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STANDING COMMITTEE ON FINANCE
(2021-2022)

SEVENTEENTH LOK SABHA

'THE CHARTERED ACCOUNTANTS, THE COST AND WORKS ACCOUNTANTS
AND THE COMPANY SECRETARIES (AMENDMENT) BILL, 2021'

(MINISTRY OF CORPORATE AFFAIRS)

FORTY-FIFTH REPORT



LOK SABHA SECRETARIAT
NEW DELHI

March, 2022 / Chaitra, 1944 (Saka)

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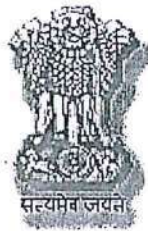
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AND THE COMPANY SECRETARIES (AMENDMENT) BILL, 2021'**

(MINISTRY OF CORPORATE AFFAIRS)

Presented to Lok Sabha onMarch, 2022

Laid in Rajya Sabha onMarch, 2022



**LOK SABHA SECRETARIAT
NEW DELHI**

March, 2022 / Chaitra, 1944 (Saka)

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COMPOSITION OF STANDING COMMITTEE ON FINANCE (2021-22)

Shri Jayant Sinha - Chairperson

MEMBERS

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Sukhbir Singh Badal
4. Shri Subhash Chandra Baheria
5. Shri Shrirang Appa Barne
6. Dr. Subhash Ramrao Bhamre
7. Smt. Sunita Duggal
8. Shri Gaurav Gogoi
9. Shri Sudheer Gupta
10. Shri Manoj Kotak
11. Shri Pinaki Misra
12. Shri Ravi Shankar Prasad
13. Prof. Sougata Ray
14. Shri P.V Midhun Reddy
15. Shri Gopal Shetty
16. Dr. (Prof.) Kirit Premjibhai Solanki
17. Shri Parvesh Sahib Singh
18. Shri Manish Tewari
19. Shri Bala Showry Vallabhaneni
20. Shri Rajesh Verma
21. *Vacant*

RAJYA SABHA

22. Shri Ahmad Ashfaque Karim
23. Shri Sushil Kumar Modi
24. Shri A. Navaneethakrishnan
25. Shri Praful Patel
26. Dr. Amar Patnaik
27. Shri Mahesh Poddar
28. Dr. C.M. Ramesh
29. Shri G.V.L Narasimha Rao
30. Dr. Manimohan Singh
31. Smt. Ambika Soni

SECRETARIAT

1. Shri Siddharth Mahajan - Joint Secretary
2. Shri Ramkumar Suryanarayanan - Director
3. Shri Kulmohan Singh Arora - Additional Director
4. Ms. Melody Vungthiansiam - Committee Officer

INTRODUCTION

I, the Chairperson of the Standing Committee on Finance having been authorised by the Committee present this Forty-fifth Report on 'The Chartered Accountants, The Cost And Works Accountants And The Company Secretaries (Amendment) Bill, 2021'

2. 'The Chartered Accountants, The Cost And Works Accountants And The Company Secretaries (Amendment) Bill, 2021', introduced in Lok Sabha on 17 December, 2021 was referred to the Committee on 22 December, 2021 for examination and report thereon, by the Speaker, Lok Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee took evidence of the representatives of the Ministry of Corporate Affairs at their sitting held on 9 February, 2022.

4. The Committee at their Sitting held on 3 February, 2022 heard the views of the representatives of the Institute of Chartered Accountants (ICAI), the Institute of Cost Accountants of India (ICoAI) and the Institute of Company Secretaries of India (ICSI).

5. The Committee considered and adopted this report at their Sitting held on 21 March, 2022.

6. The Committee wish to express their appreciation to the officials of the Ministry of Corporate Affairs concerned with the Bill for their co-operation and all the organisations for their valuable suggestions on the Bill. The Committee would like to also thank Shri R. Narayanaswamy, Retired Professor of Finance and Accounting, IIM Bangalore, PRS Legislative Research and Confederation of Indian Industry (CII) for their views and suggestions on the Bill.

7. For facility of reference, observation/ recommendations of the Committee have been printed in bold in the body of the Report.

New Delhi
21 March, 2022
30 Phalgun, 1943(Saka)

Shri Jayant Sinha
Chairperson,
Standing Committee on Finance

Report

BACKGROUND

The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980, were enacted to regulate the professions of chartered accountants, cost accountants and company secretaries, respectively. On account of multiple important changes in the economic and corporate environment of the country, it has become necessary to amend the Act.

1.2 A High-Level Committee was constituted by the Ministry of Corporate Affairs in 2017 to examine the existing provisions in the Acts, Rules and Regulations of the three Professional Institutes, namely, ICAI (Institute of Chartered Accountants of India), ICoAI (Institute of Cost Accountants of India) and ICSI (Institute of Company Secretaries of India) and to give its recommendations for strengthening the existing mechanism and ensure speedy disposal of the disciplinary cases. The Committee was constituted in the backdrop of rising disciplinary cases against the members of the three Institutes, predominantly in the ICAI. Large pendency of cases, unreasonable high average disposal time and involvement of the auditors in some alleged financial scams created a need to revisit the existing disciplinary processes in the three Institutes. In this context, it has been proposed to amend the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980. Accordingly, The Chartered Accountants, The Cost and Works Accountants and The Company Secretaries (Amendment) Bill 2021 was introduced in the Lok Sabha on 17th December, 2021.

A. Institute of Chartered Accountants of India (ICAI)

1.3 The ICAI is a statutory body established by an Act of Parliament, viz; The Chartered Accountants Act, 1949 for regulating the profession of Chartered Accountancy in the country. The Act was previously amended in 1959 and 2006 and last amended by the CA (Amendment) Act, 2011. The Institute functions under the administrative oversight of the Ministry of Corporate Affairs, Government of India. The affairs of the Institute are managed by the Council in accordance with the provisions of

the Chartered Accountants Act, 1949. The Council constitutes of 40 members of whom 32 are elected by the members of the Institute and remaining 8 are nominated by the Central Government. The Institute is headquartered at Delhi with 5 Regional Councils across India. The Institute has over 3.27 lakh Members.

B. The Institute of Cost Accountants of India (ICoAI)

1.4 The ICoAI is a statutory body established by an Act of Parliament, viz; The Cost and Work Accountants Act, 1959 for regulation of the profession of Cost Accountancy in the country. The Act was previously amended in 2006 and last amended by the CWA (Amendment) Act, 2011. The Institute functions under the administrative control of the Ministry of Corporate Affairs, Government of India. ICoAI has its headquarters at Kolkata and has 04 Regional Councils. At present, the Institute has more than 85,000 members.

C. The Institute of Company Secretaries of India (ICSI)

1.5 The ICSI is a statutory body established by an Act of Parliament, viz. the Company Secretaries Act, 1980 for regulation of the profession of Company Secretary in the country. The Act was previously amended in 2006 and last amended by the CS (Amendment) Act, 2011. The Institute functions under the administrative control of the Ministry of Corporate Affairs, Government of India. ICSI has its headquarters at Kolkata and has 04 Regional Councils. At present, the Institute has more than 62,000 members.

2. SALIENT FEATURES OF THE BILL, 2021

Salient features of the Bill as submitted by the Ministry of Corporate Affairs in a written note are as under:

- a) introduction of provision for making distinction between actionable and non-actionable complaints and information to be determined by the Disciplinary Directorate within 30 days of receipt of a complaint or information;
- b) Before taking a decision on whether a complaint or information is actionable or non-actionable, the complainant or informant is to be given fifteen days' time to file additional documents, if any;

- c) Provision for appointment of at least two Joint Directors (Discipline) in the Disciplinary Directorates of the Institutes (not below the rank of Deputy Secretary of the Institutes) to deal with the disciplinary cases. At present, there is no provision for appointment of Joint Directors. The appointment of Joint Directors would enhance the capacity of the Disciplinary Directorate to deal with the complaints and information and thus reduce the time taken for the disposal of disciplinary cases;
- d) Preliminary Examination Report (PER) to replace Prima Facie Opinion (PFO) by Director (Discipline) holding the respondent guilty or not guilty in his/her opinion;
- e) Director or Joint Director (Discipline) to give opportunity to respondent to submit a written statement within twenty-one days which may be further extended by another twenty-one days on a specific request with reasons for seeking further extension. Rejoinder to be submitted by the complainant or the informant upon receipt of written submissions of the respondent within twenty-one days;
- f) Submission of PER by Director or Joint Director (Discipline) within 30 days upon receipt of written submissions and rejoinder, if any, if prima facie case is made out;
- g) Complaint filed by an authorized officer of Government or statutory authority accompanied by an investigation report or extract thereof along with supporting evidence is to be treated as PER. At present, the said complaints go through PFO route and are first examined by Director (Discipline). This would avoid delays in concluding inquiries in such cases at the preliminary stage;
- h) Non-actionable complaints and information to be submitted to Board of Discipline within 60 days of receipt. Board of Discipline may ask Director (Discipline) to re-examine the information or complaint;
- i) Withdrawal of complaint not permitted at any stage;
- j) Appointment, re-appointment and termination of appointment of Director (Discipline) and Joint Director (Discipline) by the Council of the Institutes with the previous approval of the Central Government as a check and oversight mechanism to enable the officers engaged in investigation of the complaints or

information to discharge their functions in an independent and unbiased manner, without any fear or favour;

- k) Inclusion of Firms under the purview of Disciplinary Mechanism and a new chapter proposed for Registration of Firms with the Institutes;
- l) The Council shall continue to constitute Board(s) of Discipline (BoDs) and Disciplinary Committees (DCs) as at present. However, the majority will be of non-members of the Institutes (commonly called as lay members) in these bodies.
- m) The present practice of direct nomination by the Central Government in the BoD and DCs is proposed to be discontinued. Instead, 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 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. The presiding officers and lay members shall not be the members of the Institutes. The panels of non-members of Institute will be prepared and provided by the Councils of the Institutes.
- n) On the other hand, appointments of the members of the Institute in BoDs and DCs will be done by the Council itself out of a panel of such members to be prepared by the Council. Regulations for such matters will be made;
- o) Provision for more BoDs for quicker disposal of cases on the lines of DCs;
- p) Provision for Presiding Officers and lay members in the BoD of the ICSI and ICoAI in place of existing practice of nomination of only members of the Institutes by the Councils of these two Institutes on the lines of ICAI;
- q) Insertion of the word 'development along with regulation' in the preamble of the Chartered Accountants Act, 1949 and the Cost and Works Accountants Act, 1959 to provide for developmental mandate for the members of the Institutes;
- r) Proposal to enhance the term of the Council of ICAI from 03 years to 04 years and maximum two consecutive terms of 04 years for a person in the Council;
- s) Enhancement in Penalties/Fines in case of misconduct;
- t) Autonomy to the Councils of the Institutes in the matter of fixation of fees;

- u) Provision to enable the Institutes to remove the name of the firms or members in case of non-payment of penalties;
- v) Disposal of Disciplinary Cases within 180 days by Disciplinary Committee and 90 days by Board of Discipline;
- w) Entire Disciplinary proceedings, since filing of complaint to be completed within 365 days;
- x) Audit of annual accounts of the Councils of the Institutes by a firm of chartered accountants to be appointed annually by the Councils from the panel of auditors maintained by the Comptroller and Auditor General of India; and,
- y) Nomenclature of "Cost and Works Accountants Act, 1959" proposed to be changed to "Cost Accountants Act, 1959".

3. ISSUES DISCUSSED

In view of the detailed examination of "The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021" and suggestions received from the stakeholders, the **Committee endorse the provisions of the Bill in general** and have commented upon some of the important clauses of the Bill, which are as under:

A. Constitution of a Coordination Committee

3.2 The provision for a Coordination Committee currently does not exist in the Principal Acts.

Clause 9 of the Bill reads as under:

After section 9 of the principal Act, the following section shall be inserted, namely:—

"9A. (1) There shall be a Coordination Committee consisting of the President, Vice-President and the Secretary of the Council of each of the Institutes of Chartered Accountants of India, the Cost Accountants of India and the Company Secretaries of India for the development and harmonisation of the professions of Chartered Accountants, Cost Accountants and Company Secretaries.

(2) The meeting of the Coordination Committee shall be chaired by the Secretary, Ministry of Corporate Affairs.

(3) The meeting of the Coordination Committee shall be held once in every quarter of a year.

(4) The Committee shall be responsible for the effective coordination of the functions assigned to each Institute and shall—

(i) ensure quality improvement of the academics, infrastructure, research and all related works of the Institute;

(ii) focus on the coordination and collaboration among the professions, to make the profession more effective and robust;

(iii) align the cross-disciplinary regulatory mechanisms for inter professional development;

(iv) make recommendations in matters relating to regulatory policies for the professions;

(v) perform such other functions incidental to clauses (i) to (iv) above.”.

3.3 Views and suggestions from the three Institutes on the proposed Constitution of a Coordination Committee are as under:

The **Institute of Chartered Accountants of India (ICAI)** during the course of evidence submitted:

"Constituting a Coordination Committee would amount to not only intruding the autonomy of the Institute but it may also hamper the decision-making authority of the Councils of the respective Institutes which is evident from the functions proposed to be assigned to this Committee under sub-section (4).

A Coordination Committee of all the three Institutes is already in place as a Non-Standing Committee of the Institute under Section 17. This may be made a Standing Committee and its terms of reference should be to discuss and resolve common issues like Multidisciplinary Partnership etc."

The **Institute of Cost Accountants of India (ICoAI)** in a written submission stated:

"The Institute support proposal of establishment of a Co-ordination Committee. It has been submitted that it is a welcome proposal for the Secretary, Ministry of Corporate Affairs to chair meetings of the coordination committee that would

facilitate coordinated decisions and actions to promote the common professional pursuits in the country and abroad."

The **Institute of Company Secretaries of India (ICSI)** furnished the following suggestion:

"The main purpose of the Coordination Committee is to bring coordination and harmony among the three Institutes and it should make recommendations to that effect. The scope of the Co- ordination Committee should be for such matters/ areas that may require action by more than one Institute. It should not be made responsible for the functions assigned to each Institute. Accordingly, the words "be responsible" in Sub-section (4) be deleted and the word "work" be inserted.

The word "ensure" in sub-section 4 (i) be replaced with the words "make recommendations for". Furthermore the words "Infrastructure" and "other related works of the Institute" may be removed, as the same should be under the purview of the respective institutes and not of the committee."

3.4 The Ministry of Corporate Affairs furnished the following comments on the above suggestions:

"It may be noted that the two Institutes, ICoAI and ICSI have not objected to constitution of such a Committee. The purpose of the Committee is not to interfere in the functioning of each institute but effective coordination of the functions assigned to them in order to make the profession more effective and robust. At present, often it is seen that initiatives of one institute do not find support from other Institute since there is no mechanism of regular meetings of the representatives of the three Institutes at any forum. It may be noted that an MoU was signed in the year 2000 by ICSI with the ICAI & ICoAI, two other professional Institutes, under which a Coordination Committee of the three Institutes was constituted.

The proposed mandate of the Coordination Committee inter-alia is to ensure quality improvement of the academics, infrastructure, research and all related works of the Institute.

Section 29 of IIM Act, 2017 and Section 40 of IIIT Act, 2017 also envisages a Coordination forum for all the IIM and IIIT.

The Standing Committee of a particular Institute cannot function as a coordination platform for all the three Institutes. In order to make the Coordinative effective, it is required that the representatives of the three Institutes meet periodically on a common agreeable platform. As per the proposed bill, the Coordination Committee will comprise of Presidents, Vice-Presidents and Secretaries of the three Institutes, quarterly meeting of which shall be held under the chairpersonship of the Secretary, Ministry of Corporate Affairs, which is the administrative Ministry of all the three Institutes. "

3.5 Regarding the constitution of Coordination Committee, the recommendations of the High Level Committee Report headed by Ms. Meenakshi Datta Ghosh reads as under:

"Presently, the Co-ordination Committee among three Institutes has been constituted in an informal manner with non-specific terms of reference. The Co-ordination Committee meets in-frequently with no significant schedule for deliberation. Given the fact that these three Institutes together constitute an integral part of Corporate Governance and financial oversight across the country, effective co-ordination between three Institutes should be imperative. The Terms of Reference for this Co-ordination Committee should include all aspects of developing as well as regulating the profession."

3.6 The Committee note that the Bill seeks to constitute a Coordination Committee for the development and harmony of the three professions of Chartered Accountants, Cost Accountants and Company Secretaries. While the intent of the proposed amendment is effective coordination between the three Institutes, the Committee find that the apprehensions expressed by the ICAI regarding dilution of autonomy and the decision-making authority of the Council may be suitably addressed. The Committee, however, note that the other two Institutes in question, that is, ICoAI and ICSI have not objected to the constitution of the Coordination Committee as proposed in the Bill. The Committee are of the view that the terms of the constitution of the proposed Coordination Committee may be reviewed in as much as it may be chaired by an eminent person from Industry, Finance or Business who is not a Member of any of the three Institutes in question, instead of the Secretary of Ministry of Corporate Affairs. The Secretary can be a member of the Committee and represent the Government side. The Chairman may thus be nominated by the Central Government out of a panel of such eminent persons prepared and provided by the respective Councils. The other Members of the Committee may be the elected office-bearers of the Council as proposed in the Bill. The Coordination Committee may act as the apex body for harmonious regulation, effective professional development, and objective disciplinary oversight of the three Institutes, particularly keeping in view the fast-emerging prospect of multi-disciplinary firms/entities and the fact that the three

Professional Institutes in question together constitute the corporate governance and financial oversight framework across different sectors of our economy. The Coordination Committee may also be renamed as the Governance Committee to reflect its broader mandate of harmonious regulation, effective development, and disciplinary oversight of the three Institutes.

B. Composition of Board of Discipline and Disciplinary Committee

3.7 With regard to the composition of the Board of Discipline and Disciplinary Committee, the existing provision and the proposed changes in the Bill are as under:

Existing Provision	Proposed amendment
<p>Section 21A. Board of Discipline (1) The Council shall constitute a Board of Discipline consisting of— (a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer; (b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;"</p>	<p>"21A. (1) The Council shall, by notification, constitute one or more Boards of Discipline, each consisting of— (a) a person, not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed; (b) one member, who is a person of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed; (c) one member to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council, in such manner as may be prescribed."</p>
<p>Section 21B. Disciplinary Committee (1)The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy: Provided that the Council may constitute more</p>	<p>(1) The Council shall, by notification, constitute one or more Disciplinary Committees, each consisting of— (a) a person, not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;</p>

<p>Disciplinary Committees as and when it considers necessary.”</p>	<p>(b) two members, who are persons of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;</p> <p>(c) two members to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council in such manner as may be prescribed:</p> <p>Provided that the Presiding Officer nominated under clause (a) and the members nominated under clause (b) may be the same for different Disciplinary Committees constituted under this sub-section.</p>
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3.8 The ICAI submitted the following suggestions on the above issue:

"In regard to amendments proposed under this section, the ICAI have the following strong views/objections:-

Composition of the Board of Discipline (BOD)

The unprecedented provisions of appointment of 2 non-CAs as members (out of 3 members' Board) may have a larger impact as the work of CAs would be majorly judged by Non-CAs. Earlier there used to be only one Govt. nominee in BOD and Presiding officer used to be nominee of Council only.

The third member would be CA member who would be nominated by Council from a panel to be prepared by Council.

It may be mentioned that non-CA members would not be having in-depth knowledge of Accounting Standards, Standard on Auditing, scope of audit, inherent limitations of audit, basic concepts of audit like true and fair, materiality, substance over form, test base checking etc, etc. Auditing has increasingly become highly technical and specialised and the scope of audit is quite clearly defined through multiple standards.

Further, the decisions in BOD are taken unanimously i.e., with the consent of all members present including Government Nominee members. There is barely any instance when any member has dissented from the decision taken by BOD as a whole.

Composition of Disciplinary Committee (DC)

Regarding the composition of the Disciplinary Committee, the ICAI is of strong view that the conduct of professionals should be judged by the professionals only.

International Federation of Accountants (IFAC) has issued Statement of Members Obligation's – 6 (SMO6) and ICAI being a member of IFAC needs to comply with the same. IFAC has in its communication to ICAI confirmed that ICAI is compliant with SMO6.

Further, best efforts are made to ensure that the composition of DC is made in such a way that no member/minimum possible members hear the cases of the region to which he / she belongs.

The Appellate Authority already constituted under section 22 A of the Act has majority of non CA Members and all are appointed by Govt, The Chairperson is also a non CA member."

3.9 In this regard, the Institute of Cost Accountants of India submitted the following suggestion:

"The Institute has no reservation on the composition and manner of constituting the Board of Discipline and Disciplinary Committee(s). We as a professional body have always followed a concept of transparency, independence, and ethics in governing our Institute and Members. Even today, our disciplinary committees have presence of Government nominated Council Members who are not Cost Accountants. Therefore, we will have no difficulty even if the Presiding Officer and few other members of the Board of Discipline or the Disciplinary Committee would be non-Cost Accountants. We would welcome this change which is purely governed by the principles of ethics and unbiased justice. Similar practices prevail in leading professional accounting bodies of other countries."

3.10 The Institute of Company Secretaries of India submitted the following suggestion:

"1. Parameters for selection of Presiding Officer and Members of BoDs and DCs and such restriction should be specified through Rules rather than through regulations

2. It is proposed to include one member from out of the Council of the Institute as he can understand the technicalities of the profession, policies and code of conduct laid down by the Council and its practicalities or intricacies which an outside member may not be able to appreciate."

3.11 The Ministry of Corporate Affairs commented on the above suggestions as under:

" The Council shall continue to constitute the BoDs and there will be no change in the number of members in the bodies. However, the Presiding Officer of the BoDs will be nominated by the Central Government from out of a panel of

persons having experience in law and having knowledge of disciplinary matters and the profession, prepared and provided by the Council.

One Member in BoD shall be nominated by the Central Government from out of a panel of persons having experience in the field of law, economics, business, finance or accountancy, prepared and provided by the Council. Remaining One Member in BoD shall be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council.

In this regard, Global Best practices adopted in USA, UK, Australia, Canada and South Africa have been studied.

The conduct of the Chartered Accountants who are auditors of public interest entities are regulated by independent regulators which are constituted by the Government and in such bodies majority members are non-Chartered Accountants.

The remaining auditors and Chartered Accountants (who are not under the domain of independent regulators) are regulated either by Statutory Self-Regulatory Organisations (SROs) like India or Canada or by Self-Regulatory Organisations which are non-Government organisations like in UK, South Africa and Australia.

