

01:09 PM 21 JUN LIVE MARKET STATS ▼	सेंसेक्स 35,575 ▲ 28.05	निफ्टी 50 10,772 ▲ 0.80	सोना (एमसीएक्स) (₹/10 ... 30,645.00 ▼ -136.00	यूएसडी/भारतीय ... 68.16 ▲ 0.09	पोर्टफोलियो बनाएं	ई-टी मार्केट एप डाउनलोड करें	CHOOSE LANGUAGE HIN
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Why some dual title holders are unhappy with Kotak Panel's recommendation

BY [SHAILESH MENON](#), ET BUREAU | UPDATED: OCT 12, 2017, 12.33 AM IST

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Are designations important? Ask Indian promoters who are staring at a potential dilution of their calling cards if capital markets regulator Sebi decides to accept the 'role segregation' recommendation of the [Kotak Committee](#) report on corporate governance.

[Business promoters](#) may have to give up the dual-faced title of [chairman & managing director](#) (CMD) and take up only one, if authorities make it a prerequisite for listing on Indian exchanges or through an amendment of the Companies Act. With considerable certainty, if the recommendation is accepted, the first level of change would be in Sebi's Listing Obligations & Disclosure Requirement Regulations. That's not all. The Kotak Committee has also recommended that all promoters (or professional managers) holding the title chairman' or 'chairperson' should move into a non-executive role by 2022.

These bits of regulations, among a whole lot of other proposals, are giving promoters heartburn, as they stand to lose a "great deal" if these become the norm. "We'll lose control over our business where we are majority shareholders... And once the promoter-chairman slips into a non-executive role, he'll not get salary or perks," laments the CMD of a listed financial services firm.



The Kotak Committee feels that if both MD and chairman roles are held by the same person, it limits independence of the board to question the management.

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Why Split Roles?

To further independence of board

Provide better and balanced governance

More effective supervision of management

Create environment conducive for debates

Reduce concentration of power/authority with one individual

What Will CMDs Lose?

Loss of absolute control over business

Will have to share power despite being majority shareholder

Chair, in due course, could be non-executive

Non-exec chairs may not get salaries, perks

Promoters (current CMDs) opting to be MDs may not have real grip on the board

The proposal to segregate the roles of managing director (MD) and chairman, if it becomes a law, could become an eyesore for

promoters with larger stakes (promoter shareholding). Over 91% of companies in India have founding family members as controlling shareholders, either directly or indirectly through a holding company (See table on closely-held companies). "A promoter with a higher shareholding wonders why somebody else should be on top of him... That could be one reason why they hold both roles," says [Kishore Biyani](#), CMD, Future Retail.

Top Earning CMDs

Name	Company	Salary (₹ cr)
Pawan Munjal	Hero Motocorp	59.66
Murali K Divi	Divi's Lab	46.47
Onkar S Kanwar	Apollo Tyres	45.74
Arvind Poddar	Balkrishna Ind	36.10
Shri Paul Oswal	Vardhman Textile	26.66
Chirayu R Amin	Alembic Pharma	25.92
K M Mammen	MRF	21.56
Sajjan Jindal	JSW Steel	19.51
Pankaj R Patel	Cadila Health	18.00
Raghupati Singhania	JK Tyre & Ind	17.03

Top Earning Chairmen


Name	Company	Salary (₹ cr)
Kalanithi Maran	Sun TV Network	77.93
DB Gupta	Lupin	47.66
N Chandrasekaran	TCS	30.16
Sunil B Mittal	Bharti Airtel	30.14
Sanjiv Goenka	CESC	23.47
Ramachandra N Galla	Amara Raja	22.84
Kumar Mangalam Birla	UltraTech	22.53
Yogesh Chander Deveshwar	ITC	21.17
Samir Mehta	Torrent Pharma	15.03
Navin Agarwal	Vedanta	14.54

Source: ETIG Database

Closely-Held Indian Businesses

Company	TOT Promoter & Group Holding %
Sheela Foam	85.68
Endurance Tech	82.50
Avenue Supermarts	82.20
Dillip Buildcon	75.63
Dhanuka Agritech	75.00
Sun TV Network	75.00
Rellance Power	74.98
DLF	74.95
Relaxo Footwears	74.93
Adani Enterprises	74.92
Godrej Properties	74.91

Source - ETIG Database



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THE TITLE DEBATE

The gist of this proposal is that if the roles are split — instead of one person holding both titles — it will embolden the board to effectively intercede in matters pertaining to running of the company and for the benefit of general shareholders.

"The roles of chairperson and managing director should be split. If the positions are held by the same person, it could be the biggest negation of corporate governance," says M Damodaran, former chairman, Sebi. "The board, which is headed by the chairperson, is tasked with holding the management, led by the managing director, accountable."

If you go by the book, the chairman heads the company board and the MD helms the management. The MD takes care of day-to-day operations. The chairman is more concerned with 'vision' and long-term growth. The chairman heads board meetings — board members, whom the chairman leads, quiz the management (led by MD) about the working of the company. They support, object or reject proposals put forth by the management.

