against oppression and mismanagement under CA 2013 on the ground that the company's affairs are being conducted in a prejudicial manner.

Furthermore, a similar threshold of shareholders can, in certain circumstances, apply to the National Company Law Tribunal (NCLT) to investigate the company's affairs.[24]

However, cases under the preceding company law (CA 1956) indicate that claimants historically found success difficult to achieve.[25] For instance, the Supreme Court judgment in *Tata Consultancy Services Limited v. Cyrus Mistry Limited*[26] illustrates the challenges with the use of some of these provisions. Following differences between Cyrus Mistry, then executive chair of Tata Sons, and Ratan Tata, the former chair, on 24 October 2016, Cyrus Mistry was removed from the executive chair of Tata Sons through a board resolution and was subsequently removed as a director of Tata Sons pursuant to an EGM held on 6 February 2017, and resolutions passed at other EGMs of group companies removed him from their boards. Mistry challenged his removal and questioned historical corporate actions and the use of affirmative voting rights in the articles of Tata Sons. The NCLT ruled against Cyrus Mistry, but the National Company Appellate Tribunal ordered his reinstatement. Ultimately, the Supreme Court ruled against Cyrus Mistry and upheld his removal. The Supreme Court acknowledged that CA 2013 had broadened the scope of an oppression and mismanagement regime. However, it cited Cyrus Mistry's involvement in management in previous decisions, his past acceptance of the articles and the fact that Tata Sons is controlled by two charities in concluding that the NCLT was correct in rejecting Cyrus Mistry's assertions.

CA 2013 has also introduced a 'class action' concept in Indian company law.[27] Shareholders holding a threshold level of shareholding[28] can institute class action suits if they believe that the company's management or affairs are being conducted in a manner that is prejudicial to the interests of the company or its shareholders. The NCLT has the power to issue a broad range of directions and can also order damages. This moves Indian company law away from the restraints of the exceptions to the rule in *Foss v. Harbottle*.[29]

This remedy is starting to be tested. Recently, the shareholders of Jindal Polyfilms launched a class action suit against the company and its promoters and the market is watching the progress of this case with interest.

Other issues activists may face

Similar to other jurisdictions, activist shareholders need to be aware of concert party and insider dealing concerns when engaging with a listed company, as well as the SEBI regulations restricting manipulative, fraudulent and unfair dealings in shares.

As far as disclosure of activist positions are concerned, although companies do not have a general obligation to provide investors with details of specific shareholders' holdings, companies do need to maintain a register of members that is available for inspection.[30] As far as listed public companies are concerned, certain significant acquisitions and disposals do need to be reported to the market, and there are periodic disclosures of promoter positions. CA 2013 has also introduced the concept of a register of significant beneficial owners, which shareholders are able to inspect.[31]

Key trends in shareholder activism

Succession issues

Succession issues have sometimes led to conflict with founders or previous chairs. For instance, in late 2016 and 2017, Infosys, a US and Indian listed IT company with a good governance reputation, faced pressure from its original founder shareholders over the level of certain severance payments. Although an investigation by an international law firm reportedly exonerated the management team, Vishal Sikka, the incumbent CEO, resigned following continued criticism. Similarly, Cyrus Mistry was removed from his role as the executive chair of Tata Sons in 2016.

Litigation versus other strategies

The landscape in relation to litigation is evolving.

In the past, litigation was not seen as a successful strategy. Notably, litigation brought by the Children's Investment Fund (TCI) against the directors of Coal India for breach of fiduciary duties between 2012 and 2014 failed. In 2014, TCI withdrew its court claims and sold its Indian holdings. Furthermore, recent attempts by Cyrus Mistry, the deposed chair of Tata Sons, to seek relief under Sections 241 and 244 of CA 2013 (for oppression and mismanagement) were dismissed by the Supreme Court. Similarly, litigation by minority shareholders of Cadbury in relation to the valuation in a minority squeeze-out scheme failed as the court ruled against the minority shareholder group. In light of this, in certain cases, shareholders have elected to settle rather than pursue lengthy disputes.[32]

However, more recently, the judicial approach has been more supportive. Certain recent judgments have supported attempts by shareholders to requisition EGMs (see the subsection on Judicial support) and shareholders are increasingly seeking judicial redress, although judicial protection of shareholder rights differs from judicial support for shareholder claims against management, and the latter type of litigation is likely to continue to remain challenging.

