Industry to Sebi: Defer Rule that Bars Chairman, MD from Being Related

CII also asks market regulator not to insist that the chairman of the board be a non-executive director

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Mumbai: Corporate India has renewed its demand that the Securities and Exchange Board of India (Sebi) stay the implementation of the provision that makes it mandatory for the chairman and managing director of a large listed company to not be related to each other. It has asked the capital markets regulator to either make this provision, which is due to come into force from April 1 this year, 'recommendatory' or defer its implementation by another two years.

This provision is part of the rules relating to the splitting of the post of chairman and managing director (MD) and separation of their roles in India's top 500 companies by market capitalisation, having identifiable promoters. This guideline was to come into effect from April 1, 2020 but was subsequently deferred for two years, following protest from industry.

In a recent letter to Sebi, industry body Confederation of Indian Industry (CII) has reiterated its opposition to this amendment, and said this would lead to over-regulation, while acting as an impediment to a conducive business environment.

Half of Nifty 500 companies yet to bifurcate role of chair and MD, statistics from Primeinfobase.com show

Deadline to separate the role ends March 31

Rule does not apply to cos where there are no identifiable promoters

Currently, there are 15 such entities including engineering giant L&T

Cos where the chair and MD posts are held by the same person: RIL, TVS Motor, JSW Steel, Raymond, etc.

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"Over-regulation may weaken entrepreneurial spirit which is a key factor for stimulating wealth and value creation for stakeholders and so important in the existing crisis facing the economy due to the pandemic," CII president and Tata Steel MD TV Narendran told ET. "In light of checks and balances already present in the current laws to counter any potential ill-effects of such a situation, it is important that Indian entrepreneurs are not placed at a disadvantage by imposing such requirements."

The industry body has also asked Sebi not to insist that the chairman of the board be a non-executive director. "Since the compliance date is approaching soon, it is requested to kindly defer the implementation of the provisions relating to the chairperson not being related to the MD & CEO and that the chairperson should be a non-executive director, by two years; if not withdraw altogether, or the requirements may be recommendatory and not mandatory, as requested earlier, therefore, a clarification in this regard may be issued soon," CII said in its submission to Sebi last month.

The companies most impacted by the proposed rule regarding separation of role of chairman and MD are family-run businesses and to a lesser extent PSUs which combine the role of chairman and MD.

Business leaders expressed their opposition to these norms to ET.

Bajaj Finserv chairman & MD Sanjiv Bajaj said in India, majority of businesses are family owned, where knowledge and experience is passed from one generation to another. "Chairman and directors are expected to undertake greater responsibility and that's in conflict with mandating a non-executive role for chairman. These guidelines taken together are not even there in any significant country and we will weaken our competitiveness, especially at a time when the pandemic is on," he said.

"It takes years to groom a successor, and in a family owned/managed company, it is often a family member who has been mentored by an elder. In listed entities, independent directors will act as a counterbalance to ensure the best candidate is chosen. However, promoter interest is also aligned to picking the most suitable candidate," said Apollo Hospitals joint MD Sangita Reddy.

An email query sent to Sebi asking for a comment on CII's letter did not elicit any response till press time. Sebi chairman Ajay Tyagi had recently said that enough time has been given to industry to meet these guidelines. "I can only make an appeal to the industry to follow it," Tyagi had said.

The capital market regulator had proposed the separation of the role of chairman and MD mainly to strengthen corporate governance by ensuring greater accountability of management to the board.

CII has also submitted to Sebi that these amendments go beyond the recommendations of the Uday Kotak Committee, by not only mandating that the chairperson be a non-executive director, but by also requiring that the person should not be related to the MD and CEO. This requirement is not mandatory even in advanced economies such as the US, UK and France. It places Indian businesses at a disadvantage when compared with foreign corporations, the industry body said.

The new requirement would affect succession planning as the MD's position is often a preparatory one for the next generation family member before the person becomes the chairman, it said.

INDUSTRY VOICE

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Tyagi had last year dismissed the suggestion that the chairman and MD be allowed to be related to each other. "One can understand the argument that it should not be made mandatory but to suggest that both the persons can be related to each other is not acceptable. If they (MD and chairman) are related, then what is the relevance of separating them," he had said last September.

According to Prime Database, out of the 485 large listed companies that must comply with the regulations regarding the role of chairman and MD, 240 are non-compliant with the proposed guidelines.

"Nearly half the companies are yet to meet the requirement with just a couple of months to go, despite having four years to comply. This reminds me of the time when the woman director requirement had first come in. Companies kept on hoping for an extension. When no extension was given, you saw a flurry of appointments taking place in the last week of March. You might see something similar this time around as well. Last-minute appointments, of course, can only help in fulfilling the letter of the regulation, not the spirit," said Prime Database MD Pranav Haldea.

"It seems like most companies are waiting for the last minute to effect the required change. There is also the chance that the change of guard at Sebi before March 31, 2022 could mean a change in thinking on this crucial requirement that many Indian companies, including notable promoter-driven companies, haven't yet adhered to," said InGovern Research founder & MD Shriram Subramanian.

IiAS, a corporate governance advisory firm, in a recent note said that only a handful of boards including Mahindra & Mahindra and Wipro have announced their plan to comply with the rule.

"Most others continue to remain silent, unnerving investors, who like clarity and predictability on these issues," the firm said.