

PRESS NOTE

The Companies Law Committee was constituted in June 2015 for examining and making recommendations on the issues arising out of implementation of the Companies Act, 2013. The Committee submitted its report to the Government today.

2. The Committee was chaired by Secretary, Ministry of Corporate Affairs and consisted of Shri Bharat Vasani, nominee of the Confederation of Indian Industries (CII), Smt. Reva Khetrapal, Judge (Retd.), Delhi High Court, Shri Y.M. Deosthalee, nominee of the Federation of Indian Chambers of Commerce and Industry (FICCI), Dr. A.S. Durga Prasad, President of the Institute of Cost Accountants of India, Shri Manoj Fadnis, President of the Institute of Chartered Accountants of India, Shri Atul Mehta, President of the Institute of Company Secretaries of India, Shri N.S. Vishwanathan, Executive Director from RBI and Shri P.K. Nagpal, Executive Director from SEBI as co-opted members and Joint Secretary (Policy), Ministry of Corporate Affairs as Member Convener.

3. The Committee had extensive consultations with stakeholders before making its recommendations. More than 2000 suggestions were received during the consultation process. The stakeholders consulted included all Industry Chambers, Professional Institutes, law firms, financial sector and other regulators. Six broad based groups were set up to review the suggestions received during the public consultation, each group being convened by a member of the Committee, and consisting of subject-matter experts including industry representatives, lawyers, company secretaries, cost accountants, investors' representatives and chartered accountants.

4. The Committee has endeavoured to reconcile the competing interests of the various stakeholders keeping in mind the difficulties and challenges expressed by them, and also being mindful of the Government's objective of furthering ease of doing business, encouraging start-ups and the need for harmonising various laws. The Committee also kept in mind the need to bring in greater clarity in the Act and Rules and harmonizing the various provisions thereof while making its recommendations.

5. After exhaustive deliberations, the Committee has proposed changes in 78 sections of the Companies Act, 2013, which along with consequential changes, would result in about 100 amendments to the Act. Approximately fifty amendments to the Rules have also been proposed. The recommendations cover significant areas of the Act, including definitions, raising of capital, accounts and audit, corporate governance, managerial remuneration, companies incorporated outside India and offences/penalties.

6. Some of the key changes proposed are listed below:

- a) Managerial remuneration to be approved by shareholders. [s. 197, 198]
- b) Modify definition of associate company and subsidiary company to ensure that 'equity share capital' is the basis for deciding holding-subsidiary relationship rather than "both equity and preference share capital". [s. 2]
- c) Private placement process to be substantially simplified, doing away with separate offer letter, making valuation details public, details/record of applicants to be kept by company and to be filed as part of return of allotment only, and reducing number of filings to Registrar. [s. 42]
- d) Incorporation process to be made easier and allow greater flexibility to companies: An unrestricted objects clause to be allowed in the Memorandum of Association dispensing with detailed listing of objects, self-declarations to replace affidavits from subscribers to memorandum and first directors; changes also in various Forms. [s. 4, 7]
- e) Provisions relating to forward dealing and insider trading to be omitted from Companies Act. Listed companies are covered under SEBI Act/Regulations. [s. 194, 195]
- f) Companies may give loans to entities in which directors are interested after passing special resolution and adhering to disclosure requirement. [s. 185]
- g) Restriction on layers of subsidiaries and investment companies to be removed. [s. 2(87), 186(1)]

- h) Change in the definition of term 'relative' for determining disqualification of auditor [s. 141]
- i) Rationalize penal provisions with reduced liability for procedural and technical defaults. Penal provisions for small companies to be reduced. [various sections]
- j) No filing fees if financial statements and annual returns filed within prescribed time. [s. 403]
- k) Auditor to report on internal financial controls with regard to financial statements. [s. 143]
- l) Frauds less than Rs. 10 Lakh to be compoundable offences. Other frauds to be continued to be non-compoundable. [s. 447]
- m) Reducing requirement for maintaining deposit repayment reserve account from 15% each for last two years to 20% during the maturing year.
- n) Foreign companies having insignificant/incidental transactions through electronic mode to be exempted from registering and compliance regime under Companies Act, 2013. [s. 379]
- o) Disclosures in the Directors' Report to be simplified and duplications with SEBI's disclosure requirements and financial statements to be removed while retaining the informative content for shareholders. [s. 134, Rules]
- p) Increased threshold for unlisted companies for compliance in context of requirement for Independent Directors (IDs), Audit Committee and Nomination and Remuneration Committee. [s. 149, 177, 178]
- q) Test of materiality to be introduced for pecuniary interest for testing independence of ID; thresholds for relatives' pecuniary interest to be revised to make it more practical. [s. 149]
- r) Requirement for a managerial person to be resident in India for twelve months prior to appointment to be done away with. [Schedule V]
- s) Disclosures in the prospectus required under the Companies Act and SEBI Regulations to be aligned, with a view to make these simpler, by allowing prescriptions to be as per SEBI Regulations. [s. 26]
- t) ESOPs to be allowed to promoters working as employees/directors [s.62, Rules]
- u) Limit on sweat equity to be raised from 25% of paid up capital to 50% for start-ups. [s.54]

- v) Recognition of the concept of beneficial owner of a company proposed in the Act. Register of beneficial owners to be maintained by a company, and filed with the Registrar. [new section]
- w) Provisions with regard to consolidation of accounts to be reviewed and those with respect to attachment of standalone accounts of foreign subsidiaries to be relaxed in certain cases. [s. 129, 136]
- x) Re-opening of accounts to be limited to 8 years. [s. 130]
- y) Mandatory requirement of taking up some items only through postal ballot to be relaxed in case of a company that is required to provide electronic voting at its General Meetings. [s. 110]
- z) Requirement for annual ratification of appointment/continuance of auditor to be removed. [s. 139]

7. The report is available on the website of the Ministry of Corporate Affairs, www.mca.gov.in, and public comments on the report are *invited online* till **15 February 2016** on the facility made available specifically for the purpose at the portal.