In India, misconduct of auditors of public interest entities comes within the domain of National Financial Reporting Authority (NFRA). The auditors or Chartered Accountants which are not covered by NFRA comes under the domain of ICAI.

Globally, there is a clear separation of elected bodies/members from Investigation and Disciplinary process in the SROs. It has been observed that members of the Council or other Committees of the Council/Board are not part of the disciplinary panels.

In UK, lay members (Non-CA) head the Disciplinary Panels. (In UK there are multiple bodies imparting education and regulating the accountancy profession, unlike India, where ICAI enjoys status of statutory monopoly).

In USA, State Boards of Accountancy regulates the profession and license to practice is also given by them. There are 56 Boards of Accountancy in USA and the members of the Board are appointed by the Government.

In the South African Institute of Chartered Accountants (SAICA), a self-regulatory organization (SRO) for Chartered Accountants in South Africa, chairperson of Professional Conduct Committee, is generally an attorney/advocate or a retired Magistrate. Similarly, the chairperson of Disciplinary Committee of SAICA also happens to be advocate/attorney or a retired Magistrate. In Accountancy Bodies

in Australia and Canada, no member of the Board/Council is a member of the Disciplinary Tribunal.

International Federation of Accountants (IFAC) an advocacy organization for the accountancy profession having more than 175 members and associates in more than 130 countries and jurisdictions, in its Statement of Member Obligations (SMO-6), has recommended independence in investigation and discipline functions. As per IFAC recommendations, independence in regulatory functions of SROs is measured in terms of participation of non-auditors in disciplinary and investigation functions."

3.12 During the course of evidence, the representative of Ministry of Corporate Affairs stated as under:

"There is no government interference in the constitution of these bodies. The Council will constitute these bodies. They will recommend the panel. They will also have their own nominees in this. So, there is no change. Rather than what we have done, we have withdrawn our government nominee. There will be no direct government nomination. So, it is rather giving more autonomy to them to suggest a name which they feel is good to regulate them. They will be suggesting names, we will not be suggesting names. In fact, the earlier provision was that the Government will appoint two nominees in disciplinary committee. That we are withdrawing. So, it is in the nature of now giving more autonomy to them. Through regulations, Council will constitute BOD, DC. They will suggest names to us. Whatever name they suggest, we may agree. They are also having their own nominees in the Council."

3.13 The ICAI during the course of evidence submitted the following data on the quantum of punishment:

QUANTUM/ NATURE OF PUNISHMENT	DC	BOD*	TOTAL
Reprimand with & without fine	165	148	313
Membership Removal upto 6 months with & without fine	94	59*	153
Membership Removal from 6 months to 1 year with & without fine	57	0*	57
Membership Removal from 1 year to 5 years with & without fine	48	0*	48
Membership Removal more than 5 years with & without fine	2	0*	2
Permanent Removal with & without fine	7	0*	7
Monetary Penalty	42	17	59
Punishment yet to be awarded	142	27	169
TOTAL	557	251	808

* BOD can remove the name of a member maximum upto 3 months

3.14 On the composition of the Disciplinary Committee, the High Level Committee headed by Ms. Meenakshi Datta Ghosh recommended as under:

"In the composition of the adjudicating bodies, the only way to strictly pre-empt conflict of interest and to sustain the independence of the adjudicating bodies, follow the good governance precedent set by Ministry of Corporate Affairs, in 2009. While constituting the Appellate Authority under sub-section (1) of Section 22A of the Chartered Accountants Act, 1949 the MCA used a formulation in clause (b) of the said sub-Section (1) which states: *"The Central Government shall, by notification, appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries of India for at least one full term and who is not a sitting member of the Council"*. This precedent beautifully and specifically addresses the conflict of interest issues.

The High Level Committee recommends that for ICAI, ICSI and ICoAI, the future Disciplinary Committee will have five members, with the following composition:

- i. two Govt. Nominees, as per communication addressed by Ministry of Corporate Affairs to each Institute;
- ii. Two reputed professionals with not less than 15 years of relevant experience, recommended by the Council of each Institute, and appointed by the Ministry of Corporate Affairs. These two professionals should not be sitting Council Members and, once appointed to the Disciplinary Committee, shall not be eligible in seeking election to the Council for a period of one term after the expiry of their term on the DC;
- iii. One member should be a professional, with a legal background, with at least 15 years experience, to be recommended and appointed by the Ministry of Corporate Affairs."

3.15 The terms of the Statement of Objects and Reasons clearly state that the conflict of interest associated with an autonomous institution running both the administrative as well as disciplinary committees needs to be addressed. While the intent of the proposed amendments seems to bring in more accountability and transparency in the decision-making process, the ICAI have opposed the appointment of a non-CA as the Presiding Officer on the premise of lack of in-depth professional knowledge. The International Federation of Accountants (IFAC) in its Statement of Member Obligations (SMO-6), has recommended independence in investigation and discipline functions and the ICAI has

submitted that they are fully compliant with SMO-6 of IFAC. The ICAI further claims that disciplinary decisions have been taken unanimously and there is no conflict of interest among the members in the current setup of the Board of Discipline (BoD) and the Disciplinary Committee (DC). With regard to disciplinary proceedings, the Committee find that among the cases adjudicated by the Disciplinary Committee from 2007 to 31st December, 2021, 7 out of 557 total cases were penalised with permanent removal with or without fine. The Committee feel that while the autonomy and independence of the Professional Institutes should not be interfered with unnecessarily, the integrity associated with financial reporting cannot be diminished in any way since it reflects business standards and financial robustness for the entire country. There seems to be, however, some divergence in the interpretation of the proposed amendment between the Ministry and the ICAI. While believing that the proposed amendments do not take away the professional autonomy of the three Institutes in any significant manner, the Committee are inclined to endorse the same without any modification. The members of the Disciplinary bodies may thus be appointed as proposed in the Bill.

C. Role of President and Secretary

3.16 With regard to the role of President, the existing provisions vis-a-vis the proposed amendment are as under:

Existing Provision	Proposed amendment
The existing provision provides that the President shall be the Chief Executive Authority of the Council.	<p>The President shall be the Head of the Council.</p> <p>"12(2)(A) The President shall preside at the meetings of the Council.</p> <p>(B) The President and the Vice-President shall exercise such powers and perform such duties and functions as may be prescribed.</p> <p>(C) It shall be the duty of the President to ensure that the decisions taken by the Council are implemented.</p> <p>(D) If, for any reason a vacancy occurs in the office of the President, or if the President is absent or for any other reason, is unable to exercise the powers or perform the duties assigned to him, the Vice-President shall act in his place and shall exercise the powers and perform the duties of the President.</p> <p>16(1) For the efficient performance of its duties, the Council shall appoint—</p> <p>(a) a Secretary who will carry out administrative functions of the Institute, as its Chief Executive Officer</p>

3.17 On the above proposal, the ICAI submitted the following suggestion:

"The proposed amendments in sub-section (2) are unwarranted and contradictory in nature. As proposed sub-section (2C) provisions itself says that it shall be the duty of the President to ensure that all decisions taken by the Council are implemented which means that this sub-section can effectively be implemented only when the President is Executive Head of the Council.

Hon'ble Standing Committee is requested to retain the already existing provision of sub-section (2) and not to make any changes as suggested in the proposed Bill or refer as "Executive Head" of the Council."

3.18 The Ministry furnished the following comments on the above suggestion:

"This amendment is with a view to aligning the provisions in the two other Acts, namely, CWA Act, 1959 & CS Act, 1980 governing the Cost Accountants and Company Secretaries respectively, wherein President is designated as Head of the Council. It may be noted that Section 12 of CWA Act, 1959 and CS Act, 1980, was amended in 2006, and President was designated as Head of the Council in place of Chief Executive Authority. However, corresponding amendment was not carried out in CA Act, 1949.

The Council is an elected body of the members of the Institute and is responsible for the functioning of the Institute. As per Provisions of Sec 15 of the CA Act, 1949, the Institute shall function under the overall control, guidance and supervision of the Council.

President being Head of the Council is required to ensure that the decisions of the Council are implemented. In other Acts like, Institutes of Technology Act, 1961, it is provided that it shall be the duty of the Chairperson to ensure that the decisions of the Board of IIT are implemented (Section 16 of the said Act)."

3.19 On the above issue, an independent witness in a written submission stated as under:

"The changes proposed in the Bill in the roles of the President and Secretary are by far the most significant. The President who is currently the "chief executive authority" will become the "head of the Council". The Secretary who currently has no defined role in the CAs Act will now become the "chief executive officer" to carry out the administrative functions of the Institute to be specified. As a result, the president will become the non-executive head of the Council and the Secretary will perform the executive functions. This is similar to the separation of the roles of chairman and managing director in corporate boards. The President will have to ensure that the Council's decisions are implemented."

3.20 During the course of evidence, the Ministry presented the following data:

Country	USA	UK
Regulator	Public Company Accounting Oversight Board (PCAOB) – a private non-profit corporation	Financial Reporting Council (FRC) - a company limited by guarantee
Composition	05 Board members, including a Chairman. Only 02 (must) be CPAs. Independent from the profession	Chairman, Chief Executive as an Executive Director, the Chair of the Regulatory Standard & Codes Committee, the Chair of the Conduct Committee and non-executive directors. No member of the Board may be a practicing auditor or a member of the governing body of an accountancy body

3.21 In order to address the fundamental administrative conflict of interest, it has been proposed that the role of the President becomes that of a Chairperson or Head of the Council and that the Secretary becomes Chief Executive Officer. The Ministry has submitted that this proposal has been made to align the provisions of the three Institutes. Globally, it can be seen that the role of the Chairman or Head has been separated from that of the Executive Authority. The Institute of Technology Act, 1961 also provides for a Chairperson to ensure the implementation of the Board's decisions. As such, the Committee feel that the role of the Head of Council and the Executive Head may be separated as proposed in the Bill to bring about greater efficiency in decision making and functioning of the Council.

D. Timelines for completion of disciplinary proceedings

3.22 Regarding timeline for completion of disciplinary proceedings in BoD and DC, the existing provisions vis-a-vis the proposed amendments are as under:

Existing Provisions	Proposed amendments
No specific timelines for investigation/ adjudication of disciplinary cases.	Section 21 (3) While making investigation into a case which is found to be actionable, Director (Discipline) shall give opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days, which may further be extended by another twenty-one days on specific request giving reasons for seeking further extension. 21A(4) The Board of Discipline shall conclude its inquiry within ninety days of the receipt of preliminary examination report from the Director (Discipline). 21B (4) The Disciplinary Committee shall conclude its inquiry within one hundred and eighty days of receipt of the preliminary examination report from the Director (Discipline).

3.23 On the issue of timelines for completion of disciplinary proceedings, the ICAI submitted the following suggestion:

"Timelines for pleadings and undertaking various activities by Director (Discipline) including the procedure to be followed are given in the proposed Bill itself. It is a cardinal principle of legislative drafting that the substantive law deals with or provides for substantial and enabling provisions and the procedure part, to maintain flexibility, is prescribed in the delegated legislation i.e. in Rules. Proposed Bill focus upon / emphasises more on procedural aspects whereas procedure should be defined in Rules rather in the substantive legislation.

It is pertinent to mention that the Board of Discipline and Disciplinary Committee are part time bodies that adjudicates the disciplinary cases. Thus the, timelines needs to be realistic and practical. One would also agree that any judicial or

quasi-judicial forum is required to adhere to the principles of natural justice by giving a fair and reasonable opportunity to all the parties by following due procedure. For the sake of procedure or for expeditious disposal, the basic principle of natural justice cannot be overlooked.

Therefore, ICAI is of the view that time line, if any for various stages of disciplinary proceedings should only be provided in the Rules. At the most in this Section an upper limit of time for disposal of a case can be provided."

3.24 The Ministry of Corporate Affairs furnished the following comments on the above suggestion:

"It appears that the Institute is agreeable that timelines may be provided though it does not want to commit on the particular timelines provided in the Bill. In ICAI, it is observed that a large number of cases are pending for more than 3 years. The provision in the bill is made on the recommendations of the High Level Committee which has recommended a time line of 365 days for completion of entire proceedings and also need for a timeline for disposal of disciplinary cases. The Bill seeks to ensure timely disposal of pending cases within 180 days by Disciplinary Committee and 90 days by Board of Discipline and also prescribed timelines at the stage of PER in the Disciplinary Directorate.

In order to enable the Institutes to dispose the cases in a timely manner, the Bill further proposes to augment the capacity of Disciplinary Directorate by making provision for at least two Joint Directors (Discipline) in addition to Director (Discipline) and more than one BoD for quicker disposal of cases."

3.25 On the pendency of cases, the ICAI in a written note submitted as under:

"Pendency of Cases: From 2006, new procedure of Disciplinary Mechanism for taking action against erring members has been introduced. Since 2006 to 31st December 2021, a total of 5829 cases have been registered under the new mechanism out of which 3832 cases (65.74%) were disposed off by the 31st December, 2021. Ageing analysis of remaining, 1997 (34.26%) cases is as below:

TOTAL NO OF PENDING CASES [#]	LESS THAN A YEAR	FOR 01 - 3 YEAR	MORE THAN 3 YEARS
1997	670	753	574

(#) In 79 cases, stay has been granted by the competent Court & apart from that in 2 cases although there is no stay on the proceedings, final Order cannot be passed due to Order of the competent Court.

3.26 On the above issue, the High Level Committee had recommended as under:

" The High Level Committee recommends a carefully calibrated schedule of time ceilings starting from receipt of complaint, such that final disposal in each complaint does not exceed 365 days/one year, from the date the complaint is received in the Directorate of Discipline."

3.27 One of the important objectives of the Bill is to provide time bound disposal of cases by specifying time limits for speedy disposal of cases against members of the Institute. Based on the submissions of the Institutes and the Ministry, the Committee feel that the introduction of timelines for completion of disciplinary proceedings is reasonable and justified with a view to ensuring prompt disposal of disciplinary matters. The Committee would therefore endorse the timelines proposed in the Bill.

E. Liability of firms for misconduct of partner

3.28 On the issue of the liability of firms for misconduct of partner, firms are not covered in the existing Acts and the proposed changes in the Bill are as under:

"21A(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Board of Discipline is of the opinion that any such member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the First Schedule during the last five years, the following action may also be taken against such firm, namely:—

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a chartered accountant in practice for such period not exceeding one year; or

(b) impose such fine as it may think fit, which may extend to twenty-five lakh rupees.

21B(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Disciplinary Committee is of the opinion that any such member, who is a partner or owner of a firm has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, during the last five years, the following actions may also be taken against such firm, namely:—

- (a) prohibit the firm from undertaking any activity or activities relating to the profession of a chartered accountant in practice for such period not exceeding two years; or
- (b) suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or
- (c) impose such fine as it may think fit, which may extend to fifty lakh rupees."

3.29 The ICAI submitted the following suggestion on this issue:

"Clause (a) of sub-section (6) regarding imposing penalties on firm needs to be re-worded having regard to the following instances (which are not exhaustive).

- 'A' is a partner simultaneously in more than one firm at the time of commission of misconduct and repeatedly found guilty. In such case, whether on all the firms penalty is liable to be imposed or only on one firm.
- At the time of commission of misconduct, 'A' is a partner in one firm and subsequently becomes partner in another. In such cases, whether penalty is imposed on both the firms or on which firm the penalty can be imposed is not getting cleared.
- After committing repeated misconducts and found guilty thereof, if 'A' dissolves the said firms and establishes a new firm, whether the new firm can be penalised for his misdeeds.
- At first time, A is found to be guilty for misconduct as defined under first schedule and second time, he is found to be guilty for misconduct as defined under second schedule or both schedule. There can be a reverse situation also. The provisions need to be more clarificatory.
- There may be a situation where four partners of a single firm are found to be guilty of misconduct as defined under first schedule and / or second schedule, but none of them have been found repeated guilty. Now it is not clear whether any action can be contemplated on the said firm in this case.

Further to above, ICAI is also concerned for a firm having multiple partners, paid assistants, employees and article assistant. As per the proposed provision, if any one of the partner is found to be repeated guilty, action would be initiated against the entire firm including removal of its name from the register. However, it is felt that this would lead to unnecessary hardship to all other partners, paid assistants, employees etc. who are dependent for their livelihood on the firm without any fault of them."

3.30 The Ministry of Corporate Affairs furnished the following comments on the above suggestion:

"With regard to liability of firm, it is submitted that the proposal of fixing liability of firm has been introduced in all the three Acts through the present amendment bill along with a separate chapter on registration of firms. It is also relevant that the Institute has raised no objection as regards introduction of separate chapter on registration of firms rather there was a longstanding demand of including a separate chapter on firms and also the power to the Council to penalise them.

The action against member who is a partner or owner of a firm has been provided in the bill for misconduct under the First Schedule to be inquired by Board of Discipline and for misconduct under the Second Schedule to be inquired by Disciplinary Committee. The repeated misconduct on part of a partner of a firm in the last five years (rather than the same or identical offence) would be considered for taking action against the firm also. Here repeated misconduct refers to misconduct on part of a partner or owner of a firm on more than one occasion. Therefore, different formulation based on times of repeated offences is not required.

A professional charged with misconduct and found guilty may be partner in more than one firm. However, for the purpose of this clause, partner(s) of the firm on behalf of which he/she has carried out the audit/certification and is found to be involved in a misconduct would only be covered

The proposed formulation in the Bill has been vetted by Legislative Department."

3.31 The recommendation of the High Level Committee Report on the above issue is as under:

"At present, the jurisdiction of the disciplinary mechanism (in all three professional Institutes), extends only up to its individual member and does not in any manner implicate the firm/partnership with which such member is associated or may be so employed. Following the Satyam scam, a High Powered Committee appointed within the ICAI, had proposed to Government of India, Ministry of Corporate Affairs in 2010 that the Chartered Accountants Act, Regulations and Rules be amended such that ICAI could *"proceed against the firm, including imposition of ban, where the partners and the members of an audit team are found to be guilty of gross negligence / fraudulent activities"*.

With reference to the disciplinary process, this High Level Committee, recommends that:

(i) it is logical and also high time that the firm must also be held culpable to the extent as may be prescribed for the specific misconduct of the defaulting professional.

(ii) In any disciplinary proceeding, the Complainant must furnish the name of the firm/ partnership to which the CA/CS/Cost Accountant belonged at the time when the lapse in professional conduct took place.

(iii) Similarly, in the final order passed by the adjudicating bodies of the three Institutes, the name of the firm must be stated upfront in terms of specific penalties imposed, as relevant.

(iv) And finally, in order to bring the firms of members also under the umbrella of disciplinary mechanism, the HLC recommends that the proposal of ICAI contained in letter dated 15th December 2010 should now be considered as soon as feasible. If accepted, this would require amendments in the Acts and Rules of the respective Institutes.

3.32 The inclusion of firms under the purview of the disciplinary mechanism is one of the objectives of the Bill. This was necessitated by various incidents including the major corporate accounting scandals, huge scams that shook the economy, the discovery of shell companies after demonetization and the lack of action taken or inability to take action against firms. In this regard, the Committee are surprised that the Ministry has taken an unduly long time in taking action on the recommendations of the High Level Committee in 2017. The Committee feel that the ICAI's opposition to penalising firms for the repeated misconduct of its partners is unfounded as the firms have a fiduciary relationship with their partners and are equally responsible for their deeds. Further, it may be noted that the Bill does not intend to penalise firms for a single misconduct of its partner but repeated misconduct within a span of five years. The Committee, therefore, endorse the amendment and hope that these are not cosmetic changes and would rather go a long way in preventing financial scams in the future.

F. Increasing Competition

3.33 During the course of evidence, the representative of Ministry of Corporate Affairs stated as under:

"In the US, for taking a license, you have to go to State Board of Accountancy. For public listed companies, there is Public Company Accounting Oversight Board (PCAOB). It has to be independent from the profession. The American

Institute of Certified Public Accountants (AICPA) is a voluntary organisation but they cannot give license to practice. In fact, they are conducting seminars. Maybe, they are also suggesting syllabus through which the CPAs should appear in exam. Exam is conducted by National Association of State Boards of Accountancy (NASBA) and State Board of Accountancy.

In the US, there are 56 State Boards of Accountancy.. In California, there are 15 members – seven professionals and eight lay members. In Alabama, it is one lay member and six professionals. But all are appointed by the Government. They are not getting appointed by the Council. There would be the State Chartered Accountant bodies but they are not regulating themselves. Here, ICAI is giving license and conducting exam. That is why, we have said it is statutory monopoly. It is doing everything unlike USA where awarding of license is with the Government, cancellation of license is with the Government. It is completely regulated knowing the sensitivity and importance of the profession. Who will be appointing the Members of Board of Accountancy? They are appointed by Governor, Senate or Speaker. The AICPA is only becoming an organisation where if you want to get benefit out of something and you become a member. That is a major difference. To practice in USA, you need not become a Member of AICPA. I may not be obliged to take the membership of AICPA to practice, I can take a license from the Government and practice.

Here, you have to take a license from ICAI, certificate of practice. Without obtaining a certificate of practice, you cannot practice. That means it is completely controlled by one Institute. There is no competition also to develop the profession unlike in other countries where there are multiple bodies competing with each other and developing the profession."

3.34 The Ministry also provided the following information regarding Qualification and licensing in various countries:

USA

- Activities are performed by multiple bodies;
- Examination for CPAs is conducted by American Institute of Certified Public Accountants - AICPA (a voluntary professional organization of CPAs at National Level). National Association of State Boards of Accountancy- NASBA (a Not For Profit Organization) gets the scores from AICPA and transmits to the State Boards of Accountancy (SBAs - Govt. Bodies), which make scores available to the candidates
- License to practice/ revocation of license by SBAs (not by AICPA or State Societies of CPAs)
- CPAs need not be members of AICPA

UK, South Africa and Australia

- Activities are combined but performed through multiple bodies – SROs, which are Non-Governmental Bodies
- Canada
- Activities are combined but performed through multiple Statutory Provincial Bodies – Statutory SROs

3.35 On the above issue, an independent witness submitted the following suggestion:

"Establishment of Indian Institutes of Accounting

This proposal is for establishing a string of Indian Institute of Accounting (IIA) that will raise the standards of accounting education and offer competition to the Institute of Chartered Accountants of India.

