Emphasis is on making it easier to do business

Though the new Companies Act, framed in the backdrop of the Satyam scam, had many useful provisions, including checks on auditors and more responsibilities for independent directors and audit committees, it was also very restrictive and the compliance was long-drawn. Which is why, the panel set up to review the Companies Act under the stewardship of the corporate affairs secretary, has done well to recommend some major procedural simplifications while, at the same time, not compromising the anti-fraud provisions of the existing Companies Act. Also, in keeping with the government's commitment to easing the doing business rules in the country, the panel has relaxed various procedures for smaller firms which will make filing of returns a less painful task; the number of filings themselves have been reduced. What has governed the committee's recommendations, above all, is to make a distinction between technical defaults and financial frauds—and within the latter, a distinction has been made between small and large frauds; those of under R10 lakh or 1% of the company's turnover, whichever is less, are to be compounded. And since Sebi laws deal with insider trading, it made little sense to retain these provisions in the Companies Act; accordingly, it has been recommended that this be scrapped.

Apart from the everyday ease of doing business—which means lower compliance costs—the big takeaways from the panel's recommendations pertain to remuneration for directors and removing of the restrictions put on the number of step-down subsidiaries. Under the current Act, subject to a cap based on the company's profit, remuneration has to be approved by the government. This was a needless irritant and unnecessarily gave the government a role in how the company was run, and also resulted in unnecessary delays. It is now proposed that a shareholder vote on this be enough, and an approval of just 50% of shareholders is to be got as opposed to 75% right now. The private placement of shares has also been simplified and no separate offer letter is required—in the case of sweat equity, up to 50% of the paid up capital can be issued in this form, up from the existing 25%. For start-ups, this is a welcome move, as are the relaxations for issuing stock-options to promoters of the company—right now, this cannot be issued to promoters who are working as employees or directors which is, in fact, the case with most start-ups. Loans can now be given to companies in which directors are interested as long as a special resolution is passed and necessary disclosures are made—once again, this is a welcome move. Since even financial analysts find it difficult to keep track of firms with so many levels of step-down subsidiaries, it is a bit odd that the committee should recommend doing away with the current restrictions though companies have been of the view that such restrictions made doing business difficult. What the committee says, though, is that a new provision relating to the beneficial ownership of companies will take care of this since the ownership of subsidiaries will always be clear. While that may or may not do the trick, it is important that any Act, including the companies' one, be reviewed regularly, to see if it is hindering business while, at the same time, preventing fraud.