

Legislative Brief

The Chartered Accountants, The Cost and Works Accountants and The Company Secretaries (Amendment) Bill, 2021

The Chartered Accountants, the Cost and Works Accountants and the Company Secretaries (Amendment) Bill, 2021 was introduced in Lok Sabha on December 17, 2021.

The Bill was referred to the Standing Committee on Finance on December 22, 2021.

For a PRs Summary of the Report, [see here](#).

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March 29, 2022

Highlights of the Bill

- ◆ The Bill amends the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959, and the Company Secretaries Act, 1980.
- ◆ It changes the disciplinary mechanism under the three Acts and specifies timelines for disciplinary proceedings. It also provides more external representation on the Board of Discipline and Disciplinary Committee.
- ◆ The Bill creates a Coordination Committee headed by the Secretary of the Ministry of Corporate Affairs. The Committee will have representation from the three Institutes formed under the Acts.
- ◆ The Secretary to each Council will be designated as chief executive with the President as the head of the Council. The President will be responsible for ensuring implementation of decisions of the Council.
- ◆ Firms must now register with the Institutes. The Councils must maintain a register of firms containing details including pendency of any actionable complaint or imposition of penalty.
- ◆ The Bill increases certain fines under the three Acts. If a partner or owner of a firm is repeatedly found guilty of misconduct during last five years, disciplinary action can be taken against the firm.

Key Issues and Analysis

- ◆ The Bill proposes to change the composition of the two disciplinary entities to allow for more external representation. However, these external members will be selected from a panel of persons prepared by the three Councils. This may be against the objective of resolving conflict of interest between the disciplinary and administrative functions of the three professional Councils.
- ◆ The mandate of the proposed Coordination Committee may overlap with certain functions of the three Institutes. Further, being chaired by the Secretary of the Ministry of Corporate Affairs, it may impinge on the independence of the three Institutes.
- ◆ The Bill provides for disclosure of pending complaints or actionable information against members and firms. Disclosing details of pending complaints before finding guilt may tarnish their professional reputation.
- ◆ Though the President will have a non-executive role, he will be held responsible for implementation of decisions of the Councils.

PART A: HIGHLIGHTS OF THE BILL

Context

According to the Companies Act, 2013, every company has to appoint a chartered accountant or a CA firm to audit its accounts. In case of certain companies, the central government can direct conduct of cost audits by cost accountants. The Companies Act, 2013 also requires certain classes of companies to appoint a company secretary (CS) to ensure compliance with provisions of the Act.

In India, chartered accountants, cost accountants, and company secretaries are regulated according to the provisions of the Chartered Accountants Act, 1949, the Cost and Works Accountants Act, 1959, and the Company Secretaries Act, 1980, respectively. The three Acts provide for setting up of the Institute of Chartered Accountants of India, the Institute of Cost Accountants of India, and the Institute of Company Secretaries of India. The affairs of the Institutes are managed by their respective Councils. The Councils are comprised of elected and nominated members. The Acts also provide the mechanism for taking disciplinary actions against the members of the Institutes who are engaged in professional or other misconduct. This mechanism is broadly self-regulatory in nature wherein the members of the Institutes take part in the disciplinary proceedings along with certain external members nominated by the central government.

In recent years, India has seen several frauds and scandals, which have brought into focus the role and effectiveness of the statutory audit by independent auditors.¹ For instance, in January 2009, the chairman and managing director of Satyam Computer Services Limited revealed that the books of accounts of the company reflected fictitious cash and bank balances worth Rs 5,040 crore.² In October 2018, the central government decided to supersede the board of IL&FS after the systemically important non-banking finance company had a series of defaults in debt repayment in August and September 2018.³ The company was under pressure to service debt of around Rs 91,000 crore due to mismanaged borrowings in the past.³

In the backdrop of a major fraud at Punjab National Bank in 2018, the central government setup the National Financial Reporting Authority (NFRA) under the Companies Act, 2013.¹ NFRA is empowered to investigate matters of professional or other misconduct by chartered accountants or firms of chartered accountants. This was a move away from self-regulation of the profession of chartered accountancy as was followed so far. The CA, CWA and CS (Amendment Bill), 2021 seeks to strengthen the accountability of practitioners and firms by making the disciplinary mechanisms more independent, registering firms, and increasing penalties.

