

## **Regulatory panel plans key change to definition of ‘vanishing co’**

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A REGULATORY co-ordination committee of the government will rethink a key change to the definition of ‘vanishing company’, which could have watered down the law in respect of such companies. According to the new rule, an entity cannot be called a ‘vanishing company’ if any of its directors — executive or nonexecutive — can be traced at a later date.

The earlier rule had three conditions for labelling a company as having vanished — if it was not found at its registered office address, had not filed its returns with the Registrar of Companies (RoC) or the stock exchanges for two years.

The change in criteria means that companies that raise capital and disappear could avoid the ‘vanishing company’ tag if one of its directors was traceable. This would have made it difficult for the government to confiscate the properties of such companies and take penal action. In the event of a director being traced, the government would not be able to take action against the company as it could not be deemed a ‘vanishing company’.

The clause which was incorporated by the Co-ordination and Monitoring Committee (CMC) — co-chaired by secretary in ministry of corporate affairs and Sebi chairman — may be taken up for scrutiny with investor groups, seeking deletion of the same, said a government official, requesting anonymity. Between 1992 and 2001, as many as 238 companies had vanished after raising capital. Of these 117 were traced, but as per the government’s latest records, 121 companies are still to be traced. “This is an inoperable clause. This presumes that the government has a mechanism in place where it contacts each director on a regular basis and on discovery of such directors it can call such a company a vanishing company,” said Prithvi Haldea, chairman and managing director of PRIME Database.

The CMC is the sole authority responsible for tracking vanishing firms, based on reports of RoC and also on the basis of investors complaints against firms which duped them, and initiating action against them. Investor protection group Midas Touch Investors Association has argued that the change will act as a boon for the predatory promoters and unscrupulous management to play foul with public money without the fear of law.

Midas’ founder member Virendra Jain said: “Traceability or whereabouts of its directors is irrelevant for the purposes of its identification as a vanishing company. The directors and promoters would be liable for their acts of omission and commission — depending upon the facts and circumstances of each case — under the provisions of applicable law, only subsequent to the identification of a vanishing company.”

***By Souvik Sanyal NEW DELHI***