High-level committee to look at more changes in Companies Act

Another round of amendments to Companies Act 2013 are in the pipeline after the government eased a host of provisions of the comprehensive law enacted by the previous UPA government that was seen by many experts as draconian in its penal provisions.

Provisions related to intercorporate loans, managerial remuneration, independent directors, insolvency and SMEs are likely to be taken up by a high-level committee set up by the government in the first round of review, an official familiar with the developments toldET. The eight-member panel set up earlier this month includes members from the industry as well as judiciary.

An executive (junior) committee consisting of industry professionals is likely to be formed to go through these sections and recommend changes, which will then be approved by the high-level committee. The contours of the committee are yet to be finalised by the corporate affairs ministry.

The most important issue under the Companies Act that the industry wants addressed are the provisions relating to intercorporate loans.

The government has already sought suggestions on the relevant section 185 of the Act and the review will start soon. The Act has made it difficult for a promoter company to fund its special purpose vehicles (SPVs) or joint ventures through loans, which was allowed easily under the Companies Act of 1956. "Infrastructure companies are most affected by inter-corporate loan provision as it has become difficult to raise funds through their promoters in form of loans due to several riders," said Anshul Jain of Luthra & Luthra Law Offices. "The entire section dealing with loans needs to be reviewed. The provisions are far too strict for companies," said Lalit Kumar, partner at J Sagar Associates.

Many of these provisions were introduced in response to the Satyam fraud. The issue of independent directors will also be taken up by the committee.

At present, independent directors can get sitting fees (Rs 1 lakh per meeting) and profit-related commission. But in case of lossmaking or companies with inadequate profit, commission can't be paid to independent directors.

Under the new Act, listed companies need at least onethird of its board to consist of independent directors. "Loss-making or companies with inadequate profit are not able to get independent directors as they can't pay anything beyond sitting fees. Industry is seeking approval for increasing remuneration for independent directors either in form of some retainership or monthly fee," said the official.

As per India Inc's demand, managerial remuneration for non-executive directors also needs to be exempted. Currently, they get sitting fee and commission if the company is making profit.
"Industry is demanding fixed salary structure for non-executive directors," the official said.

"The government also needs to look at internal financial control. There's a requirement for auditors to opine that the company has adequate internal financial control. But the government is yet to decide a framework. Whether it's financial control or operational control that auditors have to look at," said Sumit Seth, partner at PWC India. The committee is also likely to take up the insolvency sections in the Act for review.

India needs to work on its insolvency framework as the country's score on strength of insolvency framework index is six out of a maximum score of 16 on the World Bank's Ease of Doing Business index.

(Economic Times)