Another technique that shareholders have used is to register complaints with regulatory authorities.[33] Alternatively, investors sometimes work with the promoters to curb more egregious abuses for which there is likely to be greater institutional investor and regulatory support.

Proxy firms

Proxy advisory firms are now active in the Indian market.

Proxy firms are regulated by SEBI under the SEBI (Research Analysts) Regulations 2014.-[34] Recently, proxy firms have faced criticism over conflicts of interest. Listed companies are able to approach SEBI to investigate any breaches of these guidelines and the code of conduct under the SEBI (Research Analysts) Regulations 2014 if they perceive any conflict issues, but in light of the criticism, SEBI considered the need for further safeguards in a consultation process in 2019. Following this, in August 2020, SEBI published guidelines adopting the recommendations from the consultation process requiring proxy advisers to formulate and publish voting recommendation policies, disclose conflicts and establish processes to mitigate conflicts, among others.[35] The regulatory approach is 'light touch' and focuses on greater transparency rather than imposing incremental restrictions. A major criticism has been the lack of clear guidance on managing conflicts of interest leading to ambiguity and inconsistent conflict management. The absence of clear enforcement mechanisms or penalties for non-compliance also weaken its effectiveness.

As regards their impact, the picture is evolving. Proxy firms are vocal but they do not always succeed. For instance, in August 2024, Institutional Investor Advisory Services India (IiAS), ISS, and Glass Lewis urged shareholders of Godfrey Phillips India to vote against the reappointment of Bina Modi as managing director, citing concerns over the remuneration structure and governance issues. Despite these recommendations, shareholders approved her reappointment and that of her daughter, Charu Modi, as an executive director. Similarly, the appointment of Gautam Singhania as the executive chairman of Raymond Lifestyle Limited was ultimately approved despite significant opposition from corporate governance advisory firms. However, despite these examples, the recommendations of proxy advisers are seriously considered by market participants and they are a key stakeholder in the shareholder activism landscape in India.

Role of the media

Although public campaigns by shareholders seeking strategic changes are uncommon,[36] the media has emerged as a key player; for instance, in the engagement that Narayana Murthy, a founder of Infosys, had with its board in 2016 and 2017.

Increased focus on investor relations

Similarly, investor relations is a key area of focus for larger groups, particularly in difficult situations. For example, the swift response of the Adani Group to allegations of wrongdoing in early 2023 was intended not only to mitigate the risk of lender action but also to manage investor relations.

Greater investor participation

In the past, collective action issues held back shareholder activism, with investors preferring to simply exit their investments. However, regulatory changes are driving greater shareholder engagement. For instance, Indian regulated mutual funds are now required by SEBI to vote on resolutions involving their portfolio companies and provide voting reports on a quarterly and annual basis.[37] In March 2017, the Insurance Regulatory and Development Authority of India published its Stewardship Code concerning investments by insurance companies in listed securities.

In addition, certain international funds have been successful in removing a director (in the case of *Fortis Healthcare*) or seeking to requisition EGMs to replace the board (in the case of *Invesco*). More recently, the shareholders of Byjus have sought to remove certain directors, although this matter is currently being litigated.

Judicial support

In the recent *Invesco* judgment,[38] the Bombay High Court strongly supported the rights of investors to remove directors and highlighted the importance of 'corporate democracy'. The Court adopted an approach that diverges from precedent in other commonwealth jurisdictions, and thus certain issues may ultimately need to be settled by the Indian Supreme Court; however, in the interim, the ruling sets a powerful precedent in favour of investors' statutory rights. This judgment has also been followed by another Bombay High Court judgment where the Court refused an application by the promoters to prevent Yes Bank (a lender that enforced a share pledge) from voting to remove the chair of Dish TV, a company that was, until recently, controlled by the same promoters as those of Zee Entertainment Enterprises Limited (Zee). These suggest that there is greater judicial support for the rights of shareholders.

Recent shareholder activism campaigns

Blocking transactions

There have been a number of instances where shareholders have been able to block adverse transactions. For instance, in November 2015, after pressure from its shareholders, Sun Pharma withdrew from a potential US$225 million investment in the United States. Furthermore, in 2016, HDFC Standard Life Insurance Company Limited and Max Life Insurance Company Limited announced a merger to create a new insurer, and the deal terms included the payment of an 8.5 billion rupee non-compete fee to one of the promoters. Ultimately, the deal did not complete owing to regulatory concerns, but various proxy firms had strongly opposed this fee.

