



Position Paper on Regulation of Accountancy Profession and Oversight Mechanism in India



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)

Updated as on June 2019

Position Paper
on
Regulation of Accountancy Profession
and Oversight Mechanism in India



The Institute of Chartered Accountants of India

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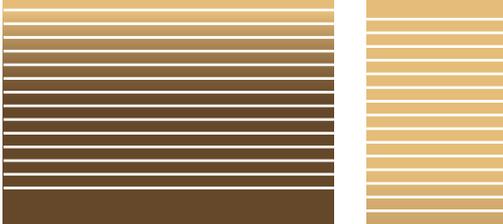
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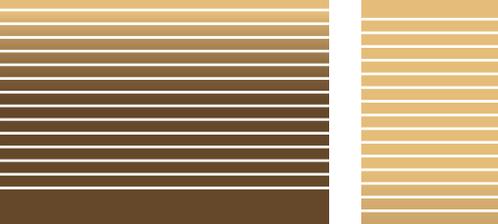
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Foreword

The Indian accountancy profession, at the economic epicenter, is vehemently steering growth of business and industry to unprecedented levels. The profession, led by the Institute of Chartered Accountants of India, has acquired a prominent position to become vanguard of public interest and propriety in the country. The profession continues to remain catalyst of business growth, sustainability and governance.

Built on strong edifice of ethical values and morals, the Institute of Chartered Accountants of India stands tall as one of the most reliable, trusted, authentic and renowned regulator in the eminent world of accountancy and business. Working with government and institutions the profession is adding credibility and trust to the business financial systems. The Institute upholds an indomitable legacy of unwavering ideals and even after decades of its admired existence continues to reflect as a prestigious symbol of good faith, academic brilliance and economic goodwill.

The Institute has persistently endeavoured to foster educated, productive and engaging members, who are relentlessly rendering expert services in the area of accountancy, auditing, finance, taxation, laws, business strategy and so on. In fact, members of the profession have scaled great heights to acquire illustrious and eminent positions in the global business world, much more than mere accountancy and finance.

Through the echoes of time, the Institute continues its journey by the constant enforcement of dependable regulations and propagation of high standards. These sworn-by regulations and standards orbit around ethical corporate governance and dissolve scope of economic malpractices, fraud and deceit. As it is correctly remarked, change is the only constant; these standards are also modified to align with the developing industry and progressing humanity. With the alliance of the professional and commerce sphere, it is noteworthy that CA members perseveringly drive forward towards yielding prosperity and providing welfare.

In order to respond to the regulatory changes at national level, the Institute of Chartered Accountants of India released this position paper in 2018 which unraveled the momentous journey of ICAI in building a strong and resilient financial system by persistent efforts by unleashing financial regulation in the country all through. The instant publication is an updation of the Position which was released in 2018 and how ICAI has been able to present its strong role in effective delivery of the governance and regulation and meeting the changing demands of the stakeholders.

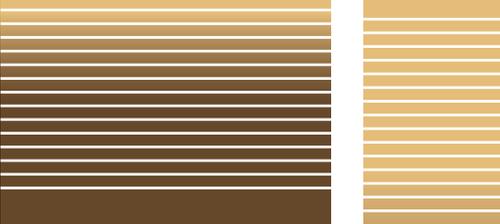
This publication brings out historical and developmental perspective of financial regulation by ICAI. It explicates the current model of regulatory framework that has evolved with the Indian economy and how it is superior in Indian context to models followed elsewhere in the globe. The publication puts forward a strong case for emulating Indian model by other nations for effective regulation through a statutorily recognized body, instead of multiple organisations trying to attain same results. Contrary to the current disposition of shifting some of the power vested in ICAI outside its purview, the publication effectively brings out the need for empowering ICAI with more powers as a mechanism to correct financial aberrations in the business. At a basic level such a scenario augurs well with managerial principle that authority and responsibility must go hand in hand.

In the end it is to acknowledge and graciously compliment the efforts of CA. M.P. Vijay Kumar, Council Member in steering the entire project for first and current volume under his close guidance.

Contribution of Shri Rakesh Sehgal, Acting Secretary and his team of officers mentioned in the acknowledgment section for their contribution to the current document; the first version of which was launched last year to which he extensively contributed is also acknowledged.

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Executive Summary

While India prepares itself for transition to a developed economy and going to be the fourth largest economy in the world soon, the Indian chartered accountancy profession has its own contribution to this progress march by providing a matured and reliable financial reporting and related governance system. It has kept at bay the financial turmoil witnessed in developed economies like US and others which, despite creating a series of reforms in their financial sector, are still trying to grapple with one or other crisis leading to virtual collapse of the financial systems. *The driving point not to be missed here in the current scenario is that India has not witnessed any sort of financial rattling since Independence and has always stood on its internal strengths and has been able to withstand even the shocks that financial landscapes the edifice elsewhere. The Chartered Accountancy profession has been able to provide resilient, vibrant, well insulated framework and thus able to mitigate and navigate in times of risks and uncertainty which other developed economies were not able to do despite their so called well regulated financial economies!*

ICAI has reinforced the role that the accountancy profession has to play in providing high quality financial information, facilitating market discipline, and fostering confidence of various stakeholders by being a prudential regulator. ICAI has achieved this by focusing on the intrinsic quality of chartered accountants attained by way of high quality & internationally benchmarked education and training, continuous professional development of its members in niche & emerging areas. ICAI has also focused on improving quality of financial reporting and assurance function through framework of standard setting and enforcement of legislative framework for improving quality of professionals to ensure that they comply with the norms laid.