Here's an outline of what the IIAs would be like:

- The IIAs will be statutory bodies established by a Central law similar to IITs and IIMs.
- They will be set up in different parts of India.
- Each IIA will have a board of governors consisting of experts, lay persons, and government officers drawn, among others, from the Ministry of Finance, the Ministry of Education, and the Ministry of Corporate Affairs. The board size will be ten.
- The board will have full functional, financial and administrative autonomy for its efficient functioning.
- The chairman and the members will be eminent persons from business, public administration, accountancy, finance, academia, and so on.
- The board will appoint the chairman and the members and they must be free from conflict of interest of any kind i.e. professional, financial, or personal.
- The chairman and the members will serve part-time and will have a term of three years. They shall not be eligible for reappointment or extension in order to avoid entrenchment and to bring in new talent regularly.
- The board will appoint a Director (CEO) for a term of five years. The Director shall not be eligible for reappointment or extension in order to avoid entrenchment. This is particularly important because the board is part-time and the Director could develop deep roots.
- Each IIA will have an Academic Council that will develop the curriculum. The undergraduate curriculum will have financial and cost accounting, auditing, tax, law, business strategy, organisational behaviour, management, governance and public administration, technology, data

science, psychology and other fields relevant to the wide role that accountants play.

- IIAs will start with a five-year undergraduate programme in accounting. Overtime, they will develop post-graduate programmes in specialized areas such as forensic accounting, business analytics, cyber security, valuation, international tax, and other relevant fields. Once these programmes stabilise, they will develop PhD programmes.
- Admission will be through a national entrance test after secondary schooling under the National Educational Policy 2020.
- IIAs will be research-driven. They will support research and publications efforts by their faculty generously.
- IIAs will work closely with national and regional educational institutions such as the Indian Institutes of Management, the Indian Institutes of Technology, the National Law Universities, and other universities and institutions.
- From the beginning IIAs will have an international outlook. They should have students from all over the world including from developing countries. They should aim to get the best faculty from around the world.
- They should price their education reasonably and provide liberal financial aid to needy students. Access, equity, inclusion, diversity, and fairness are important. They should work to raise endowments from industry.
- Those who qualify in the undergraduate programme will be given two degrees, a Bachelor of Accounting and a Bachelor of Business. This will give them a choice of the stream they want to go into.
- They will be given a licence to practise similar to CAs. The licence-holders will be called Certified Professional Accountants (CPAs). They will be required to register themselves with a Central Licensing Authority (such as NFRA) which will handle their disciplinary matters.

The proposal visualizes the IIAs as academic institutions that educate licensed professionals similar to AIIMS, PGI, JIPMER, National Law Schools, and so on. In contrast, the Institute of Chartered Accountants of India will be a professional certification agency, much the same way it is now."

3.36 During the course of examination of the Bill and scrutinizing global practices with regard to the profession of accountants, it has been observed that the qualification and licensing of accountants in advanced countries like US, UK and Canada is done by multiple bodies unlike in India where one Institute has statutory monopoly over the whole profession. As such, the scope for improving

the quality and competency of the profession remains limited. The Committee during their deliberations feel that multiple bodies on the lines of advanced countries is required in order to promote healthy competition, raise the standard and quality of auditing and accounting and improve the credibility of financial reporting. The Committee desire that the Government should consider setting up of Institutes of Accounting (IIA) akin to IITs and IIMs for further development of the accounting and finance profession in the country.

G. Substitution of Section 22- Professional or other misconduct defined

3.37 Clause 26 of the Bill states that:

"For section 22 of the principal Act, the following section shall be substituted, namely:-

'22. For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm, as mentioned in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of such member or firm, under any other circumstances."

3.38 The Committee recommend addition of the word "commission" in Clause 26 (Section 22 of Principal Act) as indicated below:

"For the purposes of this Act, the expression "professional or other misconduct" shall be deemed to include any act of commission or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm, as mentioned in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of such member or firm, under any other circumstances."

H. Change in nomenclature

3.39 Clause 39 of the Bill states as under:

"In section 1 of the principal Act, in sub-section (1), for the words "Cost and Works Accountants", the words "Cost Accountants" shall be substituted.

3.40 The Institute of Cost Accountants of India submitted the following suggestion in this regard:

"The Bill proposes to substitute the existing words 'Cost and Works Accountants' with the words 'Cost Accountants'. In this regard, the Institute submits that instead of substituting the existing words 'Cost and Works Accountants' with the words 'Cost Accountants', these should be substituted with the words "Cost and Management Accountants" in line with the title of the qualification of its members, viz., ACMA and FCMA and institute's name is changed as "The Institute of Cost and Management Accountants of India". The change would be in line with the changing role of the professionals known earlier as cost and works accountants of similar institutes in developed and developing countries such as UK, USA, Australia, Bangladesh, Sri Lanka, etc. In support, we give below the global list of all CMA Institutes:

- Chartered Institute of Management Accountants, UK
- Institute of Management Accountants, USA
- Institute of Certified Management Accountants, Australia
- Institute of Certified Management Accountants, Hong Kong
- Institute of Certified Management Accountants, Sri Lanka
- Institute of Cost and Management Accountants of Bangladesh, Bangladesh

It may be seen that except India, all other Institutes carry the title as Cost & Management Accountants or simply Management Accountants. It is only in India that the Institute carries the title of only Cost Accountants, which is misleading as the domain of cost accounting has matured itself to cost & management accounting."

3.41 The Committee note that Clause 39 of the Bill proposes to substitute the words "Cost Accountants" instead of "Cost and Works Accountants". However, the Institute of Cost Accountants of India have suggested that the nomenclature may be changed to 'Institute of Cost and Management Accountants of India' in keeping with international practice. In this regard, they have cited the example of UK where it is Chartered Institute of Management Accountants, Institute of Management Accountants in USA and Institute of Certified Management Accountants in Australia. In this regard, the Committee would suggest that the Ministry of Corporate Affairs may consider suitable change to the nomenclature of the Institute as per international practice/benchmarks.

New Delhi;
21 March, 2022
30 Phalguna, 1943 (Saka)

SHRI JAYANT SINHA,
Chairperson
Standing Committee on Finance

Minutes of the Seventh sitting of the Standing Committee on Finance (2021-22)
The Committee sat on Thursday, the 03rd February, 2022 from 1500hrs. to 1600 hrs.
in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Shri Shrirang Appa Barne
5. Dr. Subhash Ramrao Bhamre
6. Shri Manoj Kotak
7. Shri Pinaki Misra
8. Prof. Sougata Ray
9. Shri Gopal Shetty
10. Dr. (Prof.) Kirit Premjibhai Solanki
11. Shri Manish Tewari
12. Shri Rajesh Verma

RAJYA SABHA

13. Shri Ahmad Ashfaque Karim
14. Shri Sushil Kumar Modi
15. Shri A. Navaneethakrishnan
16. Shri Praful Patel
17. Dr. Amar Patnaik
18. Shri Mahesh Poddar
19. Dr. C.M. Ramesh
20. Shri G.V.L Narasimha Rao
21. Smt. Ambika Soni

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri Siddharth Mahajan | - | Joint Secretary |
| 2. Shri Ramkumar Suryanarayanan | - | Director |
| 3. Shri Kulmohan Singh Arora | - | Additional Director |
| 4. Shri Kh. Ginlal Chung | - | Deputy Secretary |

LIST OF WITNESSES

The Institute of Chartered Accountants of India

1. CA. Nihar N Jambusaria, President
2. CA. (Dr.) Debashis Mitra, Vice President
3. CA. (Dr.) Jai Batra, Secretary

The Institute of Cost Accountants of India

1. CMA P. Raju Iyer, President
2. CMA B.M. Sharma, Past President
3. CMA B.B Goyal, Advisor

The Institute of Company Secretaries of India

1. CS Devendra Deshpande, President
2. CS Ranjeet Pandey, Past President and Council Member
3. CS Asish Mohan, Secretary

3. At the outset, the Chairperson welcomed the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the President, ICAI made a powerpoint presentation on 'the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021' and went on to highlight the suggested modifications to the Bill alongwith representatives of the ICoAI and ICSI. The major issues discussed include the need for formation of a Coordination Committee among the three Institutes, the changes proposed in the composition of the Board of Discipline and Disciplinary Committee, the rationale behind penalizing firms for offence of partners, high pendency of disciplinary cases and the need for time-bound disposal of cases and conflict of interest between disciplinary and administrative arms of the Institutes.

4. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Eighth sitting of the Standing Committee on Finance (2021-22)
The Committee sat on Wednesday, the 09th February, 2022 from 1500hrs. to 1600
hrs. in Main Committee Room, Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Gaurav Gogoi
7. Shri Manoj Kotak
8. Prof. Sougata Ray
9. Shri Gopal Shetty
10. Dr. (Prof.) Kirit Premjibhai Solanki
11. Shri Bala Showry Vallabhaneni

RAJYA SABHA

12. Shri Ahmad Ashfaque Karim
13. Shri Sushil Kumar Modi
14. Shri A. Navaneethakrishnan
15. Dr. Amar Patnaik
16. Shri Mahesh Poddar
17. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri Siddharth Mahajan | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Kulmohan Singh Arora | - | Additional Director |
| 4. | Shri Kh. Ginalal Chung | - | Deputy Secretary |

LIST OF WITNESSES

Ministry of Corporate Affairs

1. Shri Rajesh Verma, Secretary
2. Shri Manoj Pandey, Joint Secretary
3. At the outset, the Chairperson welcomed the witnesses to the sitting of the Committee. After the customary introduction of the witnesses, the Secretary, Ministry of Corporate Affairs made a powerpoint presentation on the proposed amendments in 'The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021'. The major issues discussed include the rationale behind the constitution of Coordination Committee, change in the composition of Board of Discipline (BoD) and Disciplinary Committee, need for multiple bodies for qualification and licensing of accountants to increase competition as per global best practices, quantum of punishment for misconduct of partners, need for addressing conflict of interest in disciplinary and administrative arms.
4. The witnesses responded to the queries raised by the Members on the subject. The Chairperson directed the witnesses to furnish written replies to the queries which could not be readily replied by them during the sitting.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

Minutes of the Fourteenth sitting of the Standing Committee on Finance (2021-22)
The Committee sat on Monday, the 21st March, 2022 from 1500hrs. to 1530 hrs. in
Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Jayant Sinha – Chairperson

LOK SABHA

2. Shri S.S. Ahluwalia
3. Shri Subhash Chandra Baheria
4. Dr. Subhash Ramrao Bhamre
5. Smt. Sunita Duggal
6. Shri Manoj Kotak
7. Shri Pinaki Misra
8. Shri Gopal Shetty
9. Shri Parvesh Sahib Singh
10. Shri Bala Showry Vallabhaneni

RAJYA SABHA

11. Shri Ahmad Ashfaque Karim
12. Shri Sushil Kumar Modi
13. Shri A. Navaneethakrishnan
14. Shri Praful Patel
15. Dr. Amar Patnaik
16. Shri Mahesh Poddar
17. Shri G.V.L Narasimha Rao

SECRETARIAT

- | | | | |
|----|------------------------------|---|---------------------|
| 1. | Shri Siddharth Mahajan | - | Joint Secretary |
| 2. | Shri Ramkumar Suryanarayanan | - | Director |
| 3. | Shri Kulmohan Singh Arora | - | Additional Director |
| 4. | Shri Kh. Ginalal Chung | - | Deputy Secretary |

2. At the outset, the Chairperson welcomed the Members to the sitting of the Committee. Thereafter, the Committee took up the draft Report on 'the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021' for consideration and adoption. After some deliberations, the Committee adopted the draft Report and authorised the Chairperson to finalise and present the Report to the Parliament.

The Committee then adjourned.

Bill No. 161 of 2021

THE CHARTERED ACCOUNTANTS, THE COST AND WORKS
ACCOUNTANTS AND THE COMPANY SECRETARIES
(AMENDMENT) BILL, 2021

A

BILL

further to amend the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 5 1. (1) This Act may be called the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021. Short title and commencement.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be
10 construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENTS TO THE CHARTERED ACCOUNTANTS ACT, 1949

Amendment
of long title
and preamble.

2. In the Chartered Accountants Act, 1949 (hereafter in this Chapter referred to as the principal Act), in the long title and preamble, for the word "regulation", the words "regulation and development" shall be substituted. 38 of 1949.

Amendment
of section 2.

3. In section 2 of the principal Act, in sub-section (1),—

(i) after clause (aaa), the following clause shall be inserted, namely:—

'(ab) "Board of Discipline" means the Board of Discipline constituted under sub-section (1) of section 21A;';

(ii) after clause (b), the following clauses shall be inserted, namely:— 10

'(ba) "Coordination Committee" means the Coordination Committee constituted under section 9A;

'(bb) "Companies Act" means the Companies Act, 2013 or any other previous company law as defined in sub-section (67) of section 2 of the said Act;'; 18 of 2013.

(iii) in clause (c), after the words "Council of the Institute", the words "constituted under section 9" shall be inserted; 15

(iv) after clause (ca), the following clauses shall be inserted, namely:—

'(cb) "Director (Discipline)" means the Director (Discipline) referred to in section 21 and includes Joint Director (Discipline);

'(cc) "Disciplinary Committee" means the Disciplinary Committee constituted under sub-section (1) of section 21B; 20

'(cd) "Disciplinary Directorate" means the Disciplinary Directorate established under sub-section (1) of section 21;

'(ce) "fellow" means a fellow member of the Institute;';

(v) in clause (ea), after the words "Official Gazette", the words 'and the term "notify" shall be construed accordingly' shall be inserted; 25

(vi) for clause (g), the following clause shall be substituted, namely:—

'(g) "Register" means the Register of members of the Institute maintained under section 19 or the Register of firms of the Institute maintained under section 20B, as the case may be;'; 30

(vii) after clause (haa), the following clause shall be inserted, namely:—

'(haaa) "Standing Committee" means a Standing Committee constituted under sub-section (1) of section 17;';

Amendment
of section 4.

4. In section 4 of the principal Act,—

(i) for the word "Register", wherever it occurs, the words "Register of members" shall be substituted; 35

(ii) in sub-section (1), in clauses (v) and (vi), for the words "without India", wherever they occur, the words "outside India" shall be substituted;

(iii) in sub-section (3),—

(a) the words " , which shall not exceed rupees three thousand" shall be omitted; 40

(b) the proviso shall be omitted.

5. In section 5 of the principal Act,—

(i) for the word “Register”, occurring at both the places, the words “Register of members” shall be substituted;

(ii) in sub-section (3),—

(a) the words “which shall not exceed rupees five thousand” shall be omitted;

(b) the proviso shall be omitted.

Amendment
of section 5.

6. In section 6 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Every such member shall pay annual fee for the certificate as may be determined, by notification, by the Council, and such fee shall be payable on or before the 1st day of April each year.”

Amendment
of section 6.

7. In section 8 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) in clause (iii), after the words “undischarged insolvent”, the words “or an undischarged bankrupt” shall be inserted;

(iii) after clause (iii), the following clause shall be inserted, namely:—

“(iiia) is declared bankrupt under the Insolvency and Bankruptcy Code, 2016; or”;

(iv) in clause (v),—

(a) for the words “without India”, the words “outside India” shall be substituted;

(b) the words “transportation or” shall be omitted.

Amendment
of section 8.

8. In section 9 of the principal Act,—

(i) in sub-section (2),—

(a) for the word “Register”, occurring at both the places, the words “Register of members” shall be substituted;

(b) for the words “three years”, the words “four years” shall be substituted;

(c) for the words “six years”, the words “eight years” shall be substituted;

(ii) in sub-section (4),—

(a) for the word “person”, the words “member of the Institute or any partner of a firm” shall be substituted;

(b) for the words “three years”, the words “four years” shall be substituted.

Amendment
of section 9.

9. After section 9 of the principal Act, the following section shall be inserted, namely:—

“9A. (1) There shall be a Coordination Committee consisting of the President, Vice-President and the Secretary of the Council of each of the Institutes of Chartered Accountants of India; the Cost Accountants of India and the Company Secretaries of India for the development and harmonisation of the professions of Chartered Accountants, Cost Accountants and Company Secretaries.

(2) The meeting of the Coordination Committee shall be chaired by the Secretary, Ministry of Corporate Affairs.

Insertion of
new section
9A.

Coordination
Committee.

(3) The meeting of the Coordination Committee shall be held once in every quarter of a year.

(4) The Committee shall be responsible for the effective coordination of the functions assigned to each Institute and shall—

(i) ensure quality improvement of the academics, infrastructure, research and all related works of the Institute;

(ii) focus on the coordination and collaboration among the professions, to make the profession more effective and robust;

(iii) align the cross-disciplinary regulatory mechanisms for inter professional development;

(iv) make recommendations in matters relating to regulatory policies for the professions;

(v) perform such other functions incidental to clauses (i) to (iv) above.”.

Amendment
of section 10.

10. Section 10 of the principal Act shall be renumbered as sub-section (1) thereof and,—

(i) in the first proviso to sub-section (1) as so renumbered, for the words “three consecutive terms”, the words “two consecutive terms” shall be substituted;

(ii) after sub-section (1) as so renumbered and amended, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in sub-section (1), a member of the Council who immediately at the commencement of the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021, has held office as such member for two terms or is holding office for the second term of three years, shall be eligible to contest for one more term of four years and a member who has held office for one term or is holding office for the first term of three years, shall be eligible to contest for two more consecutive terms.”.

Amendment
of section 12.

11. In section 12 of the principal Act,—

(i) in sub-section (1), the proviso shall be omitted;

(ii) in sub-section (2), for the words “Chief Executive Authority”, the word “Head” shall be substituted;

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The President shall preside at the meetings of the Council.

(2B) The President and the Vice-President shall exercise such powers and perform such duties and functions as may be prescribed.

(2C) It shall be the duty of the President to ensure that the decisions taken by the Council are implemented.

(2D) If, for any reason a vacancy occurs in the office of the President, or if the President is absent or for any other reason, is unable to exercise the powers or perform the duties assigned to him, the Vice-President shall act in his place and shall exercise the powers and perform the duties of the President.”.

Amendment
of section 13.

12. In section 13 of the principal Act, in sub-section (2), for the word “Register”, the words “Register of members” shall be substituted.

Amendment
of section 14.

13. In section 14 of the principal Act, in sub-section (1), for the words “three years”, the words “four years” shall be substituted.

14. In section 15 of the principal Act, in sub-section (2),—

Amendment
of section 15.

(i) for clauses (b) and (c) the following clauses shall be substituted, namely:—

“(b) the prescribing of fees for the examination of candidates for enrolment;

(c) the granting or refusal, of registration of a firm;”;

(ii) in clause (d), for the word “Register”, the words “Register of members” shall be substituted;

(iii) for clause (f), the following clauses shall be substituted, namely:—

“(f) the prescribing of guidelines for grant or refusal of certificates of practice under this Act;

(fa) to issue guidelines for the purpose of carrying out the objects of this Act;”;

(iv) clause (g) shall be omitted;

(v) in clause (h), the words “and collection” shall be omitted;

(vi) clause (i) shall be omitted;

(vii) for clause (l), the following clauses shall be substituted, namely:—

“(l) to conduct investor education and awareness programmes;

(la) to enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of a foreign country, for the purpose of performing its functions under this Act;”.

15. After section 15A of the principal Act, the following section shall be inserted, namely:—

Insertion of
new section
15B.

“15B. The functions of the Institute shall include—

Functions of
Institute.

(a) the examination of candidates for enrolment;

(b) the regulation of the engagement and training of articled and audit assistants;

(c) the maintenance and publication of a Register of persons qualified to practice as chartered accountants;

(d) the maintenance and publication of Register of firms;

(e) collection of fees from members, examinees and other persons;

(f) subject to the orders of the appropriate authorities under this Act, the removal of names from the Registers of members and firms and the restoration of names to the Registers of members and firms which have been removed;

(g) the maintenance of a library and publication of books and periodicals relating to accountancy and allied subjects;

(h) the conduct of elections to the Council of the Institute; and

(i) the granting or refusal of certificates of practice as per guidelines issued by the Council.”.

16. In section 16 of the principal Act,—

Amendment
of section 16.

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) For the efficient performance of its duties, the Council shall appoint—

(a) a Secretary who will carry out administrative functions of the Institute, as its Chief Executive Officer;

(b) a Director (Discipline) and Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute, to perform such functions as are assigned to them under this Act and the rules and regulations framed thereunder:

Provided that no appointment or re-appointment or termination of appointment of Director (Discipline) or Joint Director (Discipline) shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Central Government.”;

(ii) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

“(c) prescribe the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service;”

Amendment
of section 18.

17. In section 18 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and subject to audit by a firm of chartered accountants to be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor-General of India:

Provided that a firm shall not be eligible for appointment as an auditor under this sub-section, if any of its partner is or has been a member of the Council during the last four years:

Provided further that in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report thereon to the Central Government.”

Amendment
of section 19.

18. In section 19 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Council shall maintain a Register of members of the Institute in such manner as may be prescribed.”;

(iii) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) whether any actionable information or complaint is pending or any penalty has been imposed against him under Chapter V, including details thereof, if any;”;

(iv) in sub-section (4),—

(a) the words “, which shall not exceed rupees five thousand” shall be omitted;

(b) the proviso shall be omitted.

5 19. In section 20 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

Amendment
of section 20.

(ii) in sub-section (3),—

10 (a) the words “, which shall not exceed rupees two thousand” shall be omitted;

(b) the proviso shall be omitted.

20. After chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of
new Chapter
IVA.

“CHAPTER IVA

15 REGISTRATION AND REGISTER OF FIRMS

20A. Every firm shall be registered with the Institute on an application made to the Council, by any partner or owner of a firm, in such manner and subject to such terms and conditions as may be prescribed:

Registration
of firms.

20 Provided that the Council may refuse to register a firm, if the name of such firm is identical or similar to the name of any other firm already registered or the name is in use by any firm within or outside India or in the opinion of the Council, registration of the firm is undesirable.

20B. (1) The Council shall maintain, in such manner as may be prescribed, a Register of firms.

Register of
firms.

25 (2) The Register of firms shall include such particulars about the firm, including details of pendency of any actionable information or complaint or imposition of penalty against it under Chapter V, in such form and at such intervals, as may be prescribed.

30 (3) The Council shall cause to be published in such manner as may be prescribed, a list of firms registered with the Institute as on the 1st day of April of each year or at any such interval as may be decided by the Council, and shall make available the list to such persons, in such form and on payment of such amount as may be prescribed.