Key Features

Disciplinary Mechanism

- Under the Acts, the respective Councils of the three Institutes must each constitute a Disciplinary Directorate, headed by Director (Discipline) who is an officer of the Institute. Depending on the misconduct, after receiving a complaint, the Director places the matter before the Board of Discipline or the Disciplinary Committee. The Bill seeks to empower the Directorate to initiate investigations suo motu against members or firms.
- Each Council constitutes a Board of Discipline. Members of the Board include: (i) Presiding Officer (having experience in law and knowledge of disciplinary matters), (ii) two members, and (iii) Director (Discipline) as Secretary. The Bill empowers the three Councils to constitute multiple Boards. The presiding officer and one of the two members must not be a member of the institutes and will be nominated by the central government from a panel of persons provided by the Councils.
- Under the three Acts, the Councils constitute Disciplinary Committees consisting of: (i) Presiding Officer (President or Vice-President of the Council), (ii) two members elected from the Council, and (ii) two members nominated by the central government. The Bill amends the Acts to provide that the Presiding Officer must not be a member of the institutes and shall be nominated by the central government from a panel of persons provided by the Councils.

Role of the President of the Council

- The CA Act specifies the President of the Council as its chief executive authority while the other two Acts provide for an officer of their Councils or Institutes to be designated as chief executive. The Bill makes the secretaries of the Councils to be the respective chief executives, and the President to be responsible for ensuring that the decisions taken by the Council are implemented.

Coordination Committee

- The Bill provides for setting up a Coordination Committee headed by the Secretary of the Ministry of Corporate Affairs. The President, Vice-President and Secretary of the three institutes will also be included in the Coordination Committee. Its functions will include: (i) quality improvement of academics, (ii)

coordinating and collaborating among the professions, and (iii) making recommendations on regulatory policies for the professions.

Registration of firms

- The Bill adds that firms must register with the Institutes by making an application to the respective Councils of the Institutes. The Councils must maintain a register of firms containing details such as pendency of any actionable complaint or imposition of penalty against the firms.

Penalties

- Under the Acts, in cases of professional or other misconduct the Disciplinary Committees may: (i) reprimand or remove the member from the register of the Institute, or (ii) impose a fine of up to five lakh rupees. The Bill increases the maximum amount of fine to Rs 10 lakh. The Bill also adds that if a partner or owner of a firm is repeatedly found guilty of misconduct during the last five years, the Disciplinary Committee may take certain actions against the firm. The actions include: (i) prohibiting the firm from undertaking activities related to the profession of chartered account, cost accountant, or company secretary, as the case may be, for up to two years, or (ii) impose a fine of up to Rs 50 lakh.

PART B: KEY ISSUES AND ANALYSIS

Disciplinary Mechanism

The objective of an independent disciplinary mechanism may not be fully met

Bill: Clauses 22, 23, 57, 58, 90, and 91

As discussed above, the Bill proposes that the Presiding Officers of the Boards of Discipline and the Disciplinary Committees will not be members of the respective Institutes. They will be nominated by the central government from a panel of persons prepared by the respective Councils. Further, one external member on the Board of Discipline and two external members on the Disciplinary Committee will be nominated by the central government from among the panels of persons prepared by the respective Councils. This may not align with the objectives of the Bill.

Act: Sections 21A and 21B under each Act

The Statement of Objects and Reasons of the Bill states that it seeks to address the conflict of interest between the administrative and disciplinary arms of the Institutes. To achieve this, the Bill proposes to change the composition of the two disciplinary entities to allow for more external representation. However, these external members will be selected from a panel of persons prepared by the three Councils. Thus, while the Bill reduces the role of the three professional Institutes with respect to representation on the Board of Discipline and the Disciplinary Committee, it continues to rely on the Councils for nominating the external members. Note that under the current framework, the external members on the Disciplinary Committee of the three professions are nominated by the central government independently. Under the CA Act, the central government independently nominates one member on the Board of Discipline. It is unclear how the conflict of interest between the disciplinary and administrative functions will be addressed if the Councils continue to be involved in recommending who could be on such disciplinary entities.