Since shareholders with an interest in related-party transactions cannot vote to approve them, minority shareholders can sometimes be strongly placed. For instance, in 2018, shareholders of Tata Sponge Iron Limited holding just 3.77 per cent of the votes were able to defeat the related-party approval resolutions for this reason. Furthermore, in July 2017, the shareholders opposed a related-party transaction between Raymond Limited and its promoters (involving the sale of an asset at a significant undervalue). More than 97 per cent of the votes cast were against the transaction.[39]

Forcing renegotiation of terms

In certain cases, shareholders have been able to force a renegotiation of terms in large transactions.

The first significant instances of shareholders driving such change arose in 2014 in relation to two prominent situations concerning Maruti Suzuki (which faced criticism for not obtaining shareholder approval for certain contract manufacturing arrangements) and Siemens India (whose shareholders shutdown the proposed sale of its metal technologies business to Siemens AG). In both cases, the transaction terms were modified and the relevant companies obtained shareholder approval.

More recently, in May 2024, majority shareholders of Nestle India opposed the board's proposal to increase the royalty payout to its parent over a period of five years. Similarly, in September 2024, a proposal by Lumax Auto Technologies Limited, to pay commission at the rate of one per cent of net profits to non-executive directors failed to receive the requisite shareholder approval.

In the public M&A context, minority shareholders threatened to challenge a mandatory share swap scheme (announced in December 2019) between Reliance Industries Limited (RIL) and Reliance Retail Limited, on the basis that they had not been provided with an exit option. In January 2020, as a result of this opposition, RIL made this scheme optional. More recently, 6 per cent of the shareholders of ICICI Securities opposed its delisting.

Removal of director

In the past, the dominance of promoters made it difficult for investors to force board-level change.[40] However, this picture is changing. Investors succeeded in removing a director of Fortis Healthcare in May 2018 following investor concerns over the board's assessment of certain bids for the company. Furthermore, in 2019, the board of CG Power and Industrial Solutions removed its promoter from his role as chair (although this was not the removal of a directorship)[41] in the wake of allegations of certain irregularities. More recently, in March 2022,[42] Invesco won a landmark judgment that supported its right to requisition an EGM to reconstitute the board of Zee. Ultimately, Invesco withdrew the requisition, but the judgment opens the doors to similar action in the future. In a related judgment, as mentioned above, the Bombay High Court also refused to support an application to prevent Yes Bank (a lender that enforced a share pledge) from voting to remove the chair of Dish TV, a company formerly controlled by the same promoters as those of Zee. Following this, in Dish TV's EGM held on 24 June 2022, the resolution to reappoint the existing managing director was rejected (with 78.95 per cent of shareholders voting against), and the appointment of certain other directors was also rejected by shareholders.

In February 2024, the shareholders of Byjus sought to remove the founder from its board. The matter is currently being litigated, but it demonstrates that shareholders are now looking at board replacement strategies in cases where they have suffered value erosion.

Voting down director appointment

There have now been a number of instances of shareholders opposing the reappointment of senior incumbent management as directors or even the choice of independent directors and have exercised their vote to make a statement. These have sometimes been used even in relation to well established leaders of business groups. For instance, in July 2018, 22.64 per cent of the shareholders of HDFC Limited voted against the reappointment of Deepak Parekh, the group chair, as a director. Similarly, in September 2018, a significant number of investors opposed the re-election of Kumar Mangalam Birla (head of Aditya Birla Group) to the board of UltraTech Cement. Such opposition has also occurred in more high-profile circumstances in the context of acquisitions and group restructurings. For instance, in November 2024, shareholders of Zee voted against reappointment of the incumbent CEO, Punit Goenka, as a director. Recently, in February 2025, over 97 per cent of the shareholders of Religare Enterprises Limited at the company's annual general meeting, rejected Rashmi Saluja's reappointment as the chairperson and director. In May 2025, the shareholders of IDFC Bank voted against a resolution to amend the bank's articles to provide a right to Warburg Pincus' affiliate to nominate one non-retiring non-executive director on the bank's board.[43]

Year in review

Over the last 12 months, proxy firms have been active and shareholders have also asserted their rights with mixed success. In certain cases, the opposition to the appointment of directors has not succeeded (for instance, in relation to Raymonds and Godrey Philips), but in many instances they have succeeded, most notably in relation to IDFC, as discussed above, and shareholders have been able to challenge corporate actions (for instance, in relation to Nestle and Lumax, as discussed above).