20C. The Council shall remove from the Register of firms the name of any firm—

Removal
from Register
of firms.

35 (a) which is dissolved or liquidated; or

(b) from which a request has been received to that effect; or

31 of 2016.

(c) is declared insolvent or bankrupt under the Insolvency and Bankruptcy Code, 2016 and remains undischarged; or

40 (d) which has been debarred from undertaking any activity or activities relating to the profession of a chartered accountant in practice under any law for the time being in force or by any competent court; or

(e) in respect of which an order for removal has been passed under this Act.

Review
before
Council.

20D. (1) Any firm aggrieved by the decision for refusal of registration may apply for review before the Council within one month from the date of such refusal.

(2) The Council may, after considering the review application, confirm or set aside the decision so taken or pass such orders as it may consider appropriate.”

Substitution
of section 21.

21. For section 21 of the principal Act, the following section shall be substituted, 5
namely:—

Disciplinary
Directorate.

“21. (1) The Council shall, by notification, establish a Disciplinary Directorate consisting of a Director (Discipline), at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed under section 16, for making investigations either *suo motu*, or on receipt of an information or a complaint, in such form, along with such fees as may be specified. 10

(2) Within thirty days of receipt of an information or a complaint, the Director (Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable:

Provided that the Director (Discipline) may call for additional information from the complainant or the informant, as the case may be, by giving fifteen days time before deciding whether the case is actionable or non-actionable: 15

Provided further that the recommendations of the Director (Discipline) on non-actionable complaints or information shall be submitted to the Board of Discipline within sixty days of its receipt and the Board of Discipline may, after looking into its merits refer such complaint or information to the Director (Discipline) for conducting further investigation. 20

(3) While making investigation into a case which is found to be actionable, the Director (Discipline) shall give an opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, for reasons to be recorded in writing. 25

(4) Upon receipt of the written statement under sub-section (3), if any, the Director (Discipline) shall send a copy thereof to the complainant or the informant, as the case may be, and the complainant or the informant shall, within twenty-one days of the receipt of such written statement, submit his rejoinder. 30

(5) Upon receipt of written statement under sub-section (3) and rejoinder under sub-section (4), the Director (Discipline) shall submit a preliminary examination report within thirty days, if a *prima facie* case is made out against a member or a firm, as the case may be.

(6) In case a *prima facie* case is made out for any professional or other misconduct mentioned in the First Schedule, the Director (Discipline) shall submit the preliminary examination report to the Board of Discipline and where *prima facie* case is made out for any professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, he shall submit a preliminary examination report to the Disciplinary Committee: 35 40

Provided that a complaint or information filed by any authorised officer of the Central Government or a State Government or any statutory authority duly supported by an investigation report or relevant extract of the investigation report along with supporting evidence, shall be treated as preliminary examination report:

Provided further that where no *prima facie* case is made out against the member or the firm, the Director (Discipline) shall submit such information or complaint with relevant documents to the Board of Discipline and the Board of Discipline may, if it agrees with the findings of the Director (Discipline), close the matter or in case of disagreement, itself proceed further or refer the matter to the Disciplinary Committee or advise the Director (Discipline) to further investigate the matter. 45 50

(7) For the purpose of investigation under this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(8) A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.

(9) The status of actionable information and complaints pending before the Disciplinary Directorate, Boards of Discipline and Disciplinary Committees and the orders passed by the Boards of Discipline under section 21A and by the Disciplinary Committees under section 21B shall be made available in the public domain by the Disciplinary Directorate in such manner as may be prescribed.”

10 22. For section 21A of the principal Act, the following section shall be substituted, namely:—

Substitution
of section
21A.

“21A. (1) The Council shall, by notification, constitute one or more Boards of Discipline, each consisting of—

Board of
Discipline.

15 (a) a person, not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

20 (b) one member, who is a person of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

25 (c) one member to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council, in such manner as may be prescribed;

(d) an officer of the Institute not below the rank of a Deputy Secretary shall function as the Secretary of the Board of Discipline:

30 Provided that the Presiding Officer nominated under clause (a) and the member nominated under clause (b) may be the same for different Boards of Discipline constituted under this sub-section.

(2) The Board of Discipline shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

35 (3) The Board of Discipline shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.

40 (4) The Board of Discipline shall conclude its inquiry within ninety days of the receipt of preliminary examination report from the Director (Discipline).

(5) Upon inquiry, if the Board of Discipline finds that such member is guilty of a professional or other misconduct mentioned in the First Schedule, it may pass an order within thirty days of such finding, after providing an opportunity of being heard to the member taking any one or more of the following actions, namely:—

45 (a) reprimand the member and record it in the Register of members;

(b) remove the name of the member or members from the Register of members, up to a period of six months;

(c) impose such fine as it may think fit which may extend to two lakh rupees.

(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Board of Discipline is of the opinion that any such member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the First Schedule during the last five years, the following action may also be taken against such firm, namely:—

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a chartered accountant in practice for such period not exceeding one year; or

(b) impose such fine as it may think fit, which may extend to twenty-five lakh rupees.

(7) Where a member or a firm fails to pay the fine imposed under sub-section (5) or sub-section (6) within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period as it may think fit.

(8) The Presiding Officer and members of the Board of Discipline shall be paid such allowances as may be prescribed.”

Substitution
of section
21B.

23. For section 21B of the principal Act, the following section shall be substituted, namely:—

Disciplinary
Committee.

“21B. (1) The Council shall, by notification, constitute one or more Disciplinary Committees, each consisting of—

(a) a person, not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

(b) two members, who are persons of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

(c) two members to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council in such manner as may be prescribed:

Provided that the Presiding Officer nominated under clause (a) and the members nominated under clause (b) may be the same for different Disciplinary Committees constituted under this sub-section.

(2) The Disciplinary Committee shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

(3) The Disciplinary Committee shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days, which may further be extended by another twenty-one days in exceptional circumstances, for reasons to be recorded in writing.

(4) The Disciplinary Committee shall conclude its inquiry within one hundred and eighty days of receipt of the preliminary examination report from the Director (Discipline).

(5) Upon inquiry, if the Disciplinary Committee finds that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, it may pass an order within thirty days of such a finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:—

(a) reprimand the member and record it in the Register of members; or

(b) remove the name of the member from the Register of members permanently or for such period, as it may think fit; or

(c) impose such fine as it may think fit, which may extend to ten lakh rupees.

(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Disciplinary Committee is of the opinion that any such member, who is a partner or owner of a firm has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, during the last five years, the following actions may also be taken against such firm, namely:—

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a chartered accountant in practice for such period not exceeding two years; or

(b) suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or

(c) impose such fine as it may think fit, which may extend to fifty lakh rupees.

(7) Where a member or a firm fails to pay the fine imposed under sub-section (5) or sub-section (6) within the specified time, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period, as it may think fit.

(8) The Presiding Officer and members of the Disciplinary Committee shall be paid such allowances as may be prescribed.”

24. In section 21C of the principal Act, the *Explanation* shall be omitted.

Amendment
of section
21C.

25. For section 21D of the principal Act, the following section shall be substituted, namely:—

Substitution
of section
21D.

“21D: All complaints or any inquiry pending before the Board of Discipline or the Disciplinary Committee or any reference or appeal filed before the Appellate Authority or before a High Court prior to the commencement of the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021.”

Transitional
provisions.

26. For section 22 of the principal Act, the following section shall be substituted, namely:—

Substitution
of section 22.
Professional
or other
misconduct
defined

“22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm, as mentioned in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of such member or firm, under any other circumstances.”

Amendment
of section
22G.

27. In section 22G of the principal Act,—

(i) in sub-section (1),—

(a) after the words “Any member of the Institute”, the words “or a firm” shall be inserted;

(b) for the words “imposing on him”, the words “imposing on such member or firm” shall be substituted;

(c) for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B, may”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B, as the case may be, may” shall be substituted;

(d) for the words “communicated to him”, the words “communicated to such member or firm” shall be substituted;

(ii) in sub-section (2), for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B,” shall be substituted;

(iii) after sub-section (2), the following sub-section and *Explanations* shall be inserted, namely:—

“(3) No order or act or proceeding of the Authority shall be called in question in any manner, on the ground merely of any defect in the constitution of, or a casual vacancy or absence of one or two members, of the Authority.

Explanation 1.—For the purposes of this Chapter,—

(A) “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry;

(B) a “firm” registered with the Institute shall also be held liable for misconduct of a member who was its partner or owner on the date of the alleged misconduct, although he has ceased to be such partner or owner, at the time of the inquiry.

Explanation 2.— No action taken under the provisions of this Chapter shall bar a Central Government Department or a State Government or any statutory authority or regulatory body to take action against a member or a firm registered with the Institute under any other law for the time being in force.

Amendment
of section 24.

28. In section 24 of the principal Act,—

(a) for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted;

(b) for the words “five thousand rupees”, the words “five lakh rupees” shall be substituted.

Amendment
of section
24A.

29. In section 24A of the principal Act, in sub-section (2),—

(i) for the words “be punishable with fine which may extend on first conviction to one thousand rupees”, the words “be punishable with imprisonment which may extend to six months, or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both on first conviction” shall be substituted;

(ii) for the words “six months, or with fine which may extend to five thousand rupees”, the words “one year, or with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees” shall be substituted.

30. In section 25 of the principal Act, in sub-section (2),—

Amendment
of section 25.

(a) after the words "punishable with fine", the words "which shall not be less than two lakh rupees but" shall be inserted;

(b) for the words "one thousand rupees", the words "ten lakh rupees" shall be substituted;

(c) for the words "to five thousand rupees", the words "with fine which shall not be less than four lakh rupees but which may extend to twenty lakh rupees" shall be substituted.

31. In section 26 of the principal Act, in sub-section (2),—

Amendment
of section 26.

(a) for the words "five thousand rupees", the words "one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "five lakh rupees" shall be substituted;

(c) for the words "ten thousand rupees", the words "two lakh rupees" shall be substituted;

(d) for the words "two lakh rupees", the words "ten lakh rupees" shall be substituted.

32. In section 28B of the principal Act, after clause (c), the following clause shall be inserted, namely:—

Amendment
of section
28B.

"(d) to forward cases of non-compliance with various statutory and regulatory requirements by the members of the Institute or firms, noticed by it during the course of its reviews, to the Disciplinary Directorate for its examination."

33. In section 29 of the principal Act, in sub-section (2), for the word "Register", the words "Register of members" shall be substituted.

Amendment
of section 29.

34. In section 29A of the principal Act, in sub-section (2),—

Amendment
of section
29A.

(i) for clauses (c) and (d), the following clauses shall be substituted, namely:—

"(c) the form and fee for filing an information or a complaint under sub-section (1), the manner of deciding a complaint or information as actionable or non-actionable under sub-section (2) and the procedure of investigation under sub-section (7), of section 21;

(d) the procedure while considering the cases by the Board of Discipline under sub-section (2) and time limit for payment of fine under sub-section (7) of section 21A;

(da) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and time limit for payment of fine under sub-section (7) of section 21B;"

35. In section 30 of the principal Act, in sub-section (2),—

Amendment
of section 30.

(i) in clauses (b), (e) and (h), for the word "Register", wherever it occurs, the words "Register of members" shall be substituted;

(ii) clause (g) and clause (i) shall be omitted;

(iii) for clause (r), the following clauses shall be substituted, namely:—

"(r) the qualification required for the purposes of sub-section (3) of section 5;

(ra) the circumstances under which certificates of practice may be cancelled under sub-section (3) of section 6;

(*rb*) the guidelines for granting or refusal of certificates of practice under clause (*f*) of sub-section (2) of section 15;

(*rc*) the manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of the Secretary and other officers and employees of the Council under clause (*c*) of sub-section (2) of section 16;

(*rd*) the manner of preparing annual financial statement under sub-section (4) and the annual accounts under sub-section (5), of section 18;

(*re*) the manner of maintaining a Register of members of the Institute under sub-section (1) and the manner in which the annual list of members registered with the Institute shall be published under sub-section (3) of section 19;

(*rf*) the manner of making an application for grant of registration of a firm and the terms and conditions of such registration under section 20A;

(*rg*) the manner of maintenance of Register of firms, and other particulars including details of pendency of any actionable information or complaint or imposition of penalty against the firm under sub-section (1) and sub-section (2), and the manner in which the annual list of firms registered with the Institute shall be published under sub-section (3), of section 20B;

(*rh*) the manner of making available status of actionable information and complaints and orders passed under sub-section (9) of section 21;

(*ri*) the manner of preparing panel of persons under clauses (*a*), (*b*) and (*c*) of sub-section (1) and the allowances payable to the Presiding Officers and members of the Boards of Discipline under sub-section (8), of sections 21A;

(*rj*) the manner of preparing panel of persons under clauses (*a*), (*b*) and (*c*) of sub-section (1) and the allowances payable to the Presiding Officers and members of the Disciplinary Committees under sub-section (8), of section 21B;

(*rk*) the salaries and allowances and conditions of service of officers and other staff of Authority under sub-section (2) of section 22E;

(*rl*) the manner in which Regional Council may be constituted under sub-section (2) of section 23 and the functions thereof; and”.

Amendment
of First
Schedule.

36. In the First Schedule to the principal Act,— 30

(*i*) in the heading, for the figures, brackets and letter “21(3), 21A(3)”, the figures, brackets and letters “21(6), 21A(5) and (6), 21B(5) and (6)” shall be substituted;

(*ii*) in Part I, in item (9), after the words and figures “Companies Act, 1956”, the words and figures “or sections 139 to 141 of the Companies Act, 2013 or any other law pertaining to appointment of auditors for the time being in force” shall be inserted. 35

Amendment
of Second
Schedule.

37. In the Second Schedule to the principal Act,—

(*i*) in the heading, for the figures, brackets and letter “21(3), 21B(3)”, the figures, brackets and letter “21(6), 21B(5) and (6)” shall be substituted;

(*ii*) in Part I, in item (3), for the words “belief that he”, the words “belief that he or his firm” shall be substituted; 40

(*iii*) in Part II, after item (4), the following item shall be inserted, namely:—

“(5) acts as an auditor of the company in contravention of the provisions of the Companies Act, 2013.” 18 of 2013.

CHAPTER III

AMENDMENTS TO THE COST AND WORKS ACCOUNTANTS ACT, 1959

Amendment
of long title.

38. In the Cost and Works Accountants Act, 1959 (hereafter in this Chapter referred to as the principal Act), in the long title, for the words “regulation of the profession of cost and Works Accountants”, the words “regulation and development of the profession of cost Accountants” shall be substituted. 45 23. of 1959.

39. In section 1 of the principal Act, in sub-section (1), for the words "Cost and Works Accountants", the words "Cost Accountants" shall be substituted. Amendment of section 1.

40. In section 2 of the principal Act, in sub-section (1),— Amendment of section 2.

(i) after clause (aaa), the following clauses shall be inserted, namely:—

(ab) "Board of Discipline" means the Board of Discipline constituted under sub-section (1) of section 21A;

(ac) "Companies Act" means the Companies Act, 2013 or any other previous company law as defined in sub-section (67) of section 2 of the said Act;

(ii) after clause (b), the following clauses shall be inserted, namely:—

(ba) "Director (Discipline)" means the Director (Discipline) referred to in section 21 and includes Joint Director (Discipline);

(bb) "Disciplinary Committee" means the Disciplinary Committee constituted under sub-section (1) of section 21B;

(bc) "Disciplinary Directorate" means the Disciplinary Directorate established under sub-section (1) of section 21;

(iii) in clause (c), after the words "Council of the Institute", the words "constituted under section 9" shall be inserted;

(iv) in clause (d), the figures "1956" shall be omitted;

(v) for clause (e), the following clause shall be substituted, namely:—

(e) "fellow" means a fellow member of the Institute;

(vi) for clause (fa), the following clause shall be substituted, namely:—

(fa) "notification" means a notification published in the Official Gazette and the term "notify" shall be construed accordingly;

(vii) for clause (i), the following clause shall be substituted, namely:—

(i) "Register" means the Register of members of the Institute maintained under section 19 or Register of firms of the Institute maintained under section 20B, as the case may be;

(viii) after clause (iaa), the following clause shall be inserted, namely:—

(iaaa) "Standing Committee" means a Standing Committee constituted under sub-section (1) of section 17;

41. In Chapter II of the principal Act, in the heading, the words "AND WORKS" shall be omitted. Amendment of heading of Chapter II.

42. In section 4 of the principal Act,— Amendment of section 4.

(i) for the word "Register", wherever it occurs, the words "Register of members" shall be substituted;

(ii) in sub-section (1), in clauses (iv) and (v), for the words "without India", wherever they occur, the words "outside India" shall be substituted;

(iii) in sub-section (3),—

(a) the words ", which shall not exceed rupees three thousand" shall be omitted;

(b) the proviso shall be omitted.

Amendment
of section 5.

43. In section 5 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) in sub-section (4), the words “which shall not exceed rupees five thousand,” shall be omitted;

(iii) the proviso shall be omitted.

5

Amendment
of section 6.

44. In section 6 of the principal Act, in sub-section (2),—

(i) words “which shall not exceed rupees three thousand” shall be omitted;

(ii) the first proviso shall be omitted;

(iii) in the second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted.

10

Amendment
of section 8.

45. In section 8 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) in clause (iii), after the words “undischarged insolvent”, the words “or undischarged bankrupt” shall be inserted;

15

(iii) after clause (iii), the following clause shall be inserted, namely:—

“(iiia) is declared bankrupt under the Insolvency and Bankruptcy Code, 2016;”

31 of 2016.

(iv) in clause (v), for the words “without India”, the words “outside India” shall be substituted.

20

Amendment
of section 9.

46. In section 9 of the principal Act,—

(i) in sub-section (2),—

(a) for the word “Register”, occurring at both the places, the words “Register of members” shall be substituted;

25

(b) for the words “three years”, the words “four years” shall be substituted;

(c) for the words “six years”, the words “eight years” shall be substituted;

(ii) in sub-section (4),—

(a) for the word “person”, the words “member of the Institute or any partner of a firm” shall be substituted;

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(b) for the words “three years”, the words “four years” shall be substituted.

Amendment
of section 12.

47. In section 12 of the principal Act,—

(i) in sub-section (1), the proviso shall be omitted;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The President shall preside at the meetings of the Council.

35

(2B) The President and the Vice-President shall exercise such powers and perform such duties and functions as may be prescribed.

(2C) It shall be the duty of the President to ensure that the decisions taken by the Council are implemented.

(2D) If, for any reason a vacancy occurs in the office of the President, or if the President is absent or for any other reason, is unable to exercise the powers or perform the duties assigned to him, the Vice-President shall act in his place and shall exercise the powers and perform the duties of the President.”.

5 48. In section 13 of the principal Act, in sub-section (2), for the word “Register”, the words “Register of members” shall be substituted. Amendment of section 13

49. In section 15 of the principal Act, in sub-section (2).-- Amendment of section 15

(i) in clause (c), for the word “Register”, the words “Register of members” shall be substituted;

10 (ii) after clause (e), the following clause shall be inserted, namely:--

“(ea) the granting or refusal, of registration of a firm:”;

(iii) after clause (j), the following clauses shall be inserted, namely:--

“(ja) to issue guidelines for the purpose of carrying out the objects of this Act;

15 (jb) to conduct investor education and awareness programmes;

(jc) to enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country, for the purpose of performing its functions under this Act;”;

20 (iv) in clause (k), for the words “, action taken thereon with a report to the Central Government within a period of three months, and their inclusion in the annual report”, the words “and the details of action taken thereon in its annual report” shall be substituted.

50. In section 15A of the principal Act.--

(i) after clause (c), the following clause shall be inserted, namely:--

25 “(ca) the maintenance and publication of a Register of firms;”;

(ii) in clause (e), for the words “Register and the restoration to the Register of names”, the words “Register of members and firms and the restoration of names to the Register of members and firms” shall be substituted.

Amendment of section 15A.

51. In section 16 of the principal Act,--

30 (i) for sub-section (1), the following sub-section shall be substituted, namely:--

“(1) For the efficient performance of its duties, the Council shall, appoint--

(a) a Secretary, who will carry out the administrative functions of the Institute as its Chief Executive Officer;

35 (b) a Director (Discipline) and Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute, to perform such functions as are assigned to them under this Act and the rules and regulations framed thereunder:

40 Provided that no appointment or re-appointment or termination of appointment of Director (Discipline) or Joint Director (Discipline), shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Central Government.”;

(ii) in sub-section (2), for clause (c), the following clause shall be substituted, namely:--

45 “(c) prescribe the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service:”.

Amendment of section 16

Amendment
of section 18

52. In section 18 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) The annual accounts of the Council shall be prepared in such manner as may prescribed and subject to audit by a firm of chartered accountants to be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor-General of India: 5

Provided that a firm shall not be eligible for appointment as an auditor under this sub-section, if any of its partner is or has been a member of the Council during the last four years:

Provided further that in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted: 10

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report thereon to the Central Government.”. 15

Amendment
of section 19

53. In section 19 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted; 20

(ii) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Council shall maintain a Register of members of the Institute in such manner as may be prescribed.”;

(iii) in sub-section (2), after clause (c), the following clause shall be inserted, namely:— 25

“(ca) whether any actionable information or complaint is pending or any penalty has been imposed against him under Chapter V, including details thereof, if any;”;

(iv) in sub-section (4),—

(a) the words “which shall not exceed rupees five thousand” shall be omitted; 30

(b) the proviso shall be omitted.

Amendment
of section 20

54. In section 20 of the principal Act,—

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted; 35

(ii) in sub-section (3),—

(a) the words “, which shall not exceed rupees two thousand” shall be omitted;

(b) the proviso shall be omitted.

Insertion of
new Chapter
IVA.

55. After Chapter IV of the principal Act, the following Chapter shall be inserted, 40
namely:—

“CHAPTER IVA

REGISTRATION AND REGISTER OF FIRMS

Registration of
firms

20A. (1) Every firm shall be registered with the Institute on an application made to the Council, by any partner or owner of a firm, in such manner and subject to such terms and conditions as may be prescribed: 45

Provided that the Council may refuse to register a firm if the name of such firm is identical or similar to the name of any other firm already registered or the name is in use

by any firm within or outside India or in the opinion of the Council, registration of the firm is undesirable.

20B. (1) The Council shall maintain, in such manner as may be prescribed, a Register of firms. Register of firms.

