

More independence for independent directors

The requirement of a special resolution for reappointment/removal of an independent director dilutes promoters' control

FOR DECADES NOW, both the capital-markets watchdog as also the department of corporate affairs have worked to enhance the role of independent directors (IDs); the Kotak Committee had noted that they form the backbone of the corporate governance framework worldwide as also in India. Apart from the auditors who are to keep vigil on financial transactions, making sure they are kosher, it is IDs who need to keep tabs on the goings-on within a company to ensure everything is above board. In reality, this is next to impossible, given promoters hold an average of 50% of the equity in the top NSE 500 companies—save for the 'professionally' run ones like an ITC or an L&T. Not surprisingly, they run the businesses as their fiefdoms and, given this, it is hard for IDs to blow the whistle as it were. While institutional shareholders are able to get wind of any adverse event, minority shareholders are left clueless. Indeed, the numerous corporate scams of the past decade—and instances of CEOs who have been arrested or charged with impropriety—are evidence that the presence of big-shot IDs has made little difference to the quality of corporate governance. Among the biggest instances of fraud have been Yes Bank and IL&FS and, most recently, the Gautam-Thapar-promoted CG Power, all of which had some big names on their boards.

Nonetheless, the SEBI's efforts to continuously tighten the norms for independent directors are to be lauded; on Tuesday, the regulator mandated that, starting 2022, appointments or reappointments or the removal of IDs would require a special resolution of shareholders. So far, promoters had enough clout and ownership to be able to push through a general resolution; now, they will need to get the small shareholders on board. It is also a good idea to make the selection of IDs by the nomination and remuneration committee (NRC) in a listed company more transparent. Moreover, Sebi said at least two-thirds of the NRC should comprise IDs; currently, they comprise the majority. This, again, is an attempt at improving governance. In addition, the SEBI wants that disclosures be made on what exactly a director brings to the table; in other words, what his or her area of expertise is. Such a move is probably aimed at discouraging companies from packing their boards with retired bureaucrats or bankers. The fact is that these bureaucrats do have skills, namely, they know how to liaise with the government or regulators. For businessmen, these 'skills' can be more useful than others.

One of the new norms—that the contents of the resignation letters of IDs—be disclosed, together with the list of present directorships and memberships on various board committees, may not work. Typically, people want to make a quiet exit if they are uncomfortable and don't want to blow the whistle; they claim they are stepping down for personal reasons. It is highly unlikely they will do otherwise even now. The need for a one-year cooling-off period for an independent director transitioning to a whole-time director in the same entity is not convincing. The point is independent directorship can't become too onerous; else, we won't have too many good ones. It is true that in India most IDs have it relatively easy. Also, unlike globally where more than three independent directorships are not appreciated, in India there are many individuals who have a presence on half a dozen boards. It is unlikely they can make a meaningful contribution.