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Two-and-a-half cheers, at best

The Companies Bill 2012, which awaits presidential assent, features some provisions which are of concern to Indian industry

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The Companies Bill, 2012, passed by the Rajya Sabha on August 8 will soon be added to the statute book, after it receives presidential assent. The Bill will change the way companies in India are governed as it establishes stricter standards in governance, auditing and accounting, investor protection, disclosures, shareholders' rights and self-regulation. In many ways, the Bill is commensurate with global standards of management, governance, transparency and accountability.

The Confederation of Indian Industry (CII) has been engaged with the government in the evolution of the Bill and many of the concerns it has highlighted have been addressed. These include the removal of the blanket restriction on step-down subsidiaries, increasing the number of investment companies through which investments could be made from one to two, and extending immunity from liability under provisions of the Bill to all non-executive directors instead of only to independent directors.

However, the Bill also introduces certain new provisions which are of concern to industry. With the passage of the new law, India will become the first country in the world to prescribe mandatory spending on corporate social responsibility (CSR) activities in its company law. CSR initiatives should be allowed to evolve naturally and not be imposed on industry. Provisions specifying the manner, amount, and how and where to undertake CSR might be restrictive and could stifle the innovative strategies that companies are developing to create enduring sources of livelihood.

The Bill also provides that companies holding public deposits must return these deposits within one year of the commencement of the new Act. This is uncalled for and will be onerous. Existing deposits should be allowed to run till maturity and stricter provisions that are proposed to be prescribed should apply to deposits mobilised after the passage of the new law. Going forward, in an instance where a director has been convicted of an offence against which he has filed an appeal, he would still have to mandatorily vacate his office. Further, companies have been restricted from giving loans to directors, their relatives and partners. Instead of mandating, this could have been left to the Boards of Companies to decide.

INDIA HAS BECOME THE FIRST COUNTRY TO PRESCRIBE MANDATORY SPENDING ON CSR. BUT THESE INITIATIVES SHOULD BE ALLOWED TO EVOLVE NATURALLY AND NOT BE IMPOSED ON INDUSTRY

A wide range of provisions of the Bill will be implemented through subordinate legislation, which will be prescribed by the Central government. Many new concepts such as the rotation of auditors, the appointment of independent directors, performance appraisal of directors and crossborder mergers have been introduced in the Bill. Industry has expressed concerns about some of these provisions. Rules need to provide an enabling framework rather than a narrow and prescriptive one. For example, the rules relating to CSR should allow meaningful CSR initiatives to be undertaken in a self-regulating manner with industry bodies like CII being encouraged to prepare voluntary guidelines that suggest ways in which social responsibility could be integrated into business persuasion by companies.

Given that most companies in the country are driven by families or promoters, the new law should be able to achieve a fine balance of power between ownership and management.

The true test of the new statute will be when the subordinate legislation is finalised. It is heartening to note that the minister for corporate affairs has said that the rules will be exposed for public comment before they are adopted. It is only when the process is consultative and transparent; against the backdrop of enhanced shareholders' democracy, and when the government chooses to exercise selective controls by stepping in only when it is necessary to do so and in public interest that industry can ring in the new statute with three cheers!

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The views expressed by the author are personal