(2) The Register of firms shall include such particulars about the firm, including details of pendency of any actionable information or complaint or imposition of any penalty against it under Chapter V, in such form and at such intervals, as may be prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed, a list of firms registered with the Institute as on the 1st day of April of each year or at any such interval as may be decided by the Council, and shall make available the list to such persons, in such form and on payment of such amount as may be prescribed.

20C. (1) The Council shall remove from the Register of firms the name of any firm— Removal from Register of firms.

(a) which is dissolved or liquidated; or

(b) from which a request has been received to that effect; or

(c) is declared insolvent or bankrupt under the Insolvency and Bankruptcy Code, 2016 and remains undischarged; or

(d) which has been debarred from undertaking any activity or activities relating to the profession of a cost accountant in practice under any law for the time being in force or by any competent court; or

(e) in respect of which an order for removal has been passed under this Act.

20D. (1) Any firm aggrieved by the decision for refusal of registration may apply for review before the Council within one month from the date of such refusal. Review before Council.

(2) The Council may, after considering the review application, confirm or set aside the decision so taken or pass such order as it may consider appropriate.”

56. For section 21 of the principal Act, the following section shall be substituted, namely:— Substitution of section 21

“21. (1) The Council shall, by notification, establish a Disciplinary Directorate consisting of a Director (Discipline), at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed under section 16, for making investigations either *suo motu*, or on receipt of an information or a complaint, in such manner, along with such fees as may be specified. Disciplinary Directorate.

(2) Within thirty days of receipt of an information or a complaint, the Director (Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable:

Provided that the Director (Discipline) may call for additional information from the complainant or the informant, as the case may be, by giving fifteen days time before deciding whether the case is actionable or non-actionable:

Provided further that the recommendations of the Director (Discipline) on non-actionable complaint or information shall be submitted to the Board of Discipline within sixty days of its receipt, and the Board of Discipline may, after looking into its merits refer such complaint or information to the Director (Discipline) for conducting further investigation.

(3) While making investigation into a case which is found to be actionable, the Director (Discipline) shall give an opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, for reasons to be recorded in writing.

(4) Upon receipt of the written statement under sub-section (3), if any, the Director (Discipline) shall send a copy thereof to the complainant or the informant, as the case may be, and the complainant or the informant shall, within twenty-one days of the receipt of such written statement, submit his rejoinder.

(5) Upon receipt of written statement under sub-section (3) and rejoinder under sub-section (4), the Director (Discipline) shall submit a preliminary examination report within thirty days, if a *prima facie* case is made out against a member or a firm, as the case may be.

(6) In case a *prima facie* case is made out for any professional or other misconduct mentioned in the First Schedule, the Director (Discipline) shall submit the preliminary examination report to the Board of Discipline and where *prima facie* case is made out for any professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, he shall submit a preliminary examination report to the Disciplinary Committee:

Provided that a complaint or information filed by any authorised officer of the Central Government or a State Government or any statutory authority duly supported by an investigation report or relevant extract of the investigation report along with supporting evidence, shall be treated as preliminary examination report:

Provided further that where no *prima facie* case is made out against the member or the firm, the Director (Discipline) shall submit such information or complaint with relevant documents to the Board of Discipline and the Board of Discipline may, if it agrees with the findings of the Director (Discipline), close the matter or in case of disagreement, itself proceed further or refer the matter to the Disciplinary Committee or advise the Director (Discipline) to further investigate the matter.

(7) For the purpose of investigation under this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(8) A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.

(9) The status of actionable information and complaints pending before the Disciplinary Directorate, Boards of Discipline and Disciplinary Committees and the orders passed by the Boards of Discipline under section 21A and by the Disciplinary Committees under section 21B shall be made available in the public domain by the Disciplinary Directorate in such manner as may be prescribed."

Substitution of section 21A

57. For section 21A of the principal Act, the following section shall be substituted, namely:—

Board of Discipline

"21A. (1) The Council shall, by notification, constitute one or more Boards of Discipline, each consisting of—

(a) a person, not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

(b) one member, who is a person of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed:

(c) one member to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council, in such manner as may be prescribed;

(d) an officer of the Institute not below the rank of a Deputy Secretary shall function as the Secretary of the Board of Discipline:

Provided that the Presiding Officer nominated under clause (a) and the member nominated under clause (b) may be the same for different Boards of Discipline constituted under this sub-section.

(2) The Board of Discipline shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

(3) The Board of Discipline shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.

(4) The Board of Discipline shall conclude its inquiry within ninety days of the receipt of preliminary examination report from the Director (Discipline).

(5) Upon inquiry, if the Board of Discipline finds that such member is guilty of a professional or other misconduct mentioned in the First Schedule, it may pass an order within thirty days of such finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:—

(a) reprimand the member and record it in the Register of members;

(b) remove the name of the member or members from the Register of members, up to a period of six months;

(c) impose such fine as it may think fit which may extend to two lakh rupees.

(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Board of Discipline is of the opinion that any such member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the First Schedule during the last five years, the following action may also be taken against such firm, namely:—

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a cost accountant in practice for such period not exceeding one year; or

(b) impose such fine as it may think fit, which may extend to twenty-five lakh rupees.

(7) Where a member or a firm fails to pay the fine imposed under sub-section (5) or sub-section (6) within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period as it may think fit.

(8) The Presiding Officer and members of the Board of Discipline shall be paid such allowances, as may be prescribed.”

Substitution
of section
21B.

Disciplinary
Committee.

58. For section 21B of the principal Act, the following section shall be substituted, namely:—

“21B. (1) The Council shall, by notification, constitute one or more Disciplinary Committees, each consisting of—

(a) a person, not being a member of the Institute, with experience in the field of law, and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed; 5

(b) two members, who are persons of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed; 10

(c) two members to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council in such manner as may be prescribed: 15

Provided that the Presiding Officer nominated under clause (a) and the members nominated under clause (b) may be the same for different Disciplinary Committees constituted under this sub-section. 20

(2) The Disciplinary Committee shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

(3) The Disciplinary Committee shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days, which may further be extended by another twenty-one days in exceptional circumstances, for reasons to be recorded in writing. 25

(4) The Disciplinary Committee shall conclude its inquiry within one hundred and eighty days of the receipt of the preliminary examination report from the Director (Discipline). 30

(5) Upon inquiry, if the Disciplinary Committee finds that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, it may pass an order within thirty days of such a finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:— 35

(a) reprimand the member and record it in the Register of members; or

(b) remove the name of the member from the Register of members permanently or for such period, as it may think fit; or

(c) impose such fine as it may think fit, which may extend to ten lakh rupees. 40

(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Disciplinary Committee forms an opinion that any such member, who is a partner or owner of a firm has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, during the last five years, the following actions may also be taken against such firm, namely:— 45

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a cost accountant in practice for such period not exceeding two years: or

(b) suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or

(c) impose such fine as it may think fit, which may extend to fifty lakh rupees.

(7) Where a member or a firm fails to pay the fine imposed under sub-section (5) or sub-section (6) within the specified time, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period, as it may think fit.

(8) The Presiding Officer and members of the Disciplinary Committee shall be paid such allowances as may be prescribed.”

59. In section 21C of the principal Act, the *Explanation* shall be omitted.

Amendment
of section
21C.

60. For section 21D of the principal Act, the following section shall be substituted, namely:—

Substitution of
section 21D.

“21D. All complaints or any inquiry pending before the Board of Discipline or the Disciplinary Committee or any reference or appeal filed before the Appellate Authority or a High Court prior to the commencement of the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021.”

Transitional
provisions.

61. For section 22 of the principal Act, the following section shall be substituted, namely:—

Substitution of
section 22.

“22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm as mentioned in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of such member or firm, under any other circumstances.”

Professional
or other
misconduct
defined.

62. In section 22E of the principal Act,—

Amendment
of section
22E.

(i) in sub-section (1),—

(a) after the words “Any member of the Institute”, the words “or a firm” shall be inserted;

(b) for the words “imposing on him”, the words “imposing on such member or firm” shall be substituted;

(c) for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B, may”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B, as the case may be, may” shall be substituted;

(d) for the words “communicated to him”, the words “communicated to such member or firm” shall be substituted;

(ii) in sub-section (2), for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B”, the words, brackets, figures and

letters "sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B, as the case may be." shall be substituted;

(iii) after sub-section (2), the following sub-section and *Explanations* shall be inserted, namely:—

(3) No order or act or proceeding of the Authority shall be called in question in any manner, on the ground merely of any defect in the constitution of, or a casual vacancy or absence of one or two members, of the Authority.

Explanation 1.—For the purposes of this Chapter,—

(A) "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry;

(B) a "firm" registered with the Institute shall also be held liable for misconduct of a member who was its partner or owner on the date of the alleged misconduct, although he has ceased to be such partner or owner, at the time of the inquiry.

Explanation 2.—No action taken under the provisions of this Chapter shall bar a Central Government Department or a State Government or any statutory authority or regulatory body to take action against a member or a firm registered with the Institute under any other law for the time being in force.

Amendment
of section 24.

63. In section 24 of the principal Act,—

(a) for the words "one thousand rupees", the words "one lakh rupees" shall be substituted;

(b) for the words "five thousand rupees", the words "five lakh rupees" shall be substituted.

Amendment
of section 25.

64. In section 25 of the principal Act, in sub-section (2),—

(i) for the words "be punishable on first conviction with fine which may extend to one thousand rupees", the words "be punishable with imprisonment which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both on first conviction" shall be substituted;

(ii) for the words "six months, or with fine which may extend to five thousand rupees", the words "one year, or with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees" shall be substituted.

Amendment
of section 26.

65. In section 26 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If any company contravenes the provisions of sub-section (1), then every director, manager, Secretary and any other officer who is knowingly a party to such contravention shall be punished on first conviction with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees, and on any subsequent conviction, with fine which shall not be less than four lakh rupees but which may extend to twenty lakh rupees."

Amendment
of section 27.

66. In section 27 of the principal Act, in sub-section (2),—

(a) for the words "five thousand rupees", the words "one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "five lakh rupees" shall be substituted;

(c) for the words "ten thousand rupees", the words "two lakh rupees" shall be substituted;

(d) for the words "two lakh rupees", the words "ten lakh rupees" shall be substituted.

67. In section 29B of the principal Act, after clause (c), the following clause shall be inserted, namely:—

Amendment
of section
29B.

“(d) to forward cases of non-compliance with various statutory and regulatory requirements by the members of the Institute or firms noticed by it during the course of its review, to the Disciplinary Directorate for its examination.”

68. For section 34 of the principal Act, the following section shall be substituted, namely:—

Substitution of
section 34.

38 of 1949.

“34. The Coordination Committee constituted under section 9A of the Chartered Accountants Act, 1949, shall be deemed to be the Coordination Committee for the purposes of this Act.”

Coordination
Committee.

69. In section 38 of the principal Act, in sub-section (2), for the word “Register”, the words “Register of members” shall be substituted.

Amendment
of section 38.

70. In section 38A of the principal Act, in sub-section (2), for clauses (c) and (d), the following clauses shall be substituted, namely:—

Amendment
of section
38A.

“(c) the form and fee for filing an information or a complaint under sub-section (1), the manner of deciding a complaint or information as actionable or non-actionable under sub-section (2) and the procedure of investigation under sub-section (7), of section 21;

“(d) the procedure while considering the cases by the Board of Discipline under sub-section (2) and time limit for payment of fine under sub-section (7), of section 21A;

“(da) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and time limit for payment of fine under sub-section (7), of section 21B;”

71. In section 39 of the principal Act, in sub-section (2),—

Amendment
of section 39.

(i) in clauses (b), (f) and (i), for the word “Register”, the words “Register of members” shall be substituted;

(ii) clause (h) and clause (j) shall be omitted;

(iii) in clause (p), for the words “members of”, the words “members and firms registered with” shall be substituted;

(iv) for clause (s), the following clauses shall be substituted, namely:—

“(s) the circumstances under which certificates of practice may be cancelled under sub-section (3), of section 6;

(sa) the guidelines for granting or refusal of certificates of practice under clause (e) of sub-section (2), of section 15;

(sb) the manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of, the Secretary and other officers and employees of, the Council under clause (c) of sub-section (2) of section 16;

(sc) the manner of preparing annual financial statement under sub-section (4) and the annual accounts under sub-section (5), of section 18;

(sd) the manner of maintaining a Register of the members of the Institute under sub-section (1), of section 19;

(se) the manner of making an application for grant of registration of a firm and the terms and conditions of such registration under section 20A;

(sf) the manner of maintenance of Register of firms, and other particulars including details of pendency of any actionable information or complaint or imposition of any penalty against the firm under sub-section (1) and sub-section (2), and the manner in which the annual list of firms registered with the Institute shall be published under sub-section (3), of section 20B;

(sg) the manner of making available status of actionable information and complaints and orders passed under sub-section (9), of section 21;

(sh) the manner of preparing panel of persons under clauses (a), (b) and (c) of sub-section (1) and the allowances payable to the Presiding Officers and members of Boards of Discipline under sub-section (8), of section 21A:

(si) the manner of preparing panel of persons under clauses (a), (b) and (c) of sub-section (1) and the allowances payable to the Presiding Officers and members of the Disciplinary Committees under sub-section (8), of section 21B;

(sj) the the salaries and allowances and conditions of service of officers and other staff of the Authority under sub-section (2) of section 22D;

(sk) the manner in which Regional Council may be constituted under sub-section (2) of section 23 and the functions thereof;”

Amendment
of First
Schedule.

72. In the First Schedule to the principal Act, in the heading, for the figures, brackets and letter “21(3), 21A(3)”, the figures, brackets and letters “21(6), 21A (5) and (6), 21B (5) and (6)” shall be substituted.

Amendment
of Second
Schedule.

73. In the Second Schedule to the principal Act,—

(i) in the heading, for the figures, brackets and letter “21(3), 21B (3)”, the figures, brackets and letter “21(6), 21B(5) and (6)” shall be substituted;

(ii) in Part 1, in item (3), for the words “belief that he”, the words “belief that he or his firm” shall be substituted.

CHAPTER IV

AMENDMENTS TO THE COMPANY SECRETARIES ACT, 1980

Amendment
of section 2.

74. In the Company Secretaries Act, 1980 (hereafter in this Chapter referred to as the principal Act), in section 2,—

(a) in sub-section (1),—

(i) after clause (aaa), the following clause shall be inserted, namely:—

“(ab) “Board of Discipline” means the Board of Discipline constituted under sub-section (1) of section 21A;”;

(ii) in clause (b), for the words and figures “Companies Act, 1956”, the words, figures and brackets “the Companies Act, 2013 or any other previous company law as defined in sub-section (67) of section 2 of the said Act” shall be substituted;

(iii) after clause (d), the following clauses shall be inserted, namely:—

“(da) “Director (Discipline)” means the Director (Discipline) referred to in section 21 and includes Joint Director (Discipline);

(db) “Disciplinary Committee” means the Disciplinary Committee constituted under sub-section (1) of section 21B;

(dc) “Disciplinary Directorate” means the Disciplinary Directorate established under sub-section (1) of section 21;”;

(iv) for clause (ga), the following clause shall be substituted, namely:—

“(ga) “notification” means a notification published in the Official Gazette and the term “notify” shall be construed accordingly;”;

(v) for clause (j), the following clause shall be substituted, namely:—

“(j) “Register” means the Register of members of the Institute maintained under section 19 or the Register of firms of the Institute maintained under section 20B, as the case may be;”;

(vi) after clause (ja), the following clause shall be inserted, namely:—

“(jaa) “Standing Committee” means the Standing Committee constituted under sub-section (1) of section 17;”;

(b) in sub-section (2), in clause (c), in sub-clause (vi),—

(A) the words, brackets and figures “the Capital Issues (Control) Act, 1947” shall be omitted;

(B) for the words and figures "the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973", the words and figures "the Securities and Exchange Board of India Act, 1992, the Foreign Exchange Management Act, 1999, the Competition Act, 2002" shall be substituted.

54 of 1969
46 of 1973
15 of 1992
42 of 1999
12 of 2003

75. In section 4 of the principal Act,—

Amendment
of section 4.

(i) for the word "Register", wherever it occurs, the words "Register of members" shall be substituted;

(ii) in sub-section (1), in clause (e), for the words "without India", the words "outside India" shall be substituted;

(iii) in sub-section (3),—

(a) the words ", which shall not exceed rupees three thousand" shall be omitted;

(b) the proviso shall be omitted.

76. In section 5 of the principal Act,—

Amendment
of section 5.

(i) for the word "Register", wherever it occurs, the words "Register of members" shall be substituted;

(ii) in sub-section (3), the words "which shall not exceed rupees five thousand," shall be omitted;

(iii) the proviso shall be omitted.

77. In section 6 of the principal Act, in sub-section (2),—

Amendment
of section 6.

(i) the words "which shall not exceed rupees three thousand," shall be omitted;

(ii) the proviso shall be omitted.

78. In section 8 of the principal Act,—

Amendment
of section 8.

(i) for the word "Register", wherever it occurs, the words "Register of members" shall be substituted;

(ii) in clause (c), after the words "undischarged insolvent", the words "or undischarged bankrupt" shall be inserted;

(iii) after clause (c), the following clause shall be inserted, namely:—

"(ca) is declared bankrupt under the Insolvency and Bankruptcy Code, 2016;"

(iv) in clause (e), for the words "without India", the words "outside India" shall be substituted.

79. In section 9 of the principal Act,—

Amendment
of section 9.

(i) in sub-section (2),—

(a) for the word "Register", occurring at both the places, the words "Register of members" shall be substituted;

(b) for the words "three years", the words "four years" shall be substituted;

(c) for the words "six years", the words "eight years" shall be substituted;

31 of 2016.

(ii) in sub-section (4),—

(a) for the word “person”, the words “member of the Institute or any partner of a firm” shall be substituted;

(b) for the words “three years”, the words “four years” shall be substituted.

Amendment
of section 12.

80. In section 12 of the principal Act,—

5

(i) in sub-section (1), the proviso shall be omitted;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) The President shall preside at the meetings of the Council.

(2B) The President and the Vice-President shall exercise such powers and perform such duties and functions as may be prescribed:

10

(2C) It shall be the duty of the President to ensure that the decisions taken by the Council are implemented.”

Amendment
of section 13.

81. In section 13 of the principal Act, in sub-section (2), for the word “Register”, the words “Register of members” shall be substituted.

Amendment
of section 15.

82. In section 15 of the principal Act, in sub-section (2),—

15

(i) in clause (c), for the word “Register”, the words “Register of members” shall be substituted;

(ii) after clause (e), the following clause shall be inserted, namely:—

“(ea) the granting or refusal, of registration of a firm;”;

(iii) after clause (j), the following clauses shall be inserted, namely:—

20

“(ja) to issue guidelines for the purpose of carrying out the objects of this Act;

(jb) to conduct investor education and awareness programmes;

(jc) to enter into any memorandum or arrangement with the prior approval of the Central Government, with any agency of any foreign country, for the purpose of performing its functions under this Act;”.

25

Amendment
of section
15A.

83. In section 15A of the principal Act,—

(i) after clause (c), the following clause shall be inserted, namely:—

“(ca) the maintenance and publication of a Register of firms;”;

(ii) in clause (e), for the words “Register and the restoration to the Register of names”, the words “Register of members and firms and the restoration of names to the Register of members and firms” shall be substituted.

30

Amendment
of section 16

84. In section 16 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) For the efficient performance of its duties, the Council shall appoint—

35

(a) a Secretary who will carry out administrative functions of the Institute, as its Chief Executive Officer;

(b) a Director (Discipline) and Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute, to perform such functions as are assigned to them under this Act and the rules and regulations framed thereunder:

40

Provided that no appointment or re-appointment or termination of appointment of Director (Discipline) or Joint Director (Discipline) shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Central Government.”:

(ii) in sub-section (2), for clause (c), the following clause shall be substituted, namely:—

“(c) prescribe the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service;”.

85. In section 18 of the principal Act, for sub-section (5), the following sub-section shall be substituted, namely:—

Amendment
of section 18.

“(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and subject to audit by a firm of chartered accountants to be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor-General of India:

Provided that a firm shall not be eligible for appointment as an auditor under this sub-section, if any of its partner is or has been a member of the Council during the last four years:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report thereon to the Central Government.”.

86. In section 19 of the principal Act,—

Amendment
of section 19.

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Council shall maintain a Register of members of the Institute in such manner as may be prescribed.”;

(iii) in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

“(ca) whether any actionable information or complaint is pending or any penalty has been imposed against him under Chapter V, including details thereof, if any;”;

(iv) in sub-section (4),—

(a) the words “, which shall not exceed rupees five thousand”, shall be omitted;

(b) the proviso shall be omitted.

87. In section 20 of the principal Act,—

Amendment
of section 20.

(i) for the word “Register”, wherever it occurs, the words “Register of members” shall be substituted;

(ii) in sub-section (3),—

(a) the words “, which shall not exceed rupees two thousand.” shall be omitted;

(b) the proviso shall be omitted.

Insertion of
new Chapter
IVA.

88. After Chapter IV of the principal Act, the following Chapter shall be inserted, 5
namely:—

“CHAPTER IVA

REGISTRATION AND REGISTER OF FIRMS

Registration
of firms.

20A. Every firm shall be registered with the Institute on an application made to 10
the Council, by any partner or owner of a firm, in such manner and subject to such
terms and conditions as may be prescribed:

Provided that the Council may refuse to register a firm if the name of such firm is 15
identical or similar to the name of any other firm already registered or the name is in use
by any firm within or outside India or in the opinion of the Council, registration of the
firm is undesirable.!

Register of
firms.

20B. (1) The Council shall maintain, in such manner as may be prescribed, a 5
Register of firms.

(2) The Register of firms shall include such particulars about the firm, including 20
details of pendency of any actionable information or complaint or imposition of any
penalty against it under Chapter V, in such form and at such intervals, as may be
prescribed.

(3) The Council shall cause to be published in such manner as may be prescribed, 25
a list of firms registered with the Institute as on the 1st day of April of each year or at
any such interval as may be decided by the Council, and shall make available the list to
such persons, in such form and on payment of such amount as may be prescribed.

Removal
from Register
of firms.

20C. The Council shall remove from the Register of firms the name of any 5
firm—

(a) which is dissolved or liquidated; or

(b) from which a request has been received to that effect; or

(c) is declared insolvent or bankrupt under the Insolvency and Bankruptcy 30
Code, 2016 and remains undischarged; or 31 of 2016.

