

## **‘KNOWLEDGE TEST’**

The Corporate Affairs Ministry wants to introduce a new concept called the ‘knowledge test’ to find out if directors had previous knowledge of a company’s wrongful acts. As a first step, it would be ensured that the board processes are totally transparent. If it is found that the board papers had a mention of any wrongful act, and a director to whom the papers were circulated did not get his objections recorded in the minutes of the meeting, then he would be deemed to have colluded to commit that wrongful act, official sources told Business Line. The silence of directors will no longer save them, they said. Currently this concept of ‘knowledge test’ is not included in the Companies Bill. The Bill is now being considered by the Parliamentary Standing Committee of Finance. The debate on this is on and officials are finalising details, the sources said. Besides, companies would have to hire external specialists to get their directors trained on their legal duties. As in the US and the UK, the companies would then need to get directors’ performance evaluation done by a Nominations Committee comprising external experts, or by their Chairman. Companies would have to fix Key Result Areas (KRA) for directors at the start of the fiscal and map the KRAs vis-à-vis the directors’ performance. This would enable shareholders to decide if they should re-elect those directors to the board or not. “The stakeholders of a company expect directors to deliver. But only a few Indian companies follow international norms on this aspect. Therefore, a system providing for performance evaluation of directors is a must,” Mr N. K. Jain, Secretary and Chief Executive Officer, the Institute of Company Secretaries of India, said. According to the Companies Bill, directors should act in good faith to promote a company’s objects and exercise their duties with reasonable care. If a director is found guilty of failing to do his duties, he would be fined between Rs 1 lakh and Rs 5 lakh. If a director is found guilty of making undue gains for him or his relatives and associates, he would have to pay an amount equal to that gain to the company.

Source: The Hindu Business Line