The Kotak Committee feels that if both MD and chairman roles are held by the same person, it limits independence of the board to question the management. The separation of powers of the chairperson and chief executive/MD is seen to provide a better and more balanced governance structure by enabling better and more effective supervision of the management, the Kotak Committee report states. Splitting of roles would provide a structural advantage for the board to act independently, reduce concentration of power with one person and ensure that board tasks are not neglected by the all-powerful individual holding the CMD's title, the report explains.

"Currently, 640 NSE-listed companies have one person holding chairman and managing director roles. If this recommendation is implemented, these companies will have to split roles," says Pranav Haldea, MD, Prime Database.

Roughly 141 BSE-500 companies have CMDs at the helm while 186 have standalone MDs. Over 60 companies have 'executive chairmen' as the top functionary while in 220 companies, there are nonexecutive chairmen.

Indian businessmen fear that if they give up either of the roles, they will lose control over the business. If a current CMD decides to give up his chairmanship and just be the MD, he may not be able to influence the board effectively. Alternatively, if he becomes the chairman and give up his role as MD, he may not be able to direct routine company operations.

"Between chairman and managing director, I would think the MD is more powerful because he actually runs the company," says Samir Paranjpe, partner at Grant Thornton. "This relationship could be likened to our democracy, where the President is the supreme head of the country, while the Prime Minister has all the powers," he explains.

LOOPHOLES GALORE

Unscrupulous promoters may find ways to veer around the rule, should it become one. For instance, they could appoint puppet chairmen, who would do as promoters dictate. They could also assume titles such as vice-chairman and MD and run their mandate. "If that happens, it would be another tick-in-the-box approach to corporate governance," says Sandeep Parekh, founder, Finsec Law Advisors.

The job profile of key managerial persons, including chairman, MD and CEO, are explicitly mentioned in the Articles of Association (AoA) of all companies, as prescribed in the Companies Act. As AoA are drawn out by promoters, they invariably favours the largest shareholder in the company (that is, the promoters themselves). "So, if this recommendation is accepted by Sebi and implemented as a regulation, companies may need to amend their Articles of Association," says Kalpana Unadkat, partner, Khaitan & Co, a law firm.

"Our companies are still promoter-driven... But they will have to change that over the next few years. Such changes are happening world over." Big-league businessmen such as Mukesh Ambani (Reliance Industries), Azim Premji (Wipro), Venu Srinivasan (TVS Motors), Sajjan Jindal (JSW), Venugopal Dhoot (Videocon), Kishore Biyani (Future Retail) and Gautam Adani (Adani Port), among others, will have to give away a part of their corporate roles if the recommendation is implemented.

"When we were growing the company, there was not much difference between an MD and a senior manager. But as the company grew and HR practices improved, roles changed quite a lot," explains Dhoot. Dhoot wears two hats at board meetings. He's the chairman of the board and the MD of the company. At board meetings, he claims to be "more of an MD."

Dhoot, along with his executive directors, answers queries posed by the board. While the industrialist lauds the efforts of the committee, he is not very supportive of role-split idea. "If this has to work, the chairman has to be a non-executive right from the start. Having an executive chairman and an MD is not a good idea. A company cannot have two power centres at the top," he explains.

Apart from loss of control or power, some CMDs could also be worried about loss of salaries and perks once they are made non-executive chairmen. Nonexecutive chairman are only entitled to get sitting fees, and in some companies a profit-share, also known as commission. Shareholder approvals may be needed to raise the remuneration of non-executive chairmen beyond a certain limit. If the non-executive chairman is a promoter, he will also get a dividend, like all shareholders (See top earners table).

"I've no problem with splitting of roles but it should not be imposed across companies, without considering factors such as size of the

business and majority stake position,” says Arokiaswamy Velumani, CMD of Thyrocare Technologies. “If the company is at the growing stage, the promoter would like to have adequate control. He would like to run the company as well as helm the board. If the board is fine by it, why should it be a problem for anyone?” Velumani, however, is quick to point out that if the CMD does not have enough time to manage everyday operations of the company, he should split the role and take up chairmanship.

Barring the UK, not many developed countries have laws that prevent one individual from assuming the role of a CMD. In the UK, most listed companies have non-executive chairmen. In the US, 50% of companies have CMDs. “We’re entrepreneurs and we all like to work according to guidelines but then regulations are changing very fast. Too many variables are getting created in business now. This is a bit upsetting,” laments Biyani of Future Retail.

The role-split recommendation may not affect banks, as they come under the Banking Regulations Act. The Act explicitly states that the chairperson shall be entrusted with the management of the bank. There is also no restriction on appointment of a CMD. “The Act has clarified that any such appointment of chairman/MD shall not be affected by requirements under other laws,” affirms Unadkat of Khaitan & Co.

NEED FOR CONVICTION

According to business consultants, splitting of roles would not upset the working of companies, if done with care. “The roles of both the managing director and chairman will have to clearly be laid out, and both of them should stick to their script,” says Paranjpe of Grant Thornton.

However, even with all the perceived goodness the splitting of CMD could bring about, there is not much conviction as to how much it would improve board performance and corporate governance standards. The recommendation, in its present form, leaves gaping loopholes for power-hungry businessmen to squirm out.

“If they’re serious about it, they should not make a law of it. It should be more like a voluntary code of conduct; it should be comply-or-explain in style,” sums up Parekh of Finsec.

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