In addition to these, there are two key evolving situations involving shareholder actions. Firstly, the significant loss of value in Byjus and its ongoing lender disputes prompted the shareholders of Byjus to seek removal of its founder from its board. The matter is currently being litigated as the Karnataka High Court has granted a stay since the company is currently also undergoing the corporate insolvency resolution process. It remains to be seen as to how this situation unfolds. Secondly, the minority shareholders of Jindal Poly Films filed India's first high-profile class action suit at the NCLT against the company and its promoters. The allegations are that the sale of certain securities held by the company to a promoter-controlled entity gave rise to the loss of approximately US$290 million. The market is keenly watching this case.

Also, market participants are beginning to explore the possibility of special rights in public listed companies as a result of the recent SEBI change, as discussed below. The market is still exploring the possibilities this offers. On the one hand, it moves away from the traditional notion of equality of shareholders in a public listed company, but on the other hand, it does offer the possibility of increased protection for investors. The key aspect of this is the need for a special resolution every five years, which creates a check that is critical to the optimal functioning of this provision.

Special considerations

SEBI has been at the forefront of regulatory change and has implemented a number of changes that have fostered shareholder activism in India.

Governance review

In previous years, SEBI strengthened governance requirements by accepting some (but not all) of the recommendations of the Kotak Committee. Furthermore, when it introduced enabling changes to permit shares with superior voting rights in listed companies in certain sectors (e.g., technology), it balanced these rights with shareholder protections, including:

1. requiring improved governance standards;
2. requiring that the superior rights be approved by a special resolution;
3. limiting superior rights to 74 per cent and curtailing their use in certain situations; and
4. requiring a five-year sunset period (extendable once).[44]

Board composition

In 2021, SEBI approved certain changes in relation to the position of independent directors. SEBI did not implement all the changes proposed in its earlier consultation paper that preceded these changes; however, the changes implemented include:

1. requiring a special resolution for the appointment and removal of independent directors (but not its earlier proposal of the dual requirement of shareholder approval and non-promoter approval); and
2. strengthening the influence of independent directors in audit committees in relation to the approval of related-party transactions.

There is now also a requirement for listed companies to hold at least one board meeting a year without the presence of non-independent directors. Furthermore, at least two-thirds of the audit committee and nominations and renumeration committee of listed companies must now comprise independent directors (but if there are shares with superior voting rights, the entire audit committee must comprise independent directors).

Finally, SEBI has also introduced changes in relation to the rotation of directors. The continuation of a director on the board of a listed company is now subject to shareholder approval at least every five years from their date of appointment or reappointment with certain limited exceptions.[45]

Shareholder rights

Special rights have been another area of focus for SEBI. In general, SEBI has tried to strike a balance by permitting certain rights, but subject to the satisfaction of various shareholder (and sometimes board) approval requirements to protect the interests of public shareholders.

For instance, SEBI now permits shareholders of listed companies to have special rights, subject to shareholder approval by way of a special resolution once every five years except in certain limited circumstances. This requirement applies to all special rights except in respect of rights granted to financial institutions or debenture trustees under lending or subscription agreements, if they become shareholders as a consequence thereof. The market is still exploring the possibilities this offers, as discussed under the 'Year in review' section above.[46]

Similarly, SEBI permits certain ‘upside sharing’ arrangements between employees (including key managerial personnel) or director or promoter of a listed company and any shareholder or any other third-party regarding compensation or profit sharing in connection with dealings in the securities of such company. These arrangements require board approval and the approval of public shareholders by way of an ordinary resolution (interested shareholders cannot vote).[47] Also to further protect public shareholders, prior shareholder approval (through special resolution with majority public shareholder approval and with no interested public shareholder voting) is now required for selling, leasing or disposing of an undertaking.[48]

Outlook and conclusions

Shareholders are increasingly active in asserting their rights, particularly in larger situations where there has been an erosion of shareholder value. This has been encouraged by a more supportive judicial and regulatory approach. Consequently, every passing year sees an increasing number of shareholder challenges to the appointment of directors and remuneration. Although these actions do not always succeed, the changed landscape means that boards now worry about the prospect of shareholder action. Going forward, we are likely to continue to see further shareholder activism, particularly in relation to board composition and larger and more high-profile transactions involving listed companies.

