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The Securities Market Code Bill, 2025 is a significant and overdue attempt to modernise India's securities law architecture. It has many positives. Yet, one provision, Section 65(2), risks diluting the reformist ethos that the Bill otherwise seeks to advance.

Section 65(2) empowers the Centre, in public interest, to exempt any listed public sector company (PSC) from any or all requirements relating to the issue of capital, minimum offer size, issue and transfer of securities, corporate governance, disclosures, substantial acquisition and takeover regulations, public shareholding norms, concentration and prudential norms, risk management, and incidental matters. In effect, it enables the executive to suspend core securities market disciplines for an entire ownership class. It strikes at the philosophical core of India's post-1991 reforms.

Economic liberalisation was not merely about allowing private entry; it was about redefining the state's role in markets. The doctrine of the 'commanding heights', where public enterprises dominated key sectors under preferential policy regimes, was gradually dismantled. Sectoral reservations were reduced and ultimately abolished; competition was introduced in banking, telecom, and insurance; and disinvestment diluted state ownership in commercial enterprises. The reform consensus rested on a simple proposition: the State would move from a privileged market participant to a rule-maker and referee. Section 65(2) unsettles that equilibrium by reintroducing regulatory asymmetry based purely on ownership.

SHORT SHRIFT TO NEUTRALITY

A central pillar of the reform has been competitive neutrality. Public and private enterprises operating in the same market have been subject to the same competition law, the same disclosure standards, and the same governance expectations. If an enterprise raises capital from public markets, it must submit to public market discipline. The proposed exemption provision departs from this fundamental logic. It creates a dual regime, one in which private companies remain fully bound by governance, disclosure, and takeover norms, while listed PSCs may be relieved from them through executive notification. That disturbs the level playing field and injects uncertainty into regulatory expectations.

Securities Bill has a problematic Section

ANTI-MARKET. An omnibus exemption for public sector companies from governance norms risks weakening accountability and competitive neutrality



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More fundamentally, the provision creates an anomalous relationship between market access and market discipline. Listed PSCs access equity markets, attract institutional and foreign portfolio investors, benefit from liquidity and price discovery, and rely on market valuation to support disinvestment programmes. Yet, under Section 65(2), they may be exempted from the very rules that underpin investor confidence: public shareholding requirements, takeover protections, governance standards, and risk management norms.

Markets operate on reciprocity: access to capital is conditional upon transparency, predictability, and adherence to uniform standards. To enjoy the benefits of the market without being fully subject to its discipline is to create regulatory free riders. Over time, such asymmetry can irretrievably weaken confidence in the system, painstakingly built over decades.

The justification offered is 'public interest'. But public interest cannot be presumed solely from state ownership. Many listed PSCs operate in sectors where private firms of comparable scale compete directly: banking, insurance, energy, infrastructure, and financial services. If a public sector steel company

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and a private sector steel company serve the same customers and access the same capital market, the rationale for exempting one from governance norms while holding the other to full compliance becomes difficult to sustain.

Several public sector entities already operate under special statutes that confer bespoke governance structures. Where differentiation was necessary, Parliament has consciously provided it. Section 65(2) adds a further, sweeping executive override atop these arrangements. Such a notification-based power inevitably raises questions about regulatory autonomy and predictability.

Independent securities regulation evolved precisely to ensure that rule-making is stable, transparent, and insulated from short-term pressures. The prospect of selective exemptions for an issuer or class of issuers may unsettle investor perception, particularly among global institutions that value consistency of regulatory treatment.

There is little evidence that regulatory relaxation enhances enterprise value. In recent decades, private peers in several sectors have commanded stronger valuation multiples than public sector counterparts of similar scale. Markets reward governance quality, board independence, disclosure rigour, and credible minority shareholder protection. Diluting these disciplines may not improve performance; it may simply increase perceived governance risk and the cost of capital.

NEED FOR SAFEGUARDS

Minority shareholders in listed PSCs, including retail investors, pension funds, and domestic institutions, rely on takeover norms, public float

requirements, and disclosure standards for protection. When the state is both the controlling shareholder and rule-maker, such safeguards assume greater significance. Any measure that sidelines these standards runs counter to the stated objective of listing more PSCs and deepening divestment.

It is natural for the state to protect its enterprises, particularly where public resources and policy objectives are intertwined. But excessive protection can be counterproductive.

The Bill is an opportunity to reinforce India's commitment to deep, credible, and globally competitive capital markets. That commitment rests on equality before regulation, institutional clarity, and competitive neutrality. Section 65(2), in its present form, risks signalling that ownership may once again determine regulatory obligation.

If public enterprises seek capital from public markets, they must accept the discipline that accompanies it. Section 65(2), which permits the government to exempt listed PSCs from core securities market disciplines, risks reversing three decades of economic reform. Genuine sector-specific challenges can be addressed through transparent consultation, regulatory amendments applicable to all similarly situated entities, or targeted legislative changes debated in Parliament.

Ownership, by itself, cannot become the basis for differential regulatory treatment in competitive markets. A modern securities code must reinforce equal rules and institutional credibility, not dilute them.

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