(d) which has been debarred from undertaking any activity or activities 35
relating to the profession of a company secretary in practice under any law for
the time being in force or by any competent court; or

(e) in respect of which an order for removal has been passed under this 35
Act.

Review before
Council.

20D. (1) Any firm aggrieved by the decision for refusal of registration may apply 40
for review before the Council within one month from the date of such refusal.

(2) The Council may, after considering the review application, confirm or set 40
aside the decision so taken or pass such order as it may consider appropriate.”

Substitution of
section 21

89. For section 21 of the principal Act, the following section shall be substituted, 5
namely:—

Disciplinary
Directorate

“21. (1) The Council shall, by notification, establish a Disciplinary Directorate 5

consisting of a Director (Discipline), at least two Joint Directors (Discipline) not below the rank of Deputy Secretary of the Institute and such other employees appointed under section 16. for making investigations either *suo motu*, or on receipt of an information or a complaint in such form, along with such fees as may be specified.

5 (2) Within thirty days of receipt of an information or a complaint, the Director (Discipline) shall decide in such manner as may be specified, whether a complaint or information is actionable or is liable to be closed as non-actionable:

10 Provided that the Director (Discipline) may call for additional information from the complainant or the informant, as the case may be, by giving fifteen days time before deciding whether the case is actionable or non-actionable:

15 Provided further that the recommendations of the Director (Discipline) on non-actionable complaint or information shall be submitted to the Board of Discipline within sixty days of its receipt and the Board of Discipline may, after looking into its merits, refer such complaint or information to the Director (Discipline) for conducting further investigation.

(3) While making investigation into a case which is found to be actionable, the Director (Discipline) shall give an opportunity to the member or the firm, as the case may be, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, for reasons to be recorded in writing.

20 (4) Upon receipt of the written statement under sub-section (3), if any, the Director (Discipline) shall send a copy thereof to the complainant or the informant, as the case may be, and the complainant or the informant, shall within twenty-one days of the receipt of such written statement, submit his rejoinder.

25 (5) Upon receipt of written statement under sub-section (3) and rejoinder under sub-section (4), the Director (Discipline) shall submit a preliminary examination report within thirty days, if a *prima facie* case is made out against a member or a firm, as the case may be.

30 (6) In case a *prima facie* case is made out for any professional or other misconduct mentioned in the First Schedule, the Director (Discipline) shall submit the preliminary examination report to the Board of Discipline and where *prima facie* case is made out for any professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, he shall submit a preliminary examination report to the Disciplinary Committee:

35 Provided that a complaint or information filed by any authorised officer of the Central Government or a State Government or any statutory authority duly supported by an investigation report or relevant extract of the investigation report along with supporting evidence, shall be treated as preliminary examination report:

40 Provided further that where no *prima facie* case is made out against the member or the firm, the Director (Discipline) shall submit such information or complaint with relevant documents to the Board of Discipline and the Board of Discipline may, if it agrees with the findings of the Director (Discipline), close the matter or in case of disagreement, may itself proceed further or refer the matter to the Disciplinary Committee or advise the Director (Discipline) to further investigate the matter.

45 (7) For the purpose of investigation under this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(8) A complaint filed with the Disciplinary Directorate shall not be withdrawn under any circumstances.

(9) The status of actionable information and complaints pending before the Disciplinary Directorate. Boards of Discipline and Disciplinary Committees and the orders passed by the Boards of Discipline under section 21A and by the Disciplinary Committees under section 21B shall be made available in the public domain by the Disciplinary Directorate in such manner as may be prescribed.”

Substitution of
section 21A

90. For section 21A of the principal Act, the following section shall be substituted, namely:—

Board of
Discipline

“21A. (1) The Council shall, by notification, constitute one or more Boards of Discipline, each consisting of—

(a) a person not being a member of the Institute, with experience in law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council, in such manner as may be prescribed;

(b) one member, who is a person of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council, in such manner as may be prescribed;

(c) one member to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council, in such manner as may be prescribed;

(d) an officer of the Institute not below the rank of a Deputy Secretary shall function as the Secretary of the Board of Discipline:

Provided that the Presiding Officer nominated under clause (a) and the member nominated under clause (b) may be the same for different Boards of Discipline constituted under this sub-section.

(2) The Board of Discipline shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

(3) The Board of Discipline shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.

(4) The Board of Discipline shall conclude its inquiry within ninety days of the receipt of preliminary examination report from the Director (Discipline).

(5) Upon inquiry, if the Board of Discipline finds that such member is guilty of a professional or other misconduct mentioned in the First Schedule, it may pass an order within thirty days of such finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:—

(a) reprimand the member and record it in the Register of members;

(b) remove the name of the member or members from the Register of members, up to a period of six months;

(c) impose such fine as it may think fit which may extend to two lakh rupees.

(6) where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Board of Discipline is of the opinion that any such

member who is a partner or owner of a firm, has been repeatedly found guilty of misconduct under the First Schedule during the last five years, the following action may also be taken against such firm, namely:—

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a company secretary in practice for such period not exceeding one year: or

(b) impose such fine as it may think fit, which may extend to twenty-five lakh rupees.

(7) Where a member fails to pay the fine imposed under sub-section (5) or sub-section (6) within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period as it may think fit.

(8) The Presiding Officer and members of the Board of Discipline shall be paid such allowances as may be prescribed.”

91. For section 21B of the principal Act, the following section shall be substituted, namely:—

Substitution
of section
21B.

“21B. (1) The Council shall, by notification, constitute one or more Disciplinary Committees, each consisting of—

Disciplinary
Committee.

(a) a person, not being a member of the Institute, with experience in the field of law and having knowledge of disciplinary matters and the profession, to be nominated by the Central Government as its Presiding Officer, from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

(b) two members, who are persons of eminence having experience in the field of law, economics, business, finance or accountancy and not being a member of the Institute, to be nominated by the Central Government from out of a panel of persons prepared and provided by the Council in such manner as may be prescribed;

(c) two members to be nominated by the Council from out of a panel of members of the Institute to be prepared by the Council in such manner as may be prescribed:

Provided that the Presiding Officer nominated under clause (a) and the members nominated under clause (b) may be the same for different Disciplinary Committees constituted under this sub-section.

(2) The Disciplinary Committees shall, while considering the cases placed before it, follow such procedure including faceless proceedings and virtual hearings as may be specified.

(3) The Disciplinary Committee shall, on receipt of preliminary examination report from Director (Discipline), require the member or the firm, as the case may be, against whom such preliminary examination report has been filed, to submit a written statement within twenty-one days which may further be extended by another twenty-one days, in exceptional circumstances, for reasons to be recorded in writing.

(4) The Disciplinary Committee shall conclude its inquiry within one hundred and eighty days of receipt of the preliminary examination report from the Director (Discipline).

(5) Upon inquiry, if the Disciplinary Committee finds that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule, it may pass an order within thirty days of such a finding, after providing an opportunity of being heard to the member, taking any one or more of the following actions, namely:— 5

(a) reprimand the member and record it in the Register of members; or

(b) remove the name of the member from the Register of members permanently or for such period, as it may think fit; or

(c) impose such fine as it may think fit, which may extend to ten lakh rupees. 10

(6) Where on the basis of evidence brought on record or during the course of an inquiry pertaining to a member, the Disciplinary Committee forms an opinion that any member, who is a partner or owner of a firm, has been repeatedly found guilty of misconduct mentioned in the Second Schedule or in both the First Schedule and the Second Schedule during the last five years, the following actions may also be taken against such firm, namely:— 15

(a) prohibit the firm from undertaking any activity or activities relating to the profession of a Company Secretary in practice for such period not exceeding two years; or 20

(b) suspend or cancel the registration of the firm and remove its name from the Register of firms permanently or for such period as it may think fit; or

(c) impose such fine as it may think fit, which may extend to fifty lakh rupees. 25

(7) Where a member or a firm fails to pay the fine imposed under sub-section (5) or sub-section (6) within such time as may be specified, the Council shall remove the name of such member or firm from the Register of members or Register of firms, as the case may be, for such period, as it may think fit. 30

(8) The Presiding Officer and members of the Disciplinary Committee shall be paid such allowances as may be prescribed.”

Amendment of section 21C.

92. In section 21C of the principal Act, the *Explanation* shall be omitted.

Substitution of section 21D.

93. For section 21D of the principal Act, the following section shall be substituted, namely:— 35

Transitional provisions.

“21D. All complaints or any inquiry pending before the Board of Discipline or the Disciplinary Committee or any reference or appeal filed before the Appellate Authority or a High Court prior to the commencement of the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Act, 2021.” 40

94. For section 22 of the principal Act, the following section shall be substituted, namely:—

Substitution
of section 22.

‘22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission, on the part of any member of the Institute either in his individual capacity or as partner or owner of a firm as mentioned in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of such member or firm, under any other circumstances.’

Professional
or other
misconduct
defined.

95. In section 22E of the principal Act,—

Amendment
of section
22E.

(i) in sub-section (1),—

(a) after the words “Any member of the Institute”, the words “or a firm” shall be inserted;

(b) for the words “imposing on him”, the words “imposing on such member or firm” shall be substituted;

(c) for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B, may”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B, as the case may be, may” shall be substituted;

(d) for the words “communicated to him”, the words “communicated to such member or firm” shall be substituted;

(ii) in sub-section (2), for the words, brackets, figures and letters “sub-section (3) of section 21A and sub-section (3) of section 21B”, the words, brackets, figures and letters “sub-section (5) or sub-section (6) of section 21A or sub-section (5) or sub-section (6) of section 21B,” shall be substituted;

(iii) after sub-section (2), the following sub-section and *Explanations* shall be inserted, namely:—

‘(3) No order or act or proceeding of the Authority shall be called in question in any manner, on the ground merely of any defect in the constitution of, or a casual vacancy or absence of one or two members, of the Authority.

Explanation 1.—For the purposes of this Chapter,—

(A) “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry;

(B) a “firm” registered with the Institute shall also be held liable for misconduct of a member who was its partner or owner on the date of the alleged misconduct, although he has ceased to be such partner or owner, at the time of the inquiry.

Explanation 2.— No action taken under the provisions of this Chapter shall bar a Central Government Department or a State Government or any statutory authority or regulatory body to take action against a member or a firm registered with the Institute under any other law for the time being in force.’

96. In section 24 of the principal Act,—

Amendment
of section 24.

(a) for the words “one thousand rupees”, the words “one lakh rupees” shall be substituted;

(b) for the words “five thousand rupees”, the words “five lakh rupees” shall be substituted.

97. In section 25 of the principal Act, in sub-section (2),—

Amendment
of section 25.

(i) for the words “be punishable on first conviction with fine which may extend

to one thousand rupees", the words "be punishable with imprisonment which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both on first conviction" shall be substituted;

(ii) for the words "six months, or with fine which may extend to five thousand rupees", the words "one year, or with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees" shall be substituted.

Amendment
of section 26.

98. In section 26 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) If any company contravenes the provisions of sub-section (1), then every director, manager, secretary and any other officer who is knowingly a party to such contravention shall be punished on first conviction with fine which shall not be less than two lakh rupees but which may extend to ten lakh rupees, and on any subsequent conviction with fine which shall not be less than four lakh rupees but which may extend to twenty lakh rupees."

Amendment
of section 27.

99. In section 27 of the principal Act, in sub-section (2),—

(a) for the words "five thousand rupees", the words "one lakh rupees" shall be substituted;

(b) for the words "one lakh rupees", the words "five lakh rupees" shall be substituted;

(c) for the words "ten thousand rupees", the words "two lakh rupees" shall be substituted;

(d) for the words "two lakh rupees", the words "ten lakh rupees" shall be substituted.

Amendment
of section
29B.

100. In section 29B of the principal Act, after clause (c), the following clause shall be inserted, namely:—

"(d) to forward cases of non-compliance with various statutory and regulatory requirements by the members of the Institute or firms, noticed by it during the course of its review, to the Disciplinary Directorate for its examination."

Amendment
of section 34.

101. For section 34 of the principal Act, the following section shall be substituted, namely:—

Coordination
Committee.

"34. The Coordination Committee constituted under section 9A of the Chartered Accountants Act, 1949, shall be deemed to be the Coordination Committee for the purposes of this Act."

Amendment
of section 38.

102. In section 38 of the principal Act, in sub-section (2), for the word "Register", the words "Register of members" shall be substituted.

Amendment
of section
38A.

103. In section 38A of the principal Act, in sub-section (2), for clauses (c) and (d), the following clauses shall be substituted, namely:—

(c) the form, manner and fee for filing an information or a complaint under sub-section (1), the manner of deciding a complaint or information as actionable or non-actionable under sub-section (2) and the procedure of investigation under sub-section (7), of section 21;

(d) the procedure while considering the cases by the Boards of Discipline under sub-section (2) and time limit for payment of fine under sub-section (7), of section 21A;

(da) the procedure while considering the cases by the Disciplinary Committees under sub-section (2) and time-limit for payment of fine under sub-section (7), of section 21B;".

104. In section 39 of the principal Act, in sub-section (2),—

(i) for the word "Register", at both places where it occurs, the words "Register of members" shall be substituted:

(ii) after clause (f), the following clauses shall be inserted, namely:—

5 "(fa) the circumstances under which certificates of practice may be cancelled under sub-section (3) of section 6:

(fb) the powers, duties and functions of the President and the Vice-President of the Council under sub-section (2B) of section 12;"

(iii) after clause (h), the following clause shall be inserted, namely:—

10 "(ha) guidelines for granting or refusal of certificates of practice under clause (e) of sub-section (2) of section 15;"

(iv) after clause (k), the following clause shall be inserted, namely:—

15 "(ka) the manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of the Secretary and other officers and employees of the Council under clause (c) of sub-section (2) of section 16;"

(v) after clause (m), the following clause shall be inserted, namely:—

20 "(ma) the maintenance of accounts under sub-section (3), the manner of preparing annual financial statement under sub-section (4) and the manner of preparing the annual accounts of the Council under sub-section (5), of section 18;"

(vi) for clause (p), the following clauses shall be substituted, namely:—

"(p) the manner of making an application for grant of registration of a firm and the terms and conditions of such registration under section 20A;

25 "(pa) the manner of maintenance of Register of firms, and other particulars including details of pendency of any actionable information or complaint or imposition of any penalty against the firm under sub-section (1) and sub-section (2), and the manner in which the annual list of firms registered with the Institute shall be published under sub-section (3), of section 20B;

30 "(pb) the manner of making available status of actionable information and complaints and orders passed under sub-section (9) of section 21;

(pc) the manner of preparing panel of persons under clauses (a), (b) and (c) of sub-section (1) and the allowances payable to the Presiding Officers and members of the Boards of Discipline under sub-section (8), of sections 21A;

35 "(pd) the manner of preparing panel of persons under clauses (a), (b) and (c) of sub-section (1) and the allowances payable to the Presiding Officers and members of the Disciplinary Committees under sub-section (8) of section 21B;

40 "(pe) the salaries and allowances and conditions of service of officers and staff of the Authority under sub-section (2) of section 22D;"

105. In the First Schedule to the principal Act, in the heading, for the figures, brackets and letter "21(3), 21A(3)", the figures, brackets and letters "21(6), 21A(5) and (6), 21B(5) and (6)" shall be substituted.

Amendment
of First
Schedule.

106. In the Second Schedule to the principal Act,—

45 (i) in the heading, for the figures, brackets and letter "21(3), 21B(3)", the figures, brackets and letter "21(6), 21B(5) and (6)" shall be substituted;

(ii) in Part I, in item (3), for the words "belief that he", the words "belief that he or his firm" shall be substituted.

Amendment
of Second
Schedule.

STATEMENT OF OBJECTS AND REASONS

The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980 (hereinafter referred to as the Acts), were enacted to make provision for the regulation of the profession of the chartered accountants, cost accountants and company secretaries, respectively. On account of changes in the economic and corporate environment in the country, it has become necessary to amend the Acts. Further, recent corporate events have put the profession of chartered accountancy under a considerable scrutiny.

2. The amendments to the Acts are based on the recommendations of a High Level Committee constituted by the Ministry of Corporate Affairs, *inter alia*, to examine the existing provisions in the Acts and the rules and regulations made thereunder, for dealing with the cases of misconduct in the three Professional Institutes, namely, the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India and the Institute of Company Secretaries of India and with a view to strengthening the existing mechanism and ensure speedy disposal of the disciplinary cases.

3. The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 proposes to further amend The Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980, *inter alia*, to—

(i) strengthen the disciplinary mechanism by augmenting the capacity of the Disciplinary Directorate to deal with the complaints and information and providing time-bound disposal of the cases by specifying the time limits for speedy disposal of the cases against members of the Institutes;

(ii) address conflict of interest between the administrative and disciplinary arms of the Institute;

(iii) provide for a separate chapter on registration of firms with the respective Institutes and include firms under the purview of the disciplinary mechanism;

(iv) enhance accountability and transparency by providing for audit of accounts of the Institutes by a firm of chartered accountants to be appointed annually by the Council from the panel of auditors maintained by the Comptroller and Auditor-General of India;

(v) provide for autonomy to the Council of the respective Institutes to fix various fees.

4. The Bill seeks to achieve the above objectives.

NIRMALA SITHARAMAN.

NEW DELHI;

The 11th December, 2021.

Notes on Clauses

Chartered Accountants

Clause 2 of the Bill seeks to amend the long title and preamble of the Chartered Accountants Act, 1949 (the Act) by including the word "development" therein.

Clause 3 of the Bill seeks to amend section 2 of the Act to insert certain definitions therein such as Board of Discipline, Coordination Committee, Companies Act, Director (Discipline), Disciplinary Committee, Disciplinary Directorate, fellow and Standing Committee and to modify the definitions of Council, notification and Register.

Clause 4 of the Bill seeks to amend section 4 of the Act to substitute the word "Register" with the words "Register of members" and to empower the Council of the Institute of Chartered Accountants of India (the Institute) to decide fee required for entry of names in the Register of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 5 of the Bill seeks to amend section 5 of the Act to substitute the word "Register" with words "Register of members", to empower the Council to decide fees required for entry of names in the Register of members as a fellow and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 6 of the Bill seeks to amend section 6 of the Act to empower the Council to decide fee for grant of certificate of practice and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 7 of the Bill seeks to amend section 8 of the Act to substitute the word "Register" with words "Register of members" and to include bankruptcy as a disqualification for member.

Clause 8 of the Bill seeks to amend section 9 of the Act to substitute the word "Register" with words "Register of members" and to increase the period of disqualification of a member from contesting the election to the Council.

Clause 9 of the Bill seeks to insert new section 9A to provide for a Coordination Committee consisting of the President, Vice-President and the Secretary of the Council of each of the Institutes of Chartered Accountants of India, the Cost Accountants of India and the Company Secretaries of India for the development and harmonisation of the professions of Chartered Accountants, Cost Accountants and Company Secretaries.

Clause 10 of the Bill seeks to amend section 10 of the Act to limit the consecutive terms for Council members from three to two.

Clause 11 of the Bill seeks to amend section 12 of the Act to designate the President of the Institute as the Head of the Institute and to provide for the functions of the President and the Vice-President of the Institute.

Clause 12 of the Bill seeks to amend section 13 of the Act to substitute the word "Register" with the words "Register of members".

Clause 13 of the Bill seeks to amend section 14 of the Act to increase the term of the Council from three years to four years.

Clause 14 of the Bill seeks to amend section 15 of the Act to provide for certain additional functions of the Council.

Clause 15 of the Bill seeks to introduce new section 15B to provide for the functions of the Institute.

Clause 16 of the Bill seeks to amend section 16 of the Act to provide that the Secretary shall be the Chief Executive Officer and to appoint Director (Discipline) and Joint Directors (Discipline), of the Institute. It further empowers the Council to make regulations for the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service.

Clause 17 of the Bill seeks to amend section 18 of the Act to provide for audit of the annual accounts of the Council by a firm of chartered accountants, to be appointed by Council from the panel of auditors maintained by the Comptroller and Auditor-General of India.

Clause 18 of the Bill seeks to amend section 19 of the Act to substitute the word "Register" with words "Register of members", to maintain a Register of members of the Institute in accordance with the regulations, to empower the Council to determine the fees for registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 19 of the Bill seeks to amend section 20 of the Act to substitute the word "Register" with the words "Register of members", to empower the Council to determine the fees for renewal of registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 20 of the Bill seeks to insert a new Chapter IYA to provide for the registration and register of firms and for the removal of names from the Register of firms and review before the Council.

Clause 21 of the Bill seeks to substitute section 21 of the Act to modify the composition of the Disciplinary Directorate by including at least two Joint Directors (Discipline) along with a Director (Discipline), simplify the investigation by classifying complaints or information into actionable and non-actionable within stipulated timeframe and to substitute the *prima facie* opinion report with preliminary examination report, to prohibit the withdrawal of complaints and to empower the Central Government to make rules for procedures to be followed by Disciplinary Directorate.

Clause 22 of the Bill seeks to substitute section 21A of the Act to empower the Central Government to establish one or more Boards of Discipline, each comprising of a Presiding Officer to be nominated by the Central Government and two members of whom one shall be nominated by the Central Government and one member to be nominated by the Council. It further seeks to fix a timeframe for completion of inquiry by Boards of Discipline, empower the Central Government to make rules for procedures to be followed by the Boards of Discipline, modify penalty provisions for misconduct by members of the Institute, provide for inclusion of firms of chartered accountants under the purview of disciplinary mechanism and to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 23 of the Bill seeks to substitute section 21B of the Act to empower the Central Government to establish one or more Disciplinary Committees, each comprising of a Presiding Officer to be nominated by the Central Government and four members of which two shall be nominated by the Central Government and two members to be nominated by the Council. It further seeks to fix a timeframe for completion of inquiry by Disciplinary Committees and to empower the Central Government to make rules for procedures to be followed by it, modify penalty provisions for misconduct by members of the Institute and to provide for inclusion of firms of chartered accountants under the purview of disciplinary mechanism. It also seeks to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 24 of the Bill seeks to amend section 21C of the Act to omit the Explanation of member of the Institute.

Clause 25 of the Bill seeks to substitute section 21D of the Act to make transitional provisions with respect to proposed amendment.

Clause 26 of the Bill seeks to substitute section 22 of the Act to modify the definition of professional or other misconduct.

Clause 27 of the Bill seeks to amend section 22G of the Act to make consequential amendments for inclusion of firms of the chartered accountants under the purview of disciplinary mechanism, define member and firm for the purpose of disciplinary actions and to provide for scope of actions against the members or firms registered with the Institute under any other law.