Endnotes

1 Section 149(10) of the Companies Act 2013 (CA 2013). ^ Back to section

2 Section 152(6)(a) and (c) of CA 2013. One-third of the directors are subject to rotational retirement and can stand for re-election every year. There is also a rarely used alternative in Section 163 of CA 2013, which allows for the concept of proportionate representation for at least two-thirds of the board. ^ Back to section

3 Section 151 of CA 2013 and Rule 7 of the Companies (Appointment of Directors) Rules 2014. For these purposes, a 'small shareholder' is one who holds shares in a listed company, the nominal value of which is less than 20,000 rupees or any other government-prescribed sum. ^ Back to section

4 In August 2017, Unifi Capital failed in its attempt to use this provision. The difficulties of this route were also illustrated in 2021 when the Supreme Court ruled that an 18.37 per cent shareholder could not use this provision to gain board representation in *Tata Consultancy Services Limited v. Cyrus Mistry Private Limited*, Civil Appeals No. 440-441 of 2020 published on 26 March 2021 at Paragraph 19.42. ^ Back to section

5 Section 169(1) of CA 2013. The reference to 'normally' is because this does not apply to directors appointed by proportional representation (which is very uncommon). Furthermore, the removal of a director involves the service of a special notice by the shareholders on the company in respect of such removal. ^ Back to section

6 Under Regulation 25(2A) of the Listing Regulations. If the special resolution fails to be passed, the director can still be appointed with the support of more than (1) 50 per cent of all shareholders and (2) 50 per cent of public shareholders. ^ Back to section

7 Section 100(2)(a) of CA 2013. ^ Back to section

8 Section 100(4) of CA 2013. ^ Back to section

9 Section 100 (6) of CA 2013. ^ Back to section

10 *Invesco Developing Markets Fund and OFCI Global China Fund LLC v. Zee Entertainment Enterprises Limited and Punit Goenka* [2022] 232 CompCas 20 (Bom), which upheld the principles on 'validity' established in *Cricket Club of India v. Madhav Apte* [1975] 45 Comp Cas 574 (Bom) and the right of shareholders as set out by the Indian Supreme Court in *LIC v. Escorts* (1986) 1 SCC 264. ^ Back to section

11 This departs from the principles in certain commonwealth cases (*Queensland Press Ltd v. Academy investments No. 3 Pty Ltd*, 1987 No. 110) and English law (*Rose v. McGivern and others* (1998) 2 BCLC 593), which suggest that meetings need not be held if they are illegal or if they could not be implemented in a legal manner. Section 303(5) of the English Companies Act 2006 also sets certain restrictions in this regard. ^ Back to section

12 Section 110 of CA 2013 and Rule 22 of the Companies (Management and Administration) Rules 2014. ^ Back to section

13 Sections 62(1)(b) and 62(1)(c) of CA 2013. This applies to both public and private companies. ^ Back to section

14 'Undertaking' is defined as any undertaking in which the company's investment exceeds 20 per cent of the company's net worth (as of the audited balance sheet of the preceding financial year) or that generated at least 20 per cent of the company's total income during the preceding financial year. ^ Back to section

15 Section 180(1)(c) of CA 2013. ^ Back to section

16 Section 188 of CA 2013. ^ Back to section

17 Regulation 23(4) of the Listing Regulations. ^ Back to section

18 Second proviso to Section 188(1) of CA 2013 and Regulation 23(4) of the Listing Regulations. ^ Back to section

19 Regulation 26 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011. ^ Back to section

20 In a board meeting of 27 June 2019, SEBI permitted shares with superior voting rights in listed companies. This may open up an avenue for takeover defences, although there are a number of safeguards (such as a five-year sunset provision, limitation on the companies that can issue such shares and also restrictions on the use of superior voting rights in relation to related-party contracts and other matters that SEBI may notify), which may limit their application in this context. ^ Back to section

21 Sections 230(6) and 232(1) of CA 2013. ^ Back to section

22 Paragraph 9(b) of the SEBI Circular (CFD/DIL3/CIR/2017/21) dated 10 March 2017, as amended by a circular dated 3 November 2020. ^ Back to section

23 In the past few years, there have been only three contested public M&A transactions: *Fortis Healthcare/IHH* in 2018, *Mindtree/Larsen and Toubro* in 2019 and *Adani Group/NDTV* in 2022. ^ Back to section

