

How does “The Chartered Accountants, The Cost And Works Accountants And The Company Secretaries (Amendment) Bill, 2021” improve the service delivery by professional institutions in India!

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Introduction

Bill No. 161 of 2021² was introduced in the Lok Sabha on 17th December, 2021 as The Chartered Accountants, The Cost And Works Accountants And The Company Secretaries (Amendment) Bill, 2021³ for amending *the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980.*

As we are aware, Chartered accountants (CAs), who are governed by *the Chartered Accountants Act, 1949* play a key role in the audit of financial statements of companies, when acting externally. While working with the companies, CAs also work on creating and managing books of accounts, budgeting, tax management and planning, etc.

Cost And Works Accountants (CWAs), who are governed by *the Cost and Works Accountants Act, 1959*, work on the costing of products/services of the companies and on ensuring compliance,

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² <http://loksabhaph.nic.in/Legislation/billintroduce.aspx>

³ 164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/161_2021_ls_Eng.pdf

on preparing costing reports, on analysing cost variances, on devising cost of production for the company, etc.

Company Secretaries (CSs), who are governed by *the Company Secretaries Act, 1980* work on meeting the regulatory and statutory requirements, on managing the Board meeting and on ensuring implementation of decisions of the board of directors, etc.

As CAs, CWAs and CSs are considered as the basic gatekeepers of corporate governance, this amendment and the attempt to reform the disciplinary mechanism of members of these professional institutions is also seen as the part of efforts to not only improve corporate governance but also the quality of preparation and reporting of key statutory documents so that the protection of investors, which is one of the mandates of IEPFA⁴ as well, gets ensured.

For this particular bill of amendment, its “STATEMENT OF OBJECTS AND REASONS” states that this amendment bill has been introduced for two broad reasons:

- a) The changes in the economic and corporate environment in the country have necessitated to amend the Acts;
- b) Additionally, recent corporate events have put the profession of chartered accountancy under a considerable scrutiny.

Background

In the recent past there have been several instances, when it appeared that a few representatives of these institutions, especially those who were supposed to guard the interest of the public and investors at large, did not perform their duties as diligently, as they should have done. Not long ago, there was the case of Satyam Computer Services, which was one of India's five top IT

⁴ <http://www.iepf.gov.in>

companies serving Fortune 500 companies had to get discredited as it admitted that its corporate accounts had been falsified. US Securities and Exchange Commission (SEC) as well as Indian Securities and Exchange Board of India (SEBI) had taken action against the then auditors of Satyam. In more recent times, we have seen the cases of NBFCs (Non-banking finance companies) like DHFL, IL&FS, etc. which got marred with issues related to financial mismanagement and related audit and accounts.

As earlier cases of lack of prudence and proper existence of oversight of accounts, cost and company secretarial practices emerged, current Government of India decided to undertake proactive approach to review the system and mechanism of dealing with deviant behaviour and process of the firms regulated by the three institutions, namely, ICAI, ICWAI and ICSI. Ministry of Corporate Affairs, Government of India set up a High Level Committee⁵ in 2017 under chairpersonship of Mrs. Meenakshi Datta Ghosh to examine the extant provisions and mechanism in the Acts and the rules and regulations made thereunder to

- a) deal with the cases of misconduct in the three Professional Institutes by chartered accountants, company secretaries and cost accountants and;
- b) to strengthen the existing mechanism and ensure speedy disposal of the disciplinary cases.

The High Level Committee that comprised 5 members apart for the Chairperson presented⁶ its report to the then Finance Minister on 18th September, 2017.

⁵ https://www.business-standard.com/article/pti-stories/panel-to-review-disciplinary-mechanism-of-ca-cs-institutes-117042100784_1.html

⁶ <https://twitter.com/finminindia/status/909760764679921664>



High Level Committee presenting the report (Source: Twitter)

To convey the message of ease of doing business as also to maintain full and proper oversight of auditing, in 2018, the Government of India had created NFRA (National Financial Reporting Authority) as the exclusive independent regulator for auditors, especially of listed companies and large unlisted entities. NFRA had the mandate of overseeing accounting standards in India as well as the auditing profession.