Clause 28 of the Bill seeks to amend section 24 of the Act to enhance penalties for falsely claiming to be a member of the Institute, etc.

Clause 29 of the Bill seeks to amend section 24A of the Act to enhance penalties for using name of the Council, awarding degree of chartered accountancy, etc.

Clause 30 of the Bill seeks to amend section 25 of the Act to enhance penalties for prohibiting companies not to engage in accountancy.

Clause 31 of the Bill seeks to amend section 26 of the Act to enhance penalties for signing of documents by unqualified persons.

Clause 32 of the Bill seeks to amend section 28B to provide for additional functions for Quality Review Board.

Clause 33 of the Bill seeks to amend section 29 of the Act to substitute the word "Register" with words "Register of members".

Clause 34 of the Bill seeks to amend section 29A of the Act to empower Central Government to make rules.

Clause 35 of the Bill seeks to amend section 30 of the Act to empower the Council of the Institute to make regulations.

Clause 36 of the Bill seeks to amend the First Schedule of the Act.

Clause 37 of the Bill seeks to amend the Second Schedule of the Act.

Cost and Works Accountants

Clause 38 of the Bill seeks to amend the long title and preamble of the Cost and Works Accountants Act, 1959 (the Act) by including the word "development" therein and omitting the word "works" there from.

Clause 39 of the Bill seeks to amend section 1 of the Act to align the name of the Act with the long title.

Clause 40 of the Bill seeks to amend section 2 of the Act to insert certain definitions therein such as Board of Discipline, Companies Act, Director (Discipline), Disciplinary Committee, Disciplinary Directorate, Standing Committee and to modify the definitions of fellow, notification and Register.

Clause 41 of the Bill seeks to amend heading of Chapter II of the Act to amend the name of the Institute from the Institute of Cost and Works Accountants to Institute of Cost Accountants.

Clause 42 of the Bill seeks to amend section 4 of the Act to substitute the word "Register" with the words "Register of members", empower the Council of the Institute of Cost Accountants of India (the Institute) to decide fee required for entry of names in the Register of members and to dispense with the condition of prior approval of Central Government.

Clause 43 of the Bill seeks to amend section 5 of the Act to substitute the word "Register" with words "Register of members", to empower the Council to decide fees required for entry of names in the Register of members as a fellow and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 44 of the Bill seeks to amend section 6 of the Act to empower the Council to decide fee for grant of certificate of practice and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 45 of the Bill seeks to amend section 8 of the Act to substitute the word "Register" with words "Register of members" and to include bankruptcy as a disqualification for member.

Clause 46 of the Bill seeks to amend section 9 of the Act to substitute the word "Register" with words "Register of members" and to increase the period of disqualification of a member from contesting the election to the Council.

Clause 47 of the Bill seeks to amend section 12 of the Act to provide for the functions of the President and the Vice-President of the Institute.

Clause 48 of the Bill seeks to amend section 13 of the Act to substitute the word "Register" with the words "Register of members".

Clause 49 of the Bill seeks to amend section 15 of the Act to provide for certain additional functions of the Council.

Clause 50 of the Bill seeks to amend section 15A of the Act to provide for certain additional functions of the Institute.

Clause 51 of the Bill seeks to amend section 16 of the Act to provide that the Secretary shall be the Chief Executive Officer and to appoint Director (Discipline) and Joint Directors (Discipline), of the Institute. It further empowers the Council to make regulations for the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service.

Clause 52 of the Bill seeks to amend section 18 of the Act to provide for audit of the annual accounts of the Council by a firm of chartered accountants, to be appointed by Council from the panel of auditors maintained by the Comptroller and Auditor-General of India.

Clause 53 of the Bill seeks to amend section 19 of the Act to substitute the word "Register" with words "Register of members", to maintain a Register of members of the Institute in accordance with the regulations, to empower the Council to determine the fees for registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 54 of the Bill seeks to amend section 20 of the Act to substitute the word "Register" with words "Register of members", to empower the Council to determine the fees for renewal of registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 55 of the Bill seeks to introduce new chapter IVA to provide for the registration and register of firms and for the removal of names from the Register of firms and review before the Council.

Clause 56 of the Bill seeks to substitute section 21 of the Act to modify the composition of the Disciplinary Directorate by including at least two Joint Directors (Discipline) along with a Director (Discipline), simplify the investigation by classifying complaints or information into actionable and non-actionable within stipulated timeframe and to substitute the *prima facie* opinion report with preliminary examination report, to prohibit the withdrawal of complaints and to empower the Central Government to make rules for procedures to be followed by Disciplinary Directorate.

Clause 57 of the Bill seeks to substitute section 21A of the Act to empower the Central Government to establish one or more Boards of Discipline, each comprising of a Presiding Officer to be nominated by the Central Government and two members of whom one shall be nominated by the Central Government one member to be nominated by the Council. It further seeks to fix a timeframe for completion of inquiry by Boards of Discipline, empower the Central Government to make rules for procedures to be followed by the Boards of Discipline, modify penalty provisions for misconduct by members of the Institute, provide for inclusion of firms of cost accountants under the purview of disciplinary mechanism and to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 58 of the Bill seeks to substitute section 21B of the Act to empower the Central Government to establish one or more Disciplinary Committees, each comprising of a Presiding Officer to be nominated by the Central Government and four members of which two shall be nominated by the Central Government and two members to be nominated by the Council. It further seeks to fix a timeframe for completion of inquiry by Disciplinary Committees and to empower the Central Government to make rules for procedures to be followed by it, modify penalty provisions for misconduct by members of the Institute and to provide for inclusion of firms of cost accountants under the purview of disciplinary mechanism. It also seeks to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 59 of the Bill seeks to amend section 21C of the Act to omit the Explanation of member of the Institute.

Clause 60 of the Bill seeks to substitute section 21D of the Act to make transitional provisions with respect to proposed amendment.

Clause 61 of the Bill seeks to substitute section 22 of the Act to modify the definition of professional or other misconduct.

Clause 62 of the Bill seeks to amend section 22E of the Act to make consequential amendments for inclusion of firms of the cost accountants under the purview of disciplinary mechanism, define member and firm for the purpose of disciplinary actions and to provide for scope of actions against the members or firms registered with the Institute under any other law.

Clause 63 of the Bill seeks to amend section 24 of the Act to enhance penalties for falsely claiming to be a member of the Institute, etc.

Clause 64 of the Bill seeks to amend section 25 of the Act to enhance penalties for using name of the Council, awarding degree of cost accountancy, etc.

Clause 65 of the Bill seeks to amend section 26 of the Act to enhance penalties for prohibiting companies not to engage in cost accountancy.

Clause 66 of the Bill seeks to amend section 27 of the Act to enhance penalties for signing of documents by unqualified persons.

Clause 67 of the Bill seeks to insert a new provision in the section 29B to provide for additional functions for Quality Review Board.

Clause 68 of the Bill seeks to substitute section 34 of the Act to provide that the Coordination Committee constituted under section 9A of the Chartered Accountants Act, 1949 shall be deemed to be the Coordination Committee for the purposes of the Act.

Clause 69 of the Bill seeks to amend section 38 of the Act to substitute the word "Register" with words "Register of members".

Clause 70 of the Bill seeks to amend section 38A of the Act to empower Central Government to make rules.

Clause 71 of the Bill seeks to amend section 39 of the Act to empower the Council of the Institute to make regulations.

Clause 72 of the Bill seeks to amend the First Schedule of the Act.

Clause 73 of the Bill seeks to amend the Second Schedule of the Act.

Company Secretaries

Clause 74 of the Bill seeks to amend section 2 of the Company Secretaries Act, 1980 (the Act) to insert certain definitions therein such as Board of Discipline, Director (Discipline), Disciplinary Committee, Disciplinary Directorate, and Standing Committee and to modify the definitions of Companies Act, notification and Register.

Clause 75 of the Bill seeks to amend section 4 of the Act to substitute the word "Register" with the words "Register of members" and to empower the Council of the Institute of Company Secretaries of India (the Institute) to decide fee required for entry of names in the Register of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 76 of the Bill seeks to amend section 5 of the Act to substitute the word "Register" with words "Register of members", to empower the Council to decide fees required for entry of names in the Register of members as a fellow and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 77 of the Bill seeks to amend section 6 of the Act to empower the Council to decide fee for grant of certificate of practice and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 78 of the Bill seeks to amend section 8 of the Act to substitute the word "Register" with words "Register of members" and to include bankruptcy as a disqualification for member.

Clause 79 of the Bill seeks to amend section 9 of the Act to substitute the word "Register" with words "Register of members" and to increase the period of disqualification of a member from contesting the election to the Council.

Clause 80 of the Bill seeks to amend section 12 of the Act to provide for the functions of the President and the Vice-President of the Institute.

Clause 81 of the Bill seeks to amend section 13 of the Act to substitute the word "Register" with the words "Register of members".

Clause 82 of the Bill seeks to amend section 15 of the Act to provide for certain additional functions of the Council.

Clause 83 of the Bill seeks to amend section 15A of the Act to provide for certain additional functions of the Institute.

Clause 84 of the Bill seeks to amend section 16 of the Act to provide that the Secretary shall be the Chief Executive Officer and to appoint Director (Discipline) and Joint Directors (Discipline), of the Institute. It further empowers the Council to make regulations for the manner of appointment, powers, duties and functions of the Secretary and other officers and employees, their salaries, fees, allowances and other terms and conditions of service.

Clause 85 of the Bill seeks to amend section 18 of the Act to provide for audit of the annual accounts of the Council by a firm of chartered accountants, to be appointed by Council from the panel of auditors maintained by the Comptroller and Auditor-General of India.

Clause 86 of the Bill seeks to amend section 19 of the Act to substitute the word "Register" with words "Register of members", to maintain a Register of members of the Institute in accordance with the regulations, to empower the Council to determine the fees

Sl. No.	Page No.	Line(s) No.	For	Read
13.	22	43	Committee forms an opinion	Committee is of the opinion
14.	22	47	actions	action
15.	26	7	the the salaries	the salaries
16.	34	13	Committee forms an opinion	Committee is of the opinion
17.	34	17	actions	action
18.	36	marginal heading against clause 101	Amendment of	Substitution of
19.	37	2	at both places where it occurs,	occurring at both the places,
20.	37	34	of sections 21A	of section 21A
21.	39	line 2 from the bottom	to introduce new	to insert new
22.	42	line 10 from the bottom	to introduce new	to insert new
23.	48	line 2 from the bottom	cases and by	cases by
24.	48	line 2 from the bottom	Disciplinary Committee	Disciplinary Committees

NEW DELHI;

December 15, 2021

Agrahayana 24, 1943 (Saka)

LOK SABHA

CORRIGENDA

to

THE CHARTERED ACCOUNTANTS, THE COST AND WORKS ACCOUNTANTS AND THE
COMPANY SECRETARIES (AMENDMENT) BILL, 2021

[To be/As introduced in Lok Sabha]

Sl. No.	Page No.	Line(s) No.	For	Read
1.	2	25, 26	(v) in clause (ea). After the words "Official Gazette", the words 'and the term "notify" shall be construed accordingly' shall be inserted;	(v) for clause (ea), the following clause shall be substituted, namely:- '(ea) "notification" means a notification published in the Official Gazette and the term "notify" shall be construed accordingly';
2.	11	15	following actions may	following action may
3.	11	48	other circumstances."	other circumstances."
4.	14	22	of sections 21A	of section 21A
5.	15	after line 8, insert		(ii) in clause (c), after the words "Council of the Institute", the words "constituted under section 9" shall be inserted;
6.	15	9	(ii) after clause (b),	(iii) after clause (c),
7.	15	10	'(ba) "Director	'(ca) "Director
8.	15	12	(bb) "Disciplinary	(cb) "Disciplinary
9.	15	14	(bc) "Disciplinary	(cc) "Disciplinary
10.	15	lines 16 and 17		omit lines 16 and 17
11.	18	4	may prescribed	may be prescribed
12.	21	21	after provding	after providing

P.T.O.

for registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 87 of the Bill seeks to amend section 20 of the Act to substitute the word "Register" with words "Register of members", to empower the Council to determine the fees for renewal of registration of members and to dispense with the condition of prior approval of Central Government to determine such fees.

Clause 88 of the Bill seeks to insert a new Chapter IVA to provide for the registration and register of firms and for the removal of names from the Register of firms and review before the Council.

Clause 89 of the Bill seeks to substitute section 21 of the Act to modify the composition of the Disciplinary Directorate by including at least two Joint Directors (Discipline) along with a Director (Discipline), simplify the investigation by classifying complaints or information into actionable and non-actionable within stipulated timeframe and to substitute the *prima facie* opinion report with preliminary examination report, to prohibit the withdrawal of complaints and to empower the Central Government to make rules for procedures to be followed by Disciplinary Directorate.

Clause 90 of the Bill seeks to substitute section 21A of the Act to empower the Central Government to establish one or more Boards of Discipline, each comprising of a Presiding Officer and two members, of whom one shall be nominated by the Council and one member to be nominated by the Central Government. It further seeks to fix a timeframe for completion of inquiry by Boards of Discipline, empower the Central Government to make rules for procedures to be followed by the Boards of Discipline, modify penalty provisions for misconduct by members of the Institute, provide for inclusion of firms of company secretaries under the purview of disciplinary mechanism and to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 91 of the Bill seeks to amend section 21B of the Act to empower the Central Government to establish one or more Disciplinary Committees, each comprising of a Presiding Officer to be nominated by the Central Government and four members of which two shall be nominated by the Central Government and two members to be nominated by the Council. It further seeks to fix a timeframe for completion of inquiry by Disciplinary Committees and to empower the Central Government to make rules for procedures to be followed by it, modify penalty provisions for misconduct by members of the Institute and to provide for inclusion of firms of company secretaries under the purview of disciplinary mechanism. It also seeks to empower the Council to remove names from the Register on non-payment of penalties imposed under the Bill.

Clause 92 of the Bill seeks to amend section 21C of the Act to omit the Explanation of member of the Institute.

Clause 93 of the Bill seeks to substitute section 21D of the Act to make transitional provisions with respect to proposed amendment.

Clause 94 of the Bill seeks to substitute section 22 of the Act to modify the definition of professional or other misconduct.

Clause 95 of the Bill seeks to amend section 22E of the Act to make consequential amendments for inclusion of firms of the company secretaries under the purview of disciplinary mechanism, define member and firm for the purpose of disciplinary actions and to provide for scope of actions against the members or firms registered with the Institute under any other law.

Clause 96 of the Bill seeks to amend section 24 of the Act to enhance penalties for falsely claiming to be a member of the Institute, etc.

Clause 97 of the Bill seeks to amend section 25 of the Act to enhance penalties for using name of the Council, awarding degree of company secretary, etc.

Clause 98 of the Bill seeks to amend section 26 of the Act to enhance penalties for prohibiting companies not to engage in company secretaryship.

Clause 99 of the Bill seeks to amend section 27 of the Act to enhance penalties for signing of documents by unqualified persons.

Clause 100 of the Bill seeks to amend section 29B to provide for additional functions for Quality Review Board.

Clause 101 of the Bill seeks to amend section 34 of the Act to provide that the Coordination Committee constituted under section 9A of the Chartered Accountants Act, 1949 shall be deemed to be the Coordination Committee for the purposes of the Act.

Clause 102 of the Bill seeks to amend section 38 of the Act to substitute the word "Register" with words "Register of members".

Clause 103 of the Bill seeks to amend section 38A of the Act to empower Central Government to make rules.

Clause 104 of the Bill seeks to amend section 39 of the Act to empower the Council of the Institute to make regulations.

Clause 105 of the Bill seeks to amend the First Schedule of the Act.

Clause 106 of the Bill seeks to amend the Second Schedule of the Act.

FINANCIAL MEMORANDUM

The Bill does not involve any expenditure, recurring or non-recurring, from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 34 of the Bill empowers the Central Government to make rules to provide for the form and fee for filing an information or a complaint before the Disciplinary Directorate, the manner of decision of the complaint or information as actionable or non-actionable by the Director (Discipline), procedure of investigation by the Disciplinary Directorate and procedure while considering the cases by the Board of Discipline and the Disciplinary Committee and time limit for payment of fine imposed by such Boards or Committees.

2. Clause 35 of the Bill empowers the Council of the Institute of Chartered Accountants of India to make regulations for the qualifications of a member of the Institute, circumstances under which certificates of practice may be cancelled, guidelines for granting or refusal of certificates of practice, manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of the Secretary and other officers and employees of the Council, manner of preparing annual accounts of the Council, manner of maintaining a Register of members of the Institute, manner in which annual list of members registered with the Institute shall be published, manner of making an application for grant of registration of a firm and the terms and conditions of such registration, manner of maintenance of Register of firms, manner in which the annual list of firms registered with the Institute shall be published, allowances payable to the Presiding Officers and members of the Boards of Discipline and Disciplinary Committees, manner of making available status of actionable information and complaints and penalties imposed by the Boards of Discipline, the Disciplinary Committees and the Appellate Authority, manner of preparing panel of persons for nomination to such Boards and Committees.

3. Clause 70 of the Bill empowers the Central Government to make rules to provide for the form and fee for filing an information or a complaint before the Disciplinary Directorate, manner of deciding a complaint or information as actionable or non-actionable by Director (Discipline), procedure of investigation by the Disciplinary Directorate, procedure while considering the cases by the Boards of Discipline and the Disciplinary Committees and the time limit for payment of fine imposed by such Boards or Committees.

4. Clause 71 of the Bill empowers the Council of the Institute of the Cost Accountants of India to make regulations for prescribing the circumstances under which certificates of practice may be cancelled, guidelines for granting or refusal of certificates of practice, manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of the Secretary and other officers and employees of the Council, manner of preparing the annual accounts of the Council, manner of maintaining a Register of members of the Institute, manner of making an application for grant of registration of a firm and the terms and conditions of such registration, manner of maintenance of Register of firms, manner in which the annual list of firms registered with the Institute shall be published, manner of making available status of actionable information and complaints and penalties imposed by the Boards of Discipline, the Disciplinary Committees and the Appellate Authority, manner of preparing panel of persons for nomination to the Boards of Discipline and Disciplinary Committees and allowances payable to the Presiding Officers and members of such Boards and Committees.

5. Clause 103 of the Bill empowers the Central Government to make rules to provide for the form and fee for filing an information or a complaint before the Disciplinary Directorate, manner of decision of the complaint or information as actionable or non-actionable by the Director (Discipline), procedure of investigation by the Disciplinary Directorate and procedure while considering the cases and by the Boards of Discipline and the Disciplinary Committee and time limit for payment of fine imposed by such Boards or Committees.

6. Clause 104 of the Bill empowers the Council of the Institute of the Company Secretaries of India to make regulations for prescribing the circumstances under which certificates of practice may be cancelled, powers, duties and functions of the President and the Vice-President of the Council, guidelines for granting or refusal of certificates of practice, manner of appointment, powers, duties, functions, salaries, fees, allowances and other terms and conditions of service of the Secretary and other officers and employees of the Council, manner of preparing the annual accounts of the Council, manner of making an application for grant of registration of a firm and the terms and conditions of such registration, manner of maintenance of Register of firms, manner in which the annual list of firms registered with the Institute shall be published, manner of making available status of actionable information and complaints and penalties imposed by the Boards of Discipline, the Disciplinary Committees and the Appellate Authority, the manner of preparing panel of persons for nomination to the Boards of Discipline and Disciplinary Committees and the allowances payable to the Presiding Officers and members of such Boards and Committees.

7. The matters in respect of which rules and regulations may be made are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative powers is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CHARTERED ACCOUNTANTS ACT, 1949

(38 OF 1949)

An Act to make provision for the regulation of the profession of chartered accountants.

WHEREAS it is expedient to make provision for the regulation of the profession of chartered accountants and for that purpose to establish an Institute of Chartered Accountants;

* * * * *

Interpretation.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

* * * * *

(c) "Council" means the Council of the Institute;

* * * * *

(ea) "notification" means a notification published in the Official Gazette;

* * * * *

(g) "Register" means the Register of members maintained under this Act;

* * * * *

Entry of names in the Register.

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely,—

* * * * *

(v) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute:

Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council, as the case may be, may impose such further conditions as it may deem fit.

(vi) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such foreign examination, is at the commencement of this Act undergoing training, whether within or without India:

Provided that any such examination or training was recognised before the commencement of this Act for the purpose of conferring the right to be registered as an accountant under the Auditors' Certificates Rules, 1932, and provided further that such person passes the examination or completes the training within five years after the commencement of this Act.

* * * * *

(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv), (v) and (vi) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may, with the prior approval of the Central Government,

determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.

* * * * *

5. (1) *

Fellows and associates.

(3) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a chartered accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute and shall be entitled to use the letters F. C. A. after his name to indicate that he is a fellow of the Institute of Chartered Accountants:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

6. (1) *

Certificate of practice.

(2) Every such member shall pay such annual fee for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.

* * * * *

8. Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in or borne on the Register if he—

Disabilities.

(iii) is an undischarged insolvent; or

(v) has been convicted by a competent Court, whether within or without India, of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

CHAPTER III

COUNCIL OF THE INSTITUTE

9. (1) *

Constitution of the Council of the Institute.

(2) The Council shall be composed of the following persons, namely:—

(a) not more than thirty-two persons elected by the members of the Institute from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years:

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be:

(b) not more than eight persons to be nominated in the specified manner, by the Central Government.

* * * * *

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2), for a period of three years after he ceases to be an auditor.

* * * * *

President and Vice-President

12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant the Council shall choose another person to be the President or the Vice-President as the case may be:

Provided that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of this sub-section.

(2) The President shall be the Chief Executive Authority of the Council.

* * * * *

Resignation of membership and casual vacancies

13. (1) * * * * *

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council, or he has been found guilty of any professional or other misconduct and awarded penalty of fine, or if his name is, for any cause, removed from the Register under the provisions of section 20.

* * * * *

Duration and dissolution of Council.

14. (1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting, on the expiry of which it shall stand dissolved and a new Council constituted in accordance with the provisions of this Act.

