MCA ACTION ON THE CSR RECOMMENDATIONS OF THE COMPANIES LAW COMMITTEE: ALL YOU NEED TO KNOW

BY AARTI MOHAN

Audits, no non-compliance penalty, carry forward unspent budgets in CSR, no monetization of employee involvement, the spirit of the Law – a circular recently released by the Ministry of Corporate Affairs on the recommendations around the CSR law have some welcome inclusions.

The much-discussed and debated Section 135 of the Indian Companies Act was reviewed in 2015 by a high-level committee headed by former urban development secretary Anil Baijal, which submitted its recommendations in September 2015. The changes, part of recommendations made to the Ministry of Corporate Affairs (MCA) on 1 February, include amendments to around a dozen provisions of Section 135 of the Companies Act 2013, dealing with CSR.

The Companies Law Committee (CLC) was mandated to review these and other committee reports on the Act. **On Feb 21,** the Ministry of Corporate Affairs released a circular on the actions being taken on the recommendations by the CLC. While the circular itself is not for public consumption yet, Sattva was given the permission to go ahead and share a summary of the recommendations and actions.

Here is a lowdown on all that's being changed and deliberated:

The High Level Committee is convinced that the **main thrust and spirit of the law is not to monitor but generate a conductive environment for enabling the corporates to conduct themselves in a socially responsible manner,** while contributing towards the human development goals of the country. All the recommendations, the CLC stated, were being made by examining the entire implementation and monitoring of these provisions in the background and true spirit, rather than letter.

Key highlights from the recommendations and responses around CSR

1. Public information of annual disclosure of companies around CSR: All information related to the implementation of the CSR law including spend, activities undertaken, geographies covered etc as reported in the annual disclosure made by the companies about the implementation of their CSR activities **will be compiled by the MCA and be placed in the public domain.**

2. On adopting pre-devised methodologies by companies for systematic monitoring of CSR: The committee feels that the Board and CSR committee, being accountable to their own shareholders and public at large, **should be managing this at their own level.** The existing legal provisions like mandatory disclosures, account audits of the company etc act as safeguard.

3. Is the Government going to engage external experts to monitor CSR? The committee feels that the **Government should have NO role to play** in engaging experts for external monitoring of CSR.

4. Additional monitoring of CSR undertaken by CPSUs: The existing mechanism of the C&AG audit, as well the as the study of COPU, are adequate to monitor CSR of CPSUs. Further the practice of signing MoUs between CPSUs and Administrative Ministry is expected to put in place some monitoring mechanism at the level of Administrative Ministry. Therefore, **no additional mechanism is required monitor the CSR of CPSUs.**

“CSR should be a level playing field for all companies, including CPSUs, said the Committee.

5. Third Party Audits: The general principles of “comply or explain” are sufficient for compliance by companies; however, boards/CSR committees are free to engage third parties to do independent audits of their programs.

6. How can you ensure that the money is not thinly spread? In order to ensure that only truly sustainable programs are being taken up, all CSR proposals are to be approved by the Board, on the recommendation of the committee. Changes to the proposal/project are to be made only after the approval of the Board.

7. Raising administrative costs to 10%: The permissible limit of budget dedicated to administrative costs can be increased from 5% to 10%, recommended the Committee. **This is still being reviewed by the MCA.** There is also an allied opinion that administrative expense should exclude the capacity building costs of the implementation agencies.

8. Monetization of services of corporate employees does NOT count towards CSR: In order to encourage employees to come forward and contribute their expertise and skills to CSR efforts, the Committee recommended that companies involve all their employees. However, their efforts cannot be monetized.

9. Recommendation to have a uniform tax structure: A differential tax structure for areas under Schedule VII may lead to unforeseen distortions in allocation of funds by corporates, where there emerges a bias towards areas based on taxes rather than social need, and in order to avoid this, the Committee recommended a uniform tax structure for all areas. **This is being put as a proposal to the CBDT, Ministry Of Finance.**

10. Unspent money can be carried forward: In many cases, implementation of CSR activities may take time, leading to unspent budgets towards the end of the year. This unspent money can be carried forward to the subsequent year. However, there should be a sunset clause on carrying over post 5 years.

The Committee had some interesting views on the rationale, spirit and aim of the Law, which we thought invited further summarizing here.

Thoughts of the expert committee around CSR

‘CSR is not about financing the gaps in public goods’

The committee observed that the rationale behind CSR is not to generate financial resources for social and human development since the resource gap can well be satisfied by levying additional taxes/cess on the corporates. The committee observed:

Use of corporate innovations and management skills in the ‘delivery of public goods’ is at the core of CSR implementation by the companies.

‘The first two to three years is about learning’

It would be premature to comment on the qualitative and quantitative aspects of CSR without giving it sufficient time to brew and have reports coming in.

‘Give it 2-3 years to bring in a culture of compliance’

“There is no need for penalty at this point – let us allow companies to graduate in 2-3 years time to ensure in a culture of compliance.”

‘If you are small, pool resources’

The Committee recommends that there should be two methods of implementation strategies for CSR. For companies having CSR budgets **more than 5 crores,** the company **can undertake long-term sustainable CSR activities** while companies with less than **5 crores of CSR budget** can undertake **project based CSR activities,** depending on their CSR spend from year to year. **Smaller CSRs are encouraged to combine with other similar companies and pool in resources.** This suggested threshold of 5 crore (in CSR expenditure) should be adjusted for inflation, using the GDP deflator or Wholesale Price Index (WPI) once every three years, with the figure being rounded off to the nearest crore.

Put together from the MCA circular dated Feb 21, 2016 on ‘Proposed Action by MCA on the recommendations of the high level committee on CSR and the earlier recommendations of the CLC.

Sattva are knowledge partners to the Indian Institute of Corporate Affairs (IICA) on Corporate Social Responsibility in India.