Main points of amendment

In the past, these professional institutions had tried to make attempts at self-regulation of its members. For example, ICAI had indicated⁷ that it was open to changes and had indicated that cases where the Quality Review Board (QRB) suggested disciplinary action against its members (CAs), required action would be taken after following the due process. In May 2018, ICAI had come out with a detailed technical guide⁸ prepared by the Quality Review Board, which had been established by Government of India under Section 28A of the Chartered Accountants Act, 1949 for conducting quality review.

However, these self-regulation mechanism did not seem to have the effectiveness of regulating and disciplining the deviant members. As the mechanism of self-regulation of professionals by

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http://timesofindia.indiatimes.com/article/show/80472121.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁸ <http://www.qrbca.in/wp-content/uploads/2018/06/qrb40237.pdf>

these three institutions could not deliver on expected lines, the government decided to address the gaps in the Acts of these three institutions by bringing in the current Bill of amendment. As indicated above, the Bill introduced in the Lok Sabha seeks to amend *the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980.*

In the report submitted⁹ by the committee, amongst several recommendations on the issue, the Committee recommended that not only the disciplinary platform needed to be independent of the institute, but also the current mechanism needed to be overhauled.

As per the “STATEMENT OF OBJECTS AND REASONS” of the Bill, it proposes to –

- a) address conflict of interest between the disciplinary arm and the administrative arm of the Institute;
- b) strengthen the disciplinary mechanism by
 - 1) augmenting the capability of the Disciplinary Directorate to deal with the information and complaints
 - 2) providing time bound disposal of each of the cases against members of the Institutes by specifically indicating the time limits for speedy disposal of those cases;
- c) enhance transparency and accountability by providing for audit of accounts of the Institutes by a firm of CAs, which would appointed annually by the Council of the Institute. The CA firm would be selected from the panel of auditors that would be maintained by the Comptroller and Auditor-General of India;
- d) have a separate chapter on registration of firms with the respective Institutes, with additional provision for bringing the firms under the purview of the disciplinary mechanism;

⁹ <https://twitter.com/finminindia/status/909760764679921664>

- e) finally, for fixing various fees, make it autonomous for the Council of the respective Institutes to decide on the fees.

Amendment synopsis

The Bill discusses the amendments of the three acts in separate chapters. Chapter II of the Bill discusses about amendments to The Chartered Accountants Act, 1949. Chapter III of the Bill discusses about amendments to The Cost And Works Accountants Act, 1959 and Chapter IV of the Bill discusses about amendments to The Company Secretaries Act,1980. Main points of amendment (along with a few illustrative clauses of the Bill) can be summarized under the following categories:

A) Mechanism to deal with the complaints

- Within 30 days of receipt of a complaint or information, Disciplinary Directorate would make distinction between actionable and non-actionable complaints and information (Clause 21 of the Bill)
- Before deciding whether a complaint or information is non-actionable or actionable, the complainant or informant would be given a period of fifteen days to file any additional documents, which s/he may desire; (Clause 21 of the Bill)
- In place of Prima Facie Opinion (PFO), Director (Discipline) would be prepare Preliminary Examination Report (PER) for determining the respondent guilty or not guilty in his opinion; (Clause 21 of the Bill)
- Within 30 days upon receipt of written submissions and rejoinder, if any, Director or Joint Director (Discipline) would submit PER if the prima facie case is made out;
- To give wider interpretation of the term PER, complaint filed by an authorized officer of Government or statutory authority, accompanied by an investigation report or extract thereof along with supporting evidence, would be treated as PER.
- Withdrawal of complaint would not be permitted at any stage; (Clause 21 of the Bill)