* * * * *

Functions of Council

15. (1) * * * * *

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include—

* * * * *

(b) the examination of candidates for enrolment and the prescribing of fees therefore;

(c) the regulation of the engagement and training of articled and audit assistants;

(d) the prescribing of qualifications for entry in the Register;

* * * * *

(f) the granting or refusal of certificates of practice under this Act;

(g) the maintenance and publication of a Register of persons qualified to practice as chartered accountants:

(h) the levy and collection of fees from members, examinees and other persons;

(i) subject to the orders of the appropriate authorities under the Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

* * * * *

(l) the maintenance of a library and publication of books and periodicals relating to accountancy;

* * * * *

16. (1) For the efficient performance of its duties, the Council shall—

Officers and employees, salary, allowances, etc.

(a) appoint a Secretary to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as are assigned to him under this Act and the rules and regulations framed thereunder.

(2) The Council may also—

* * * * *

(c) prescribe the salaries, fees, allowances of the officers and employees and their terms and conditions of service;

* * * * *

18. (1) *

Finances of the Council.

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that, if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.

* * * * *

CHAPTER IV

REGISTER OF MEMBERS

19. (1) The council shall maintain in the prescribed manner a Register of the Members of the Institute.

Register.

* * * * *

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Removal from
the Register.

20. (1) * * * * *

(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.

CHAPTER V

MISCONDUCT

Disciplinary
Directorate.

21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or, as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

Board of
Discipline.

21A. (1) The Council shall constitute a Board of Discipline consisting of—

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months:

(c) impose such fine as it may think fit, which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Disciplinary
Committee.

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Chartered Accountants (Amendment) Act, 2006, shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Chartered Accountants (Amendment) Act, 2006.

9 of 2006.

Transitional
provisions.

22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing

Professional
or other
misconduct
defined.

in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

* * * * *

Appeal to
Authority.

22G. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority, if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

* * * * *

CHAPTER VII

PENALTIES

Penalty for
falsely
claiming to be
a member, etc.

24. Any person who,—

(i) not being a member of the Institute,—

(a) represents that he is a member of the Institute; or

(b) uses the designation Chartered Accountant, or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a chartered accountants,

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months or with fine which may extend to five thousand rupees, or with both.

Penalty for
using name of
the Council,
awarding
degrees of
chartered
accountancy,
etc.

24A. (1) * * * * *

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

25. (1) *

(2) If any company contravenes the provisions of sub-section (1), then, without prejudice to any other proceedings which may be taken against the company, every director, manager, secretary and any other officer thereof who is knowingly a party to such contravention shall be punishable with fine which may extend on first conviction to one thousand rupees, and on any subsequent conviction to five thousand rupees.

* Companies
not to engage
in
accountancy.

26. (1) *

(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings, which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.

* Unqualified
persons not to
sign
documents.

CHAPTER VIII

MISCELLANEOUS

29. (1) *

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to accountancy shall be recognised for the purposes of entry in the Register.

* Reciprocity.

29A. (1) *

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

* Power of
Central
Government
to make rules.

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2).

30. (1) *

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters:—

* Power to
make
regulations.

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;

(e) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(h) the particulars to be entered in the Register;

(r) the terms of office, and the powers, duties and functions of the Secretary and other officers and servants of the Council; and

THE FIRST SCHEDULE

[See sections 21(3), 21A(3) and 22]

PART I

Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

* * * * *

(9) accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with;

* * * * *

THE SECOND SCHEDULE

[See sections 21(3), 21B(3) and 22]

PART I

Professional misconduct in relation to chartered accountants in practice

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he—

* * * * *

(3) permits his name or the name of his firm to be used in connection with an estimate of earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

* * * * *

EXTRACTS FROM THE COST AND WORKS ACCOUNTANTS ACT, 1959

(23 OF 1959)

An Act to make provision for the regulation of the profession of cost and works accountants.

* * * * *

CHAPTER I

PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Cost and Works Accountants Act, 1959.

* * * * *

Definitions and interpretation.

2. (1) In this Act, unless the context otherwise requires,—

* * * * *

(c) "Council" means the Council of the Institute;

(d) "dissolved company" means the Institute of Cost and Works Accountants registered under the Companies Act, 1956;

1 of 1956.

(e) "fellow" means a fellow of the Institute;

* * * * *

(fa) "notification" means a notification published in the Official Gazette;

* * * * *

(i) "Register" means the Register of members maintained under this Act;

CHAPTER II

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely:—

Entry of
names in the
Register.

(iv) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed for members of the Institute:

Provided that in the case of any person who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem fit;

(v) any person domiciled in India, who at the commencement of this Act is studying for any foreign examination and is at the same time undergoing training, whether within or without India, or, who, having passed such examination, is at such commencement undergoing training whether within or without India:

Provided that such foreign examination and training are recognised by the Central Government or the Council in this behalf:

Provided further that the person passes the examination and completes his training within five years from the commencement of this Act.

(3) Every person belonging to any of the classes mentioned in clauses (ii), (iii), (iv) and (v) of sub-section (1) shall have his name entered in the Register on an application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.

5. (1) *

Fellows and
Associates.

(4) A member, being an associate who has been in continuous practice in India for at least five years, whether before or after the commencement of this Act, or whether partly before and partly after the commencement of this Act, and a member who has been an associate for a continuous period of not less than five years and who possesses such qualifications as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a cost accountant shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a fellow of the Institute:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practiced in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practice during that period.

Explanation II.—In computing the continuous period during which a person has been an associate of the Institute, there shall be included any continuous period during which the person has been an associate of the dissolved company immediately before he became an associate of the Institute.

Certificate of practice.

* * * * *

6. (1) *

(2) Every such member shall make an application in such form, and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand:

Provided further that if a member of the Institute, who was in practice immediately before the commencement of this Act, has made within one month of such commencement an application for the grant of certificate of practice, he shall not be deemed to have contravened the provisions of sub-section (1) by reason of his having practiced during the period between such commencement and the disposal of the application;

Disabilities.

* * * * *

8. Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in, or borne on, the Register if he—

(iii) is an undischarged insolvent; or

(v) has been convicted by a competent court whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing removed the disability; or

CHAPTER III

COUNCIL OF THE INSTITUTE

Constitution of the Council of the Institute.

* * * * *

9. (1) *

(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected by the members of the Institute, from amongst the fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a fellow of the Institute, who has been found guilty of any professional or other misconduct, and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.

(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor.

12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President becomes vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be:

President and Vice-President.

Provided that on the first constitution of the Council a member of the Council nominated in this behalf by the Central Government shall discharge the functions of the President, until such time as a President is elected under the provisions of this sub-section.

13. (1) *

Resignation of membership and casual vacancies.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council or he has been found guilty of any professional or other misconduct and awarded penalty of fine, or if his name is, for any cause, removed from the Register under the provisions of section 20.

15. (1) *

Functions of Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include—

(c) the prescribing of qualifications for entry in the Register;

(k) consideration of the recommendations of the Quality Review Board made under clause (a) of section 29B, action taken thereon with a report to the Central Government within a period of three months, and their inclusion in the annual report; and

15A. The functions of the Institute shall include—

Functions of Institute.

(e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

Officers and employees, salary, allowances, etc.

16. (1) For the efficient performance of its duties, the Council shall—

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also—

* * * * *

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

* * * * *

Finances of the Council.

18. (1) *

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a chartered accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government;

* * * * *

CHAPTER IV

REGISTER OF MEMBERS

Register.

19. (1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

* * * * *

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand.

Removal from the Register.

20. (1) *

(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council which shall not exceed rupees two thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand which shall not in any case exceed rupees four thousand.

CHAPTER V

MISCONDUCT

21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it. Disciplinary Directorate.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board of Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

21A. (1) The Council shall constitute a Board of Discipline consisting of— Board of Discipline.

(a) a person with experience in law and having knowledge of disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section 16;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Disciplinary Committee.

Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

(4) The allowances payable to the members nominated by the Central Government shall be such as may be specified.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

21D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Cost and Works Accountants (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Cost and Works Accountants (Amendment) Act, 2006.

22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

* * * * *

22E. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

5 of 1908.

Transitional
provisions.

7 of 2006.

Professional
or other
misconduct
defined.

Appeal to
Authority.

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

* * * * *

CHAPTER VII

PENALTIES

24. Any person who,—

(i) not being a member of the Institute—

(a) represents that he is a member of the Institute; or

(b) uses the designation cost accountant; or

(ii) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practices as a cost accountant;

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for falsely claiming to be a member, etc.

25. (1) * * * * *

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for using name of the Council, awarding degrees of cost accountancy, etc.

26. (1) * * * * *

(2) Any contravention of the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction to five thousand rupees.

Companies not to engage in cost accountancy.

27. (1) * * * * *

(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.

Unqualified persons not to sign documents.

34. (1) Where an order is made under this Act reprimanding a member a record of the punishment shall be entered against his name in the Register.

(2) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

Alteration in the Register and cancellation of certificate.

38. (1) * * * * *

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to cost accountancy shall be recognised for the purposes of entry in the Register.

Reciprocity.

Power of
Central
Government
to make rules.

38A. (1) *

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

Power to
make
regulations.

39. (1) *

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(b) the qualifications for the entry of the name of any person in the Register as a member of the Institute;—

(f) the manner in which and the conditions subject to which applications for entry in the Register may be made;

(i) the particulars to be entered in the Register;

(p) the manner in which the annual list of members of the Institute shall be published;

(s) the terms of office, and the powers, duties and functions of the Secretary and other employees of the Council;

THE FIRST SCHEDULE

[See sections 21(3), 21A(3) and 22]

THE SECOND SCHEDULE

[See sections 21(3), 21B(3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

(3) permits his name or the name of his firm to be used in connection with an estimate of cost or earnings contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

EXTRACTS FROM THE COMPANY SECRETARIES ACT, 1980

(56 OF 1980)

* * * * *

2. (1) In this Act, unless the context otherwise requires,—

Definitions
and
interpretation.

1 of 1956.

(b) "Companies Act" means the Companies Act, 1956;

* * * * *

(ga) "notification" means a notification published in the Official Gazette;

* * * * *

(j) "Register" means the Register of members of the Institute maintained under this Act;

* * * * *

(2) Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice or in partnership with members of such other recognised professions as may be prescribed, he, in consideration of remuneration received or to be received,—

* * * * *

(c) offers to perform or performs such services as may be performed by—

* * * * *

29 of 1947.

65 of 1951.

1 of 1956.

42 of 1956.

54 of 1969.

46 of 1973.

(vi) an adviser to a company on management, including any legal or procedural matter falling under the Capital Issues (Control) Act, 1947, the Industries (Development and Regulation) Act, 1951, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, any of the rules or bye-laws made by a recognised stock exchange, the Monopolies and Restrictive Trade Practices Act, 1969, the Foreign Exchange Regulation Act, 1973, or under any other law for the time being in force,

* * * * *

4. (1) Any of the following persons shall be entitled to have his name entered in the Register, namely:—

Entry of
names in the
Register.

* * * * *

(e) any person who has passed such other examination and completed such other training without India as is recognised by the Central Government or the Council as being equivalent to the examination and training prescribed under this Act for membership of the Institute:

Provided that in the case of any person belonging to any of the classes mentioned in this sub-section who is not permanently residing in India, the Central Government or the Council may impose such further conditions as it may deem to be necessary or expedient in the public interest.

* * * * *

(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees three thousand:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.

Associates and
Fellows.

* * * * *
5. (1) * * * * *

(3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of such fees, as may be determined, by notification, by the Council, which shall not exceed rupees five thousand, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees five thousand, which shall not in any case exceed rupees ten thousand.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II.—In computing the continuous period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute.

Certificate of
practice.

* * * * *
6. (1) * * * * *

(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be determined, by notification, by the Council, which shall not exceed rupees three thousand, and such fee shall be payable on or before the 1st day of April in each year:

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees three thousand, which shall not in any case exceed rupees six thousand.

Disabilities.

* * * * *
8. Notwithstanding anything contained in section 4, a person shall not be entitled to have his name entered in, or borne on, the Register if he—

* * * * *
(c) is an undercharged insolvent; or

* * * * *
(e) has been convicted by a competent court, whether within or without India, of an offence involving moral turpitude and punishable with imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

CHAPTER III

COUNCIL OF THE INSTITUTE

9. (1) *

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Constitution
of the Council
of the
Institute.

(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected by the members of the Institute, from amongst the Fellows of the Institute chosen in such manner and from such regional constituencies as may be specified:

Provided that a Fellow of the Institute, who has been found guilty of any professional or other misconduct and whose name is removed from the Register or has been awarded penalty of fine, shall not be eligible to contest the election,—

(i) in case of misconduct falling under the First Schedule of this Act, for a period of three years;

(ii) in case of misconduct falling under the Second Schedule of this Act, for a period of six years,

from the completion of the period of removal of name from the Register or payment of fine, as the case may be;

(b) not more than five persons nominated in the specified manner by the Central Government.

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(4) No person who has been auditor of the Institute shall be eligible for election to the Council under clause (a) of sub-section (2) for a period of three years after he ceases to be an auditor.

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12. (1) The Council at its first meeting shall elect two of its members to be respectively the President and the Vice-President thereof, and so often as the office of the President or the Vice-President falls vacant, the Council shall choose a person to be the President or the Vice-President, as the case may be:

President and
Vice-
President.

Provided that the President of the Council of the dissolved company shall continue to hold such office after the commencement of this Act, until such time as a President is elected under the provisions of this sub-section.

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13. (1) *

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Resignation of
membership
and casual
vacancies.

(2) A member of the Council shall be deemed to have vacated his seat if he is declared by the Council to have been absent without sufficient excuse from three consecutive meetings of the Council or he has been found guilty of any professional or other misconduct and awarded penalty of fine, or of any of the Committees which has been constituted by the Council and of which he is a member or if his name is, for any cause, removed from the Register under the provisions of section 20.

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15. (1) *

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Functions of
Council.

(2) In particular, and without prejudice to the generality of the foregoing powers, the duties of the Council shall include—

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*

*

(c) the prescribing of qualifications for entry in the Register;

Functions of
Institute

* * * * *

15A. The functions of the Institute shall include—

* * * * *

(e) subject to the orders of the appropriate authorities under this Act, the removal of names from the Register and the restoration to the Register of names which have been removed;

* * * * *

Officers and
employees,
salary,
allowances,
etc.

16. (1) For the efficient performance of its duties, the Council shall—

(a) appoint a Secretary of the Council to perform such duties as may be prescribed;

(b) appoint a Director (Discipline) to perform such functions as assigned to him under this Act and the rules and regulations framed thereunder;

(c) designate an officer of the Council or the Institute to carry out the administrative functions of the Institute as its chief executive.

(2) The Council may also—

* * * * *

(c) prescribe the salaries, fees, allowances of the officers and employees of the Council and the Institute and their terms and conditions of service;

* * * * *

Finances of
the Council.

18. (1) * * * * *

(5) The annual accounts of the Council shall be prepared in such manner as may be prescribed and be subject to audit by a Chartered Accountant in practice to be appointed annually by the Council:

Provided that no member of the Council or a person who has been a member of the Council during the last four years or a person who is in partnership with such member shall be eligible for appointment as an auditor under this sub-section:

Provided further that, in the event it is brought to the notice of the Council that the accounts of the Council do not represent a true and fair view of its finances, then, the Council may itself cause a special audit to be conducted:

Provided also that if such information, that the accounts of the Council do not represent a true and fair view of its finances, is sent to the Council by the Central Government, then, the Council may, wherever appropriate cause a special audit or take such other action as it considers necessary and shall furnish an action taken report on it to the Central Government.

* * * * *

CHAPTER IV

REGISTER OF MEMBERS

Register.

19. (1) The Council shall maintain in the prescribed manner a Register of the members of the Institute.

* * * * *

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee as may be determined, by notification, by the Council, which shall not exceed rupees five thousand:

Provided that the Council may with the prior approval of the Central Government,

determine the fee exceeding rupees five thousand which shall not in any case exceed rupees ten thousand.

20. (1) * * * *

(3) If the name of any member has been removed from the Register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the Register on payment of the arrears of annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council, which shall not exceed rupees two thousand:

Removal from
the Register.

Provided that the Council may with the prior approval of the Central Government, determine the fee exceeding rupees two thousand, which shall not in any case exceed rupees four thousand.

CHAPTER V

MISCONDUCT

21. (1) The Council shall, by notification, establish a Disciplinary Directorate headed by an officer of the Institute designated as Director (Discipline) and such other employees for making investigations in respect of any information or complaint received by it.

Disciplinary
Directorate.

(2) On receipt of any information or complaint along with the prescribed fee, the Director (Discipline) shall arrive at a *prima facie* opinion on the occurrence of the alleged misconduct.

(3) Where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, he shall place the matter before the Board of Discipline and where the Director (Discipline) is of the opinion that a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, he shall place the matter before the Disciplinary Committee.

(4) In order to make investigations under the provisions of this Act, the Disciplinary Directorate shall follow such procedure as may be specified.

(5) Where a complainant withdraws the complaint, the Director (Discipline) shall place such withdrawal before the Board of Discipline or as the case may be, the Disciplinary Committee, and the said Board or Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal at any stage.

21A. (1) The Council shall constitute a Board of Discipline consisting of—

Board of
Discipline.

(a) a person with experience in law and having knowledge of the disciplinary matters and the profession, to be its presiding officer;

(b) two members one of whom shall be a member of the Council elected by the Council and the other member shall be the person designated under clause (c) of sub-section (1) of section 16;

(c) the Director (Discipline) shall function as the Secretary of the Board.

(2) The Board of Discipline shall follow summary disposal procedure in dealing with all the cases before it.

(3) Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register up to a period of three months;

(c) impose such fine as it may think fit which may extend to rupees one lakh.

(4) The Director (Discipline) shall submit before the Board of Discipline all information and complaints where he is of the opinion that there is no *prima facie* case and the Board of Discipline may, if it agrees with the opinion of the Director (Discipline), close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter.

Disciplinary
Committee.

21B. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members to be elected from amongst the members of the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, economics, business, finance or accountancy:

Provided that the Council may constitute more Disciplinary Committees as and when it considers necessary.

(2) The Disciplinary Committee, while considering the cases placed before it, shall follow such procedure as may be specified.

(3) Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

(a) reprimand the member;

(b) remove the name of the member from the Register permanently or for such period, as it thinks fit;

(c) impose such fine as it may think fit, which may extend to rupees five lakhs.

* * * * *

Authority,
Disciplinary
Committee,
Board of
Discipline and
Director
(Discipline) to
have powers
of civil court.

21C. For the purposes of an inquiry under the provisions of this Act, the Authority, the Disciplinary Committee, Board of Discipline and the Director (Discipline) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavit.

Explanation.—For the purposes of sections 21, 21A, 21B, 21C and 22, “member of the Institute” includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

Transitional
provisions.

21D. All complaints pending before the Council or any inquiry initiated by the Disciplinary Committee or any reference or appeal made to a High Court prior to the commencement of the Company Secretaries (Amendment) Act, 2006 shall continue to be governed by the provisions of this Act, as if this Act had not been amended by the Company Secretaries (Amendment) Act, 2006.

* * * * *

Professional
or other
misconduct
defined.

22. For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

* * * * *

22E. (1) Any member of the Institute aggrieved by any order of the Board of Discipline or the Disciplinary Committee imposing on him any of the penalties referred to in sub-section (3) of section 21A and sub-section (3) of section 21B, may within ninety days from the date on which the order is communicated to him, prefer an appeal to the Authority:

Appeal to Authority

Provided that the Director (Discipline) may also appeal against the decision of the Board of Discipline or the Disciplinary Committee to the Authority if so authorised by the Council, within ninety days:

Provided further that the Authority may entertain any such appeal after the expiry of the said period of ninety days, if it is satisfied that there was sufficient cause for not filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Board of Discipline or the Disciplinary Committee under sub-section (3) of section 21A and sub-section (3) of section 21B and may—

- (a) confirm, modify or set aside the order;
- (b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;
- (c) remit the case to the Board of Discipline or Disciplinary Committee for such further enquiry as the Authority considers proper in the circumstances of the case; or
- (d) pass such other order as the Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

* * * * *

CHAPTER VII
PENALTIES

24. Subject to the provisions of section 7, any person who,—

- (a) not being a member of the Institute,—
 - (i) represents that he is a member of the Institute; or
 - (ii) uses the designation "Company Secretary"; or
 - (iii) uses the letters "A.C.S." or "F.C.S." after his name; or

Penalty for falsely claiming to be a member, etc.

(b) being a member of the Institute, but not having a certificate of practice, represents that he is in practice or practises as a Company Secretary,

shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

25. (1) * * * * *

(2) Any person contravening the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with imprisonment which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

Penalty for using name of the Council, or awarding degree of Company Secretary.

Companies
not to engage
in Company
Secretaryship.

26. (1) *

(2) Any company contravening the provisions of sub-section (1) shall be punishable on first conviction with fine which may extend to one thousand rupees, and on any subsequent conviction with fine which may extend to five thousand rupees.

Unqualified
persons not to
sign docu-
ments.

27. (1) *

(2) Any person who contravenes the provisions of sub-section (1) shall, without prejudice to any other proceedings which may be taken against him, be punishable on first conviction with a fine not less than five thousand rupees but which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to one year or with a fine not less than ten thousand rupees but which may extend to two lakh rupees or with both.

CHAPTER X

MISCELLANEOUS

Alteration in
the Register
and cancella-
tion of
certificate.

34. (1) Where an order is made under this Act reprimanding a member, a record of the punishment shall be entered against his name in the Register.

(2) Where the name of any member is removed, the certificate of practice granted to him under this Act shall be recalled and cancelled.

Reciprocity.

38. (1) *

(2) Subject to the provisions of sub-section (1), the Council may prescribe the conditions, if any, subject to which foreign qualifications relating to Company Secretaryship shall be recognised for the purposes of entry in the Register.

Power of
Central
Government
to make rules.

38A. (1) *

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:—

(c) the procedure of investigation under sub-section (4) of section 21;

(d) the procedure while considering the cases by the Disciplinary Committee under sub-section (2) and fixation of allowances of the nominated members under sub-section (4) of section 21B;

Power to
make
regulations.

39. (1) *

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(p) the manner in which the annual list of members of the Institute may be published under sub-section (3) of section 19;

THE FIRST SCHEDULE

[See sections 21(3), 21A(3) and 22]

* * * * *

THE SECOND SCHEDULE

[See sections 21(3), 21B(3) and 22]

PART I

Professional misconduct in relation to company secretaries in practice.

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

* * * * *

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

* * * * *

LOK SABHA

A
BILL

further to amend the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959 and the Company Secretaries Act, 1980.

(Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs)

MGIPMRND—1587LS(S3)—14-12-2021.