

Exempt independent directors from any criminal liability: CII

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After decriminalisation of the companies law, industry representatives have pitched for legal and procedural safeguards for independent directors to keep the risks and rewards of such posts proportionate. “It is necessary to expressly exempt independent directors from vicarious criminal liability since they are not involved in the day-to-day running of the company,” said the Confederation of Indian Industry (CII).

Battling for clear safe harbours, it said, “Initiation of prosecution should be an exception rather than the rule... Proceedings may be initiated only once there is prima facie evidence of their possible involvement in the matter, rather than as a matter of course.” “While wrongdoers must be prosecuted, there need to be procedural guidelines and safeguards across laws to restrict and minimise proceedings against individuals who are not actually and demonstrably in charge of the management,” the CII said.

The industry body said the increasing liability of independent directors was a wor-

rying trend which has led to many resignations and a lack of such professionals for board-level positions.

The suggestions to the government come in the context of certain provisions under the Companies Act which penalise not only the firm concerned for a non-compliance, but also “officers in default”.

The CII has suggested that “a non-obstante clause may be incorporated in the Act to exclude independent directors from any vicarious criminal liability for offences committed by the company.”

Against the backdrop of Covid-19, the industry body has said that bona fide decisions taken during such exceptional times, even if they do not turn out as anticipated, may not be unduly challenged with the benefit of hindsight.

For instance, owing to the uncertain external environment and the focus on survival, directors may find it challenging to draw the right balance between a firm’s interest and the interest of stakeholders. “Options like reorganisation, restructuring, rightsizing and asset disposals are becoming common to enable firms to survive and grow stronger.”