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PEs, VCs to lose promoter status

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MUMBAI: Private equity and venture capital funds will not be clubbed with promoters — a relaxation that the capital market regulator Sebi announced on Thursday to lend greater flex bility to these financial investors as well as companies planning to mop-up funds.

The shareholdings of these investors were jointly mentioned with promoter stakes due to the special rights that PEs and VCs enjoyed in companies where they invested.

Such powers gave these investors the right to decide board members, influence decisions on new businesses and sell shares along with promoters in the event of a takeover. But, placing them as part of the promoter group often put roadblocks in companies' efforts to get listed and even caused post-listing complications.

For instance, if the combined holding of the promoters and the PEs in a company exceeded 75%, these investors, along with the promoters, were under obligation to lower the stake within one year to avoid delisting of the company. In the context of an initial public offer by an investee company, which has substantial holding by a domestic venture capital or foreign venture capital fund, disclosure requirements can be stifling.

"Other companies where the PE holds substantial stakes could by virtue of definition become a part of the promoter group, thereby triggering extensive disclosure, not only with respect of respective funds, but also in respect of other investee companies," said Siddharth Shah, headfunds practice at law firm Nishith Desai Associates. The listing of a leading retail brokerage was blocked as a PE investor was uncomfortable with the disclosure requirement.

"Considering the constraints in disclosure by investee companies regarding venture capital funds that are shown as one of the promoters of such investee company, it has been decided to specify a separate set of disclosures for them," the regulator said in a press release, after a board meeting.

"The move could make it easier for startups as well as listed firms to attract PE investments as the promoter-definition relation to PEs was causing complications," said RS Loona, managing partner, Alliance Corporate Lawyers, and a former Sebi member. The regulator's recent decision may not necessarily mean a softening of its stand on private-equity regulations. Indeed, investment bankers and advisors are keenly awaiting Sebi's final norms on private equity funds.

In August, Sebi unveiled draft rules for alternative investment funds to regulate fund pools such as private equity funds. The regulator proposed higher sponsor contributions, caps on investment and restrictions on the use of funds, among other things, to reduce systemic risk and to channelise private equity investment in specified sectors.

It also proposed to categorise private equity into nine formats, such as venture capital funds (VCF), private investment in public equity, or PIPE funds, private equity funds, infrastructure equity funds, debt funds, small and medium enterprise funds, social venture funds and strategy funds.

On Thursday, the regulator also revised the rules on anchor investors in a public offer to make fund raising more efficient. "...it has been decided to prescribe a minimum allotment size of Rs 5 crore and maximum number of AIs slabwise," said a Sebi release. Bankers said that this could mean that the maximum number of AIs will be fixed depending on the size of an issue.

Till now, there was no minimum subscription requirement for anchor investors. "Sebi wants the AI to have more skin in the game for the mandated 30 days. So only genuine investors convinced of fundamentals will come in. A reasonable move to make AI concept more foolproof," S Venkatraghavan, managing director, IDFC Capital, said. Sebi had introduced the concept of anchor investors in June 2009 as a class of committed investors who could be relied upon to anchor an issue of capital in all market conditions.

An anchor investor, who cannot be related to the promoter or the promoter-group companies, can subscribe up to 30% of the portion for institutional investors in an initial share sale. They have to pay 25% of the total investment at the time of applying for the public offer and their shares are locked-in for a period of one month from the date of allotment.