

More changes to companies law, clearer CSR norms likely in 2016

With an aim to further improve India's 'ease of doing business' ranking, Corporate Affairs Ministry is gearing up for more changes in 2016 to the voluminous Companies Act and bring in further clarity on the CSR spending norms.

Despite a number of changes this year to the Companies Act, 2013, which itself has replaced over 60-year-old legislation, the industry remains an unsatisfied lot and wants many more amendments to make it easier to do business here.

A major target set by the Ministry for the new year is lowering the number of days required to set up a company to just 1-2 days. During 2015, the time taken to incorporate a new company was halved to 4-5 days, from 9-10 days earlier.

As per the latest 'ease of doing business' rankings of the World Bank, the overall time required to start a business in India remains much higher at 29 days. This includes number of calendar days needed to complete the procedures to legally operate a business.

India now ranks 155th on this parameter, up from 164th last year, while its overall ease of doing business ranking has moved up four places to 130th. The Modi government has set itself an ambitious target of joining the top-50 league.

However, India ranks much higher at 8th place for protecting minority investors, the credit for which goes to a large extent to the new companies law.

However, the National Company Law Tribunal continues to remain an unfinished agenda of this Act.

Another unfinished task moving into the new year would be the final word on the unprecedented draft order of the Ministry of Corporate Affairs to merge crisis-hit National Spot Exchange Ltd (NSEL) with its parent FTIL.

More than a year has passed since issuance of the draft order, which was later challenged at the Bombay High Court.

Legacy seems to be a tough nut to crack as multiple committees, their recommendations and incessant stakeholder pleas continued to loom large over the new companies law.

About 20 months have passed since most provisions of the new law -- that replaced the nearly six-decade old Companies Act, 1956 -- came into force, but concerns and apprehensions persist despite the government effecting a raft of amendments this year in the legislation.

In May, Parliament approved 16 amendments to the Act, including on winding up of companies, board resolutions, bail provisions and utilisation of unclaimed dividends with a few to bring the law in tune with the global standards.

The Act has more than 450 clauses and several of them are said to have complicated the way business is done. "You are feeling the pinch after its being implemented," Finance and Corporate Affairs Minister Arun Jaitley said famously in May.

Apart from seeking to address the Companies Act-related issues, the ground is being prepared to usher in the new accounting standards that are in tune with international practices from April 2016.

To address acute manpower crunch faced by Serious Fraud Investigation Office (SFIO), the Ministry has also finalised various recruitment rules for filling the vacant posts.

As many as 57 posts of the total 130 sanctioned positions were vacant at SFIO at the start of this year.

Amendments to various rules also continued to flow in thick and fast all through this year, as the government made ease of doing business a priority area.

The Corporate Social Responsibility (CSR) spending requirement -- a showpiece of the new law -- came into effect way back on April 1, 2014, but there are still many lingering apprehensions.

While the final tally of annual CSR spending by all eligible companies is yet to be compiled, the Ministry officials expect the total expenditure to be around Rs 12,000 crore in the first full financial year (2014-15) of new law.

The Ministry is looking into recommendations of a high-level panel on CSR that include ensuring uniform tax treatment for all CSR activities and providing leniency towards non-compliant firms in the first 2-3 years of the law.

The year 2015 also witnessed two changes to the position of the Corporate Affairs Secretary.

After superannuation of the then Secretary Naved Masood in February, Anjuly Chib Duggal took charge and steered the Ministry for six months. She was then made Financial Services Secretary, after which Gujarat-cadre civil servant Tapan Ray took the charge.

Setting up of the National Company Law Tribunal (NCLT) and the appellate tribunal are yet to be completed and the recruitment process is going on. NCLT would be replacing the Company Law Board.

According to the Ministry, the Companies (Amendment) Act, 2015, notified in May this year, addresses the practical difficulties faced by the companies and stakeholders.

Among the changes, the Ministry has relaxed the procedure for setting up companies by introducing an integrated electronic application form, doing away with the earlier requirement of filing five e-forms for this purpose.

Taking into consideration concerns from stakeholders, a high-level panel was set up by the Ministry this June to address arising from the implementation of the Act.

The Companies Law Committee, which has received close to 2,000 comments and suggestions from various quarters, is in the process of finalising its recommendations.

Reflecting the Ministry's intent to have a broader and detailed re-look at various provisions of the Act, the panel also has the mandate to examine recommendations received from the Bankruptcy Law Reforms Committee, Law Commission and others.

Further, the panel has constituted six groups to broad base the consultations process.

While there is no official word yet, more amendments are likely after panel comes out with its recommendations.

On the positive side, the Ministry managed to get a higher budgetary allocation of nearly Rs 272 crore for the current financial year.

The outlay includes Rs 5 crore for the ambitious Corporate Data Management (CDM) scheme that seeks to effectively utilise the vast repository of information filed in its corporate registry.

Many other measures, including engaging experts and empanelment of chartered accountants, have been undertaken.

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