New Companies Bill: Key changes to help ease doing business

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The Companies (Amendment) Bill, 2014, sought to remove some "oppressive provisions" in the Companies Act, which would foster the investment climate by attracting more foreigners to open up businesses in India, finance minister Arun Jaitley told Parliament yesterday.

India ranks 142 out of 189 countries in the World Bank's Ease of Doing Business ranking, which rates countries for the ease at which one can open, conduct and close down businesses. The index looks at a host of activities related to doing business such as dealing with construction permits, getting electricity, registering a property, getting credit, paying taxes and protecting investors, etc.

Prime Minister Narendra Modi has directed government officials to take steps to bring the country's ranking to within 50 in two years.

Key changes proposed by the Companies Bill that was passed yesterday include: -

Doing away with the need to have Rs 1 lakh paid-up share capital for private companies and Rs 5 lakh for public companies. This was done away with as it was seen as a deterrent for individuals to set up new firms.

The move, though, may prove contentious as the law ministry had suggested revising the floor higher instead of doing away with it, as one of the reasons for its existence was to discourage setting up of shell companies meant to re-route black-money. The government, however, has said stricter compliance rules should be used to tackle the menace of shell companies.

- Punishments for raising illegal deposits: In the event to refund deposit and interest within stipulated timeframe, companies found violating provisions could be fined Rs 1 crore to Rs 10 crore while its defaulting officers may have to pay fine of Rs 25 lakh-Rs 2 crore and may be incarcerated for up to 7 years.

This has likely been introduced in light of the Saradha scam and the increasing concerns over thousands of illegal chit funds through the country.

- Removal of clause allowing public inspection of corporate authorizations such as board resolutions: The bill proposes to do away with the clause that allows for public scrutiny of documents filed with the Registrar of Companies such as board resolutions.

FM Jaitley said this could run against interests of companies by exposing key commercial decisions to rivals. “However, the industry might still have concerns over the requirement for filing such documents,” KPMG said.

- No dividends till carried-forward losses/depreciation are written off. Also dividends not paid or claimed will not be transferred to Investor Protection Fund till seven years.

- Auditor required to report only material frauds to government: The earlier rule mandated company auditors to report suspicion of frauds to the central government, irrespective of what its potential size could be.

Under the new norms, suspected frauds only above a certain threshold will require to be reported to the government. Frauds below the threshold are required to be reported to the company’s audit committee.

- Streamlining related party transaction norms: The earlier Act required companies to obtain special resolution for loans given by a holding company to a wholly-owned subsidiary or guarantee/security given for its loans. Now only an ordinary resolution would do.

Besides, the bill also contains other provisions such as with respect to winding-up procedures, and proceedings against offences of the act.

“It comes as a great relief to corporates as they go about implementing the new law and gear up for the first year of reporting under the new law,” KPMG partner Sai Venkateshwaran wrote this morning. “However, there are still some areas where corporates continue to have concerns, and hope that a more comprehensive post implementation review of the Act will be undertaken to address these other issues.”

But even as the government was able to obtain a buy-in in the Lok Sabha, thanks to its majority, it may face difficult in seeking the Upper House’s nod as the opposition Congress has demanded changes be referred to a standing committee.

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