

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

UNSTARRED QUESTION NO:3709
ANSWERED ON:16.12.2011
AMENDMENT OF TAKE OVER CODE
Nimmala Shri Kristappa

Will the Minister of FINANCE be pleased to state:

- (a) whether many Industrial Associations have pointed out some lacunae in the recent amendment to Take Over Code by Securities and Exchange Board of India (SEBI) in relation to disclosure of encumbered shares;
- (b) if so, the details thereof and action taken by SEBI thereon; and
- (c) the steps being taken by the Government /SEBI to ensure greater transparency while enacting such laws?

Answer

MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI NAMO NARAIN MEENA)

(a) The Ministry of Finance had received a representation from the All India Association of Industries (AIAI), regarding the disclosure of encumbered shares by promoters of listed companies addressed to several officials of the Ministry. This representation was referred to the Securities and Exchanges Board of India (SEBI). The representation was, however, received after SEBI notified the Substantial Acquisition of Shares and Takeover Regulations, 2011 (New Takeover Regulations) on September 23, 2011.

(b) AIAI had inter-alia represented as under:

(i) SEBI Takeover Regulations 2011 has mandated promoters of all listed companies to make disclosures of 'encumbrances' on their shareholding. The earlier requirement was limited to disclosure of pledged shares only.

(ii) The above modification was neither discussed, nor approved at the SEBI Board meeting in July 2011.

(iii) The proposed modification has far reaching consequences and likely to further destabilise the already declining Indian capital Markets.

(iv) The requirement to disclose such 'encumbrances' is unnecessary and will be exploited by unscrupulous short sellers to destroy sentiment and precipitate sharp decline in stock market.

(v) The previous requirement of disclosure of 'pledged' shareholding was appropriate, and more than adequate which is not the case with 'encumbrances'. SEBI has informed that the requirement of disclosures of shares pledged or otherwise encumbered by the promoters has been in the listing Agreement since February, 2009. The Takeover Regulations Advisory Committee (TRAC), had recommended. alignment of the requirements of Takeover Regulations with that of the Listing Agreement.

The SEBI Board after considering all the relevant inputs placed before it, approved the new Takeover code giving due weightage to the recommendations of TRAC and the comments received thereon. SEBI has also clarified the nature of encumbrances which need to be disclosed by the promoters in terms of New Takeover Regulations on December 12, 2011. These are available in the Frequently Asked Questions (FAQs) section of SEBI website (www.sebi.gov.in).

(c) As a general practice, SEBI formulates Rules/Regulations through a consultative process that usually includes discussions with various stake holders like representative bodies. Public comments on the draft Rules/Regulations etc. are also normally invited before submitting proposals to the Board of SEBI for its decision. Through this process, SEBI is able to promote transparency in decision making.