B) Disciplinary Mechanism

- Provision has been made for inclusion of Firms under the purview of Disciplinary Mechanism, with additional new chapter for Registration of Firms with the Institutes
- Autonomy has been provided to the Councils of the Institutes for fixing various fees in place of extant condition of prior approval of Central Government to determine such fees. (Clause 6 and clause 19 of the Bill)
- In case of misconduct, the Penalties/Fines may be enhanced
- The Bill would also enable the Institutes to remove the name of the firms or members in case of non-payment of penalties;

C) Administrative mechanism

- To enable the officers engaged in investigation of the complaints or information and to discharge their functions in an independent and unbiased manner, without any fear or favour, as also as a check and oversight mechanism of the entire process, appointment, re-appointment and termination of appointment of Director (Discipline) and Joint Director (Discipline) would be done by the Council of the Institutes only with the previous approval of the Central Government (Clause 22 of the Bill)
- A significant change in the constitution of Board(s) of Discipline (BoD) and Disciplinary Committees (DCs) of the Council is that majority would be of non-members of the Institutes (commonly called as lay members) in these bodies, even though BODs and DCs shall continue to be constituted by the Institutes as at present.
- While discontinuing the extant practice of direct nomination in the BoD and DCs by the Central Government, it is proposed that
 - a. the Presiding Officers will be selected by the Central Government from out of a panel of suitable persons with experience in law, having knowledge of disciplinary matters and the profession and
 - b. lay members will be selected from out of a panel of persons of eminence having experience in the field of law, economics, business, finance or accountancy.

It would be ensured that the presiding officers and lay members shall not be the members of the Institutes. To facilitate selection of lay members, panels of non-members of Institutes would be prepared and provided by the Councils of the Institutes.

- Provision would be made for increasing the number of BoDs for quicker disposal of cases on the lines of DCs;
- On the lines of ICAI, for ICSI and ICoAI as well, provision of Presiding Officers and lay members in the BoD, in place of existing practice of nomination of only members of the Institutes by the Councils of these two Institutes, would be made;x`
- It is also proposed that a person can be in the Council for maximum two consecutive terms (Clause 10 of the Bill) of 04 years as the term of the Council of ICAI would get enhanced from 03 years to 04 years (Clause 13 of the Bill).

D) Other points

- In the preamble of the Chartered Accountants Act, 1949 and the Cost and Works Accountants Act, 1959 the word ‘development along with regulation’ would be inserted to provide for developmental mandate for the members of the Institutes; (Clause 38 of the Bil)
- In order to bring global best practices, enhance transparency and accountability, as also to ensure improved quality of the audit, it has been provisioned that a firm of chartered accountants, which would be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor General of India, would carry out audit of annual accounts of the councils of the Institutes. (Clause 17 of the Bill)

Views of the Institutes

It is heartening to note that a few of the proposals of the Bill have been already accepted by the institutes and the required legal changes are being undertaken in consultation with the respective institutes.

Institutes are also welcoming the move of amending these acts. For example, The Institute of Company Secretaries of India (ICSI), while sharing its views on social media¹⁰, appreciated the GOI's efforts in bringing in reforms in the the Company Secretaries Act, 1980 and hoped that the amendment would further strengthen the profession of company secretaries.

Way forward

While there is no gainsaying that members of the three professional institutes have largely delivered outstanding professional services and support, the performance of a few of the members, occasionally globally best firms, have lacked in what they were supposed to do.

It is hoped that with the passage of The Chartered Accountants, The Cost And Works Accountants And The Company Secretaries (Amendment) Bill, 2021, better delivery of services by the members of these institutes would be enabled. As the Lok Sabha got adjourned on 21st December, 2021, The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 got referred¹¹ to the Departmentally Related Standing Committee.

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¹⁰<https://www.facebook.com/ICSI/posts/10159815359480350>

¹¹ <https://twitter.com/LokSabhaSectt/status/1473227428193452034>