

SEBI proposes to give more teeth to minority shareholders: Mandates 'majority of minority' rule in additional items for shareholders' approval

Agreements binding on LEs subject to SE disclosure and SH approval

- **What are the present provisions:** Entering into agreements binding on LEs, not in ordinary course of business to be disclosed under Para A (5) of Part A of Schedule III to LODR.
- **What is the proposed change:**
 - Insertion of clause 5A mandating disclosure of any agreements that directly or whose purpose and effect is to impact:
 - management of LE;
 - control of LE;
 - impose any restriction on LE;
 - create a liability on LE.
 - Disclosure also to be made in the annual report of **FY 23-24**.
 - Parties to such agreement to inform LEs, where not informed earlier;
 - In case of existing one: on or before **March 31, 2023**.
 - In case of new ones: **within 2 working days** of execution.
 - Board to provide its opinion with rationale, justifying the economic interest of the LE.
- S/Hs' approval mandatory through SR and 'majority of minority' - until which it will remain ineffective.
 - For existing agreements: to be placed before S/H in the 1st AGM/EGM of the LE held after **April 01, 2023**.
- **VKCo Comments:**
 - Far-reaching impact of widely worded restrictions
 - Impose any restriction, create liability.
 - Right to transfer of control will become subject S/H approval
 - Requirement more stringent than SAST norms.
 - SAST provides open offer obligation not S/H approval.
 - Non-compete agreements, non-disposal undertakings - ineffective till S/H approve? - If it creates any restriction?
 - Whether any liability or only material liability should be relevant?

Sale, disposal of assets outside scheme of arrangement

- **What do the present provisions say:** Requirement of seeking approval under Section 180 (1)(a) by way of a SR. SEBI circular dated **November 23, 2021** not applicable.
- **What is the proposed change:**
 - S/H required in addition to SR under CA, 2013.
 - sale or disposal or lease of whole or substantially whole of the undertaking.
 - Mandatory disclosure of object & commercial rationale.
- **VKCo comments:** the meaning of the term 'whole or substantially the whole of the undertaking' should be aligned with section 180 (1) (a) of CA, 2013.

Board permanency to be done away with

- **What are the present provisions:**
 - Tenure of MD/WTD is 5 years. Tenure of NEDs, other than IDs, is based on Section 152(6).
 - Sec 152(6) of CA, 2013, requires of at least 2/3rd of directors be liable by rotation;
 - out of which 1/3rd retire every AGM.
 - balance 1/3rd of directors can be non retiring.
 - Therefore, the office will never come before S/H post appointment.
- **What is the proposed change: From April 01, 2024 –**
 - LEs to ensure that directorships of all directors on the board are subjected to S/H approval once in 5 years.
 - Not required for directors appointed by court or tribunal.
- **VKCo Comments:**
 - Relevant only where companies have non-retiring directors.
 - In case of retiring directors, the retirement will happen **once in 3 years**.

Special rights pursuant to SHA to require S/H approval in every 5 years

- **Present provisions:** Post listing, LEs seek one-time S/H approval (majority of minority) for retaining special rights in AOA.
- **What is the proposed change:**
 - Grant of special right (existing/proposed) to a shareholder - subject to S/H approval **once in every 5 years**.
 - Existing rights to be renewed within 5 years from amendment notification.

SEBI seems to be at it - as many as **5 consultation papers (CPs) in less than 10 days!** To read our snippets on the same click here:

1. [Review of CG provisions for HVDLE](#)
2. [Proposed amendments in NCS Regulations](#)
3. [Proposed amendments in LODR Regulations](#)
4. [ESG disclosure, rating and investing](#)

Timeline to submit comments

Comments may be submitted to SEBI by **March 07, 2023**.

Vinod Kothari & Company
Mumbai | Delhi | Kolkata
corplaw@vinodkothari.com