Bill may hinder speedy disposal of disciplinary cases

The Statement of Objects and Reasons of the Bill states that it seeks to achieve speedy disposal of cases against members of the Institutes by strengthening the disciplinary mechanism and providing for time bound disposal of cases. The Bill empowers the three Councils to constitute multiple Boards of Discipline and Disciplinary Committees. However, the Bill allows the central government to nominate the same persons as “Presiding Officer” or “members” across different Boards of Discipline and Disciplinary Committees. This may be incompatible with the objective of speedy disposal of cases against members. Appointing the same set of people on multiple Boards of Discipline or Disciplinary Committees may prevent these entities from hearing cases of misconduct simultaneously, thereby leading to delay in disposal of cases.

Role of Coordination Committee may overlap with that of the Institutes

Bill: Clause 9

The three Acts set up respective Institutes and Councils. These bodies approve academic courses, conduct examinations of candidates, prescribe qualifications for entry of names in the register of members, and regulate and maintain the status and standards of professional qualifications of their members. The Institutes also have respective coordination committees for coordination among the three bodies.

The Bill provides for setting up a Coordination Committee, chaired by the Secretary of the Ministry of Corporate Affairs, to coordinate functions of the three institutes and align cross-disciplinary regulatory mechanisms for inter professional development. The functions proposed for the Coordination Committee may overlap with the current mandate of the three Institutes and the Councils. For instance, the Coordination

Committee will ensure quality improvement in academics, research, and all related works of the Institutes. It will also focus on coordination and collaboration among the professions. These activities are currently undertaken by the respective Councils and Institutes. As the three Institutes also have committees for coordinating among themselves, it is unclear as to why there is a need to setup another Coordination Committee as proposed under the Bill. Further, the proposed Coordination Committee will be chaired by the Secretary of Ministry of Corporate Affairs. This provision may impinge on the independence of the three Institutes.

Non-executive Presidents may be held accountable for implementation

Under the CA Act, the President of the Council is its chief executive authority. According to the CWA Act and the CS Act, the President of the respective Councils is only their head; both the Councils designate an officer of the respective Councils or Institutes to carry out administrative functions as chief executive. The Bill proposes to amend the CA Act to specify that the President will be the head of the Council. The Bill seeks to make the respective Presidents of the three Councils responsible for ensuring that the decisions taken by the Council are implemented. It also provides that the respective secretaries of the Councils will be responsible for carrying out the administrative functions of the Institutes as their chief executive officer.

The Bill seems to be turning the position of President in the three Councils into a non-executive role. The secretaries of the respective councils are being designated as chief executive officers. However, the Bill holds the respective Presidents responsible for implementing the decisions taken by the Councils. It is unclear how the President will ensure that the decisions taken by the Council are implemented when at the same time, the secretary is proposed to carry out the administrative functions of the Institute as its chief executive officer. The Bill seems to be separating the responsibility for governance and execution by prescribing separate roles for the President and Secretary of the Council. However, holding the President responsible for implementing decisions, which is an executive role, may be against the framework of separation of powers as proposed in the Bill.

Disclosing details of cases being investigated may harm reputations

The Bill provides for disclosure of pending complaints or actionable information against members of the Institutes and firms registered with them. For the three professions, the Board of Discipline or the Disciplinary Committee decide whether a member is guilty of an alleged misconduct. Publishing details of members or firms found guilty (and imposition of any penalty) may be useful information for prospective and current clients. However, recording details of pending complaints in the register of members and register of firms before they are found guilty may adversely impact their reputation.

Regulators of other professions, such as doctors, publish details only of those blacklisted or suspended from practice. According to the National Medical Commission Act, 2019, the Ethics and Medical Registration Board and State Medical Councils are required to maintain the National Register and State Register respectively.⁴ These registers contain details such as the name, address, and all recognised qualifications of licensed medical practitioners. While the Indian Medical Register contains details of doctors who have been blacklisted along with dates of suspension and revocation of suspension (if applicable), it does not contain details of pending complaints against doctors.

1. [Consultation Paper on Enhancing Engagement with Stakeholders](#), Report of the Technical Advisory Committee, National Financial Reporting Authority, March 2021.

2. [Writ Petition No. 37487 of 2012](#), High Court for the State of Telangana, December 31, 2018.

3. "Firm and Decisive Government Action taken to preserve value and assets of IL& FS", Press Information Bureau, Ministry of Finance, October 1, 2018.

4. [The National Medical Commission Act, 2019](#).

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