

**WIDENS** governance gaps between private cos and impinges on Sebi's efforts and autonomy, say experts

# 'MPS Leeway for PSUs Not a Right Signal'

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**Mumbai:** India's decision to exempt listed state-owned firms from maintaining a minimum public shareholding (MPS) threshold has put the spotlight on rules that appear linked to ownership types, rekindling the debate on governance standards and minority investor rights in entities where North Block is the primary owner.

Until recently, listed companies were required to maintain an MPS of 25% regardless of the type of primary ownership — government or private.

The government's argument that the move was in 'public interest' doesn't seem to have cut ice with several D-Street veterans. They said India had introduced MPS to ensure liquidity through dispersed shareholding. Exemptions on such thresholds would widen the governance standard gaps between listed public sector units (PSUs) and listed private (non-government) sector companies.

"The amendment that enables the Central government, in the public interest, to exempt any listed public sector company from any or all of the provisions of the rule, is welcome in the context of the impending IPO of LIC," said Excellence Enab-

lers chairperson and former Sebi chairman M Damodaran. "However, in rulemaking, there should be no distinction between public and private sector companies. The amendment should have provided for the granting of exemption to 'any listed company', rather than to 'any listed public sector company'."

Damodaran added that guidelines and preconditions for granting

such exemptions could have been put in place.

"Ownership should not be the basis for differential treatment," he said.

The government has been giving preferential treatment to PSUs with regards to their maintenance of MPS.

While the original timeline for maintaining 25% MPS for listed companies was 2013, the timeline for PSUs was extended multiple times closer to the deadline, with the last extension granted until August 2. However, days before the deadline, the government exempted PSUs from maintaining MPS.

If private companies fail to maintain MPS, they are penalised: These include freezing of promoter shares

**MPS is aimed at reasonable public float, which is essential for better price discovery and to curb manipulation, says an expert**

## No Level Playing Field

Private cos failing to maintain MPS are penalised

These include

- Freezing promoter shares
- Compulsory delisting

1,075

Private Cos listed on NSE

2

Cos not compliant with MPS

Govt has been giving preferential treatment to PSUs on MPS norms

77

Listed PSUs

28

PSUs with public shareholding below 25%



Experts say pre and post listings should be under Sebi

Currently they are within the ambit of SCRR, predating Sebi

Govt amended SCRR to give itself power to exempt PSUs from MPS

and compulsory delisting. Significantly, out of 1,705 private companies listed on NSE, only two were non-compliant with the MPS requirement, data showed. On the other hand, 28 out of 77 PSUs had public shareholding less than 25%.

A securities lawyer said that to create a culture of good corporate governance in government companies, it would be right that pre- and post-listing matters are brought exclusively within the domain of capital market regulator Sebi — not in the Securities Contract (Regulation) Rules (SCRR)

predating the regulator's establishment. It is important to mention that the Centre had amended SCRR to give itself complete power to exempt the applicability of MPS for PSUs.

"This move by the government will have a direct impact on Sebi's efforts to provide a level playing field to all listed entities, whether they are from the private or public sector," said Alliance Law managing partner and former Sebi executive director RS Loona. "It is also seen as an action to curtail the autonomy of the market regulator, which is certa-

inly not good for the development of the securities market."

Interestingly, two years ago, India proposed raising the MPS threshold in listed companies to 35%.

"While all companies should be treated on a par upon listing, the reality is that PSUs are a different animal. The government controls these companies and would always manage to have a final say. Moreover, these companies are audited by the CAG and are answerable to Parliament," said Prime Database chairman Prithvi Haldea. "We already have many carveouts in Sebi regulations for companies based on their size, the sectors they are in, and so forth. A similar exemption can be given to PSUs in terms of MPS."

Haldea added that public float is essential for better price discovery and to prevent price manipulation. The MPS is aimed at a reasonable public float as also to give the public a say in special resolutions.

"However, in many jurisdictions, MPS is not defined by the percentage of capital but by the number of shares in the market. With the changing times and emergence of a large number of very large-cap companies, it would be appropriate to take cognisance, and have a mix of percentage and/or a minimum number of shares as public float," Haldea said.