

Our Views

Democratisation of corporate decision making – *only check and no balance*

Any important corporate decision requires approval from its shareholders. A listed company must follow the requirements of both the Companies Act and the SEBI guidelines. Over a period, these requirements have evolved. The approval levels are defined depending on the nature of the decision. Some decisions require approval of a simple majority, while more critical items require a super majority. In some of the situations the statutory voting requirement could be very onerous. For example, to pass a resolution concerning the Scheme of Arrangement and Delisting requires the following voting patterns:

1. First, votes cast in favour of the proposal by just public shareholders (non-controlling shareholders) of the listed company should be at least two times the number of votes cast against it. This is akin to super-majority of minority shareholders.
2. Second, number of votes cast by the shareholders (including the controlling shareholders) of the listed company should be at least three-fourths in favour of the proposal.
3. And finally, the number of **voters** in favour of a proposal should be higher than the number of **voters** against it.

While the above requirements make the decision-making very inclusive, they are also prone to abuse by a handful of interested party.

To get a super-majority of minority, it becomes very difficult for a corporate to obtain twice the number of positive votes for every negative vote. It means that less than just a 1/3rd of minority shareholders in value can block a proposal because getting positive vote from all the remaining 2/3rd could be a challenge since everyone doesn't vote. By way of an illustration, let us consider a company having 70% of its shareholders as controlling shareholders, and balance 30% as public. Some part of the public category will be held by retail which generally doesn't vote. In such a case, a small group of 5 to 7% of the overall shareholders (or lesser) with negative votes can potentially block the transaction since it would be virtually impossible to get every remaining non-controlling voter to vote. There is an urgent need to review the regulation around this to ensure a more rationale decision making.

Our Views

Democratisation of corporate decision making – *only check and no balance*

Further, while conducting voting to get a majority of number of voters a new scenario is playing out. So far, voting by an institution or by a retail shareholder was recognised as one vote each. For example, if a mutual fund votes it is counted as one vote and if I, as an individual shareholder, vote it is still counted as one vote. Now a new category of shareholders, the discretionary Portfolio Manager (PMS), has come up which controls many different folios. From market practice, we understand that some of these Portfolio Managers also vote on behalf of the large number of folio holders through Power of Attorney provided to them during the onboarding of the client. Such Power of Attorney (PoA) typically empowers the PMS to attend any shareholder meeting, or vote or otherwise act on behalf of their client shareholder. So, the PMS can direct the custodian to cast votes against or in favour of a resolution. Effectively, under the PoA arrangement of a PMS, one Portfolio Manager can vote on behalf of large number of shareholders and **each folio will count as one vote**. This act of voting based on one PMS manager's decision is akin to a voting by a mutual fund manager. However, unlike a mutual fund where only one vote is counted irrespective of the number of unitholders, in case of a PMS each folio-holder is counted as a vote. Given that it is one decision maker, votes by a discretionary Portfolio Manager should be treated as **one voter** instead of going by number of folios held by it.

Since the situation of a PMS voting on behalf of a large number of shareholders was never envisaged, this needs to be immediately corrected. Else, we are getting into a zone where a single person running a PMS can overturn the decision of the majority of minority, the super majority and the majority of number of shareholders.

We all believe in democratisation of decision making but with this I would say that the pendulum has really swung on the other side. Let us bring some balance in the checks that we have built.

Sunil Sanghai
Founder & CEO
NovaaOne Capital Pvt. Ltd