24 Section 213 of CA 2013. ^ Back to section

25 Umakanth Varottil, 'The Advent of Shareholder Activism in India',*Journal on Governance*, Vol. 1 No. 6, 2012. ^ Back to section

26 See footnote 5. ^ Back to section

27 Section 245 of CA 2013. ^ Back to section

28 The threshold for shareholders to be able to trigger this protection (i.e., a shareholding percentage) is the lower of 100 shareholders or shareholders holding at least 5 per cent of the asset share capital. ^ Back to section

29 (1843) 2 Har 361. CA 1956 did not recognise derivative action, so claimants needed to establish a case on the basis of common law. Academic studies have shown that this had little success (see footnote 21). ^ Back to section

30 Section 88 of CA 2013. ^ Back to section

31 Section 90 of CA 2013. ^ Back to section

32 In 2019, minority shareholders of Associated Broadcasting Company challenged the sale of the company and the appointment nominees of the acquirer on the board, alleging oppression and mismanagement, and the NCLT passed a restraining order. However, press reports suggest that, subsequently, a settlement occurred with SAIF Partners, a key minority shareholder, pursuant to which the transaction appears to have been completed. ^ Back to section

33 For instance, in July 2019, the shareholders of Bharat Nidhi Limited objected to a share buy-back scheme and asked SEBI to investigate. Subsequently, in January 2020, the Supreme Court ordered SEBI to complete the investigation in four months. Also, in July 2024, SEBI directed the National Stock Exchange to evaluate Linde India Limited's related party transactions with Praxair India Private Limited following a shareholders' complaint. ^ Back to section

34 Proxy firms are required to register with SEBI, although certain foreign proxy firms are not required to do so. However, SEBI has recently recommended that foreign firms also follow a common code of conduct with domestic proxy firms on a 'comply or explain' basis. ^ Back to section

35 SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/147 of 3 August 2020 (which was amended by SEBI Circular SEBI/HO/IMD/DF1/CIR/P/2020/256 on 31 December 2020). Although these Circulars stand rescinded as of 15 June 2023, the contents of these Circulars are now covered under the SEBI Master Circular SEBI/HO/MIRSD-PoD-2/P/CIR/2023/90 dated 15 June 2023. ^ Back to section

36 The only real example was in 2012 when CLSA wrote to the then CEO of Infosys challenging its business model, but that did not result in any meaningful change or shareholder engagement. ^ Back to section

37 SEBI Circulars SEBI/IMD/CIR No. 18/198647/2010 dated 15 March 2010; CR/IMD/DF/05/2014 dated 24 March 2014; and SEBI/HO/IMD/DF2/CIR/P/2016/68 dated 10 August 2016. ^ Back to section

38 See footnote 11. ^ Back to section

39 Ingovern, India Proxy Season 2017. ^ Back to section

40 For instance, in 2017, the attempt of a 20 per cent investor to seek board representation in relation to MRO-TEK and the attempt by Florintree Advisors to seek a seat on the board of PTC India did not succeed. ^ Back to section

41 He subsequently resigned from his non-executive directorship. ^ Back to section

42 See footnote 11. ^ Back to section

43 Furthermore, in 2021, investors opposed the extension of the term as the chair and managing director of Balakrishna Industries and rejected the extension of the term of the managing director of Eicher Motors. In March 2023, the shareholders of Dish TV voted down the appointment of four independent directors. More recently, in June 2023, more than half of the institutional investors opposed the reappointment of the managing director of Bharat Forge Limited. ^ Back to section

44 Implemented through various amendments to the Listing Regulations. To improve the adoption of these provisions, following a subsequent consultation exercise in 2021, SEBI raised the net worth cap for groups holding superior voting rights (from 5 billion rupees to 10 billion rupees) by amending Regulation 6(3) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018 with effect from October 2021. ^ Back to section

45 Regulation 17(1D) of the Listing Regulations. Additionally, any person continuing as director as from 31 March 2024 without shareholder approval for five or more years is required to be approved by the shareholders in the first shareholders' meeting after 31 March 2024. ^ Back to section

46 Regulation 31B of the Listing Regulations. ^ Back to section

47 Regulation 26(6) of the Listing Regulations. ^ Back to section

48 Regulation 37A(1) of the Listing Regulations. ^ Back to section

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