

No. 1/1/2015-CL-I
Government of India
Ministry of Corporate Affairs

5th Floor, Shastri Bhawan,
Dr. R. P. Road, New Delhi-110001
Dated: 7th September, 2016

To

The Director General,
Confederation of Indian Industry (CII)
The Mantosh Sondhi Centre
23, Institutional Area, Lodi Road, New Delhi - 110 003

Subject: Suggestion for amendment of section 182 of the Companies Act, 2013 based on the 255th Report of the Law Commission of India titled "Electoral Reforms" - regarding.

Sir,

I am directed to refer to recommendations at para 2.31(a)[2] of 255th Report of the Law Commission of India (Electoral Reforms) which has *inter-alia* recommended that Section 182 of the Companies Act, 2013 may be amended to require approval at company's Annual General Meeting instead of its Board of Directors, for making political contribution. Relevant extracts of the Report are enclosed.

2. The above recommendation was considered by Companies Law Committee (CLC) which gave following recommendation in its Report of 1st February, 2016:

"Prohibitions and restrictions regarding political contributions
12.12 The Committee deliberated on the recommendations made by Law Commission of India in its 255th Report for amending section 182 of the Act (Prohibitions and restrictions regarding political Contributions) to empower a larger group of people, such as the company's shareholders, in deciding how to use the funds of a company for political purposes. **The Committee felt that a wider consultation with industry chambers, political parties and other stakeholders should be taken up by the Ministry before taking a final decision on changes recommended in the 255th Report."**

3. It is requested that comments on the recommendation of the Law Commission and CLC may be sent to this Ministry at an early date.

Yours faithfully,



(N.K. Dua)

Joint Director

Ph: 23382260

Encl: As above



GOVERNMENT OF INDIA

LAW COMMISSION
OF
INDIA

Report No.255

Electoral Reforms

March 2015

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nomination to the date of notification of elections, extending to the date of declaration of results.

- Thus, the words "on which he has been nominated" in sub-section (1) of section 77 should be deleted and instead, the words "of notification of such election" should be inserted in its place.

2. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution of the company's funds at the company's Annual General Meeting (AGM) instead of its Board of Directors.

- Thus, the words "a meeting of the Board of Directors" in sub-clause (1) of section 182 should be deleted and in its place, the words "the annual general meeting" should be inserted.

b) **On Disclosure**

Relating to individual candidates

3. A new section 77A of the RPA has to be inserted requiring the candidates, or their election agents to maintain an account of the contributions received by them from their political party (not in cash) or any other permissible donor. The new section 77A reads as follows:

77A. Account of contributions received.—Every candidate at an election shall, either by himself or by his election agent, also keep an account of the following particulars in respect of the donations or contributions received by the candidate after the date of notification of election, namely: —

- (f) the amount of contribution received by the candidate from his party for the election;
- (g) the amount of contribution received by the candidate from—
 - (i) any person;
 - (ii) any company, not being a governmental company
- (h) the name, address and PAN card details, if applicable, of the donor in each clause (f), (g) above;
- (i) the nature of each contribution, in particular, whether it is:
 - (i) cash;
 - (iv) cheque; or
 - (v) gifts in kind;
- (j) the date on which the contribution was received.

Explanation: All contributions by a political party to its candidate shall be made by a crossed account payee cheque or draft or bank transfer."

CHAPTER XVIII

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Below is a summary of conclusions and recommendations of the Commission on various issues discussed in the report. The amendments to the Constitution, RPA, Election Rules and any other laws have been made in track changes in the Annexure appended to this Report.

18.1 Election Finance

The Law Commission has proposed wide ranging reforms on the issue of candidate expenditure limits; disclosure obligations of individual candidates and political parties; and penalties imposable on political parties; as well as examining the issue of state funding of elections.

- a. Section 77 of the RPA, regulating the election expenses incurred or authorized by candidates or their election agents, currently extends from the date of nomination to the date of declaration of results. This period should be extended by amending section 77(1) to apply from the date of notification of the elections to the date of declaration of results.

[Para 2.31(a)1]

- ✓ b. Section 182(1) of the Companies Act, 2013 should be amended to require the passing of the resolution authorising the contribution from the company's funds to a political party at the company's Annual General Meeting (AGM) instead of its Board of Directors.

[Para 2.31(a)2]

- c. The existing disclosure obligations of individual candidates are limited to maintaining an account of electoral expenses under sections 77 and 78, RPA. This is sought to be amended by inserting a new section 77A to require candidates or their election agents to maintain an account and disclose the particulars (names, addresses and PAN card numbers of donors and amounts contributed) of

- i. any individual contribution received by them from any person or company, not being a Government company and
- ii. any contribution by the political party from the date of notification of elections, which have to be made by the party by a crossed account payee cheque or draft or bank transfer.

[Para 2.31(b)3]

d. Section 78 should be amended in light of the proposed amendment to section 77A above, and the reference to more than one returned candidate should be removed.

[Para 2.31(b)4]

e. A new section 78A should be inserted requiring the district election officer to make publicly available, on his website or on file for public inspection on payment of prescribed fee, the expenditure reports submitted by every contesting candidate under section 78.

[Para 2.31(b)5]

f. Political parties should be required to maintain and submit annual accounts, duly audited by a qualified and practicing chartered accountant from a panel of such accountants maintained for the purpose by the Comptroller and Auditor General, to the ECI every financial year. These accounts will fully and clearly disclose all the amounts received by the party and the expenditure incurred by it. The ECI will then upload these accounts online or keep them on file for public inspection on payment of fee.

[Para 2.31(b)6]

g. Disclosure provisions governing political parties has been substantially recast, with the existing 29C being deleted and replaced by a new section 29D requiring all parties to:

- i. mandatorily disclose all contributions in excess of Rs. 20,000;
- ii. include aggregate contributions from a single donor amounting to Rs. 20,000 within its scope;
- iii. disclose the names, addresses and PAN card numbers (if applicable) of these donors along with the amount of each donation above Rs. 20,000;
- iv. disclose such particulars even for contributions less than Rs. 20,000 if such contributions exceed Rs. 20 crore or 20 % of the party's total contributions, whichever is less. Consequential amendments will need to be made to the Election Rules and the IT Act.

[Para 2.31(b)7]

h. A new section 29E to be inserted in the RPA requiring the ECI to make publicly available, on its website or on file for public inspection on payment of prescribed fee, all the contribution reports submitted by all political parties under section 29D.

[Para 2.31(b)8]

i. ECI's transparency guidelines prescribing, *first*, a "statement of election expenditure" to be filed with it, by every party contesting an election within 75 days of the Assembly elections and 90 days of the General elections election; and *second*, expenses incurred by political parties to be usually in the form of cheque or draft, unless banking facilities are

AMENDMENTS TO THE COMPANIES ACT, 2013 (18 of 2013)

182. Prohibitions and restrictions regarding political contributions.— (1) Notwithstanding anything contained in any other provision of this Act, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party:

Provided that the amount referred to in sub-section (1) or, as the case may be, the aggregate of the amount which may be so contributed by the company in any financial year shall not exceed seven and a half per cent of its average net profits during the three immediately preceding financial years:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at the annual general meeting ~~a meeting of the Board of Directors~~ and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.