Strong economies no doubt need strong and credible regulatory institutions and regulators. However, there has so far been no clear answer to a question posed by the various Parliamentary Standing Committees on Finance as to *why in Indian Financial System there exists multiplicity of regulators?* Few aberrations with alleged involvement of very few black sheep cannot be a premise that the entire profession and institution be subjected to a scrutiny or review, when many other champions of the accountancy profession are doing a herculean task in heading institutions be in Governmental or non-Governmental sector.

The Company Law in India had its new avatar in the Companies Act, 2013. The Companies Act, 2013 is taking its own time for implementation of various provisions of the Act and the focus is mainly on condensation, simplification of the process and procedure for ease of doing business in India with minimum government interference but with robust Rules. Prevention is better than Cure. However, practically Caution is better as compared to taking care. We have plethora of regulators, regulations, rules, etc. Given an entity or institution's birth and berth under a regulation of one law, it finds itself succumbing to a parallel and layers of many other regulators and regulations and at the end of day, ease of doing business is done away with cost and time of compliances, its reporting, filing and leaving business and professionals surmounted with Doing Business of Regulations compliance only.

Despite its unblemished record of decisions in disciplinary matters through a system of natural justice evolved over decades, to the world at large, the disciplinary mechanism of the ICAI has been allegedly seen as a stumbling block where there is perception that things are unexplainably delayed. This perception gap gets a spike whenever certain corporate scam(s) is/ are unearthed; and when the investigating/regulatory agencies of the country come up with a major fraud which allegedly portray the suspicion on role of the Chartered Accountant(s). The increasing frequency with which such different scams/frauds are unearthed, the magnitude of coverage of such matters in the social media, call for a deeper foray into the

provisions and procedures in the disciplinary mechanism of ICAI evolved over the last several years so as to appreciate the time and efforts involved in a quasi-judicial procedure laid by Parliament in The Chartered Accountants Act 1949 towards the ends of justice.

It needs to be mentioned that a large chunk of the disciplinary complaints filed unfortunately pertain to inter-professional disputes, misunderstanding of facts/evidences and differences at the Management level. Some of the complaints are unfortunately pertaining to marital disputes, family misunderstandings, etc. and not specifically pertaining to any irregularities conducted by a member of ICAI in the course of his professional assignments. These cases, despite not relating to professional work, are treated as misconduct and member is subject to punishment as the profession expects very high standard from a member even in non professional matters as otherwise (example dishonour of a personal cheque), it is seen as bringing disrepute to the profession. In the context of the present provisions of the Act and Rules framed, all such cases have to be taken cognizance of and dealt with.

Further, it may also be mentioned that with a view to focus specifically on cases which are received from Government Departments/Regulators/News Reports on social media/Matters of Public Interest, etc., a specific bench of Disciplinary Committee has been created to expeditiously monitor and process such cases on fast track mode and taking them to final conclusion in terms of the procedure prescribed under the Chartered Accountants Act, 1949 and the Rules framed thereunder. Last but not the least, in fulfilling the above endeavour for speedy disposal of disciplinary matters, the Ministry of Corporate Affairs had constituted a High Powered Committee in March 2017, to look into and suggest the amendments in provisions relating to disciplinary mechanism. The report of the Committee has already been submitted to Ministry of Corporate Affairs.

Again, the issue, not a panacea, is that no other institute or body (such as RBI, SEBI) would initiate or continue proceedings once NFRA initiates the proceedings will be fraught with jurisdictional or constitutional or legal problems as each and every other institute or body are set up under an enactment of Parliament and therefore supremacy over each and every other will raise points and counter points and therefore again our fervent appeal would be to allow the ICAI (set up under an Act of Parliament,) to continue to endeavour its role, responsibilities and duties rather diluting our role. Also, diluting the powers of other specialised regulatory bodies, who review the cases of misconduct. NFRA would be largely duplicating the same powers as are currently under ICAI Act, 1949 and its Disciplinary Mechanism for which ICAI has requested the Government to strengthen it with more powers as are envisaged in the section. This would be a panacea instead NFRA duplicating and carrying out the role and responsibilities of ICAI

While the aim of accountancy function is to sub serve the public interest by promoting an investment climate of trust; it has to be seen that provisions like NFRA would impede the ease of doing business by associating multiple regulations without bringing the intended impact. An already complex business regime will be gagged further and an extrapolation of imported governance model is likely to trigger many a complex scenario which are unfathomable now!

Chapter 1

Evolution of Accountancy Profession in India

1.1 Birth of ICAI – Constituent Assembly deliberations:

- (i) It is important to empathise that carte blanche of ubiquitous nature which is discernible in the chartered accountancy profession has been due to the path of rectitude that the Chartered Accountancy profession has all through followed in its journey of support to Indian Industry, and Economy. It also in tandem with the consecrated ordainment that was fervidly put forth in the constituent Assembly debates; quoting from the *History of the Accountancy Profession in India*, Volume I, by Shri G. P. Kapadia:

“No profession can aspire to progress unless it has a vision and sets service to the community as its objective. It has also to be free from restraints and allow for the economic advancement of its entire membership. Its resilience and practice to respond to the changing situation and growing demands on it will determine its continued existence and growth. Technical excellence in the performance of its functions and observance of the highest in professional ethics constitutes the foundation on which its future can be built up.”

- (ii) It sums up the expectation and the roadmap from the Chartered Accountancy profession in all times to come. Equally apt is to point out the speech made by Shri C D Deshmukh, Hon’ble Finance Minister, Government of India at the 2nd Council Meeting of the Institute held on 11th August, 1951. (Source: *History of Accountancy Profession – Volume I*)

The practice of accountancy is in the nature of a public service. Apart from the statutory responsibilities to report on the accounts to the shareholders, it is the duty of every member of the Institute to ensure that he fulfils the high ideals set before him amidst all the pressures and temptations of the day. I am glad to know from your address that you are fully alive to your responsibilities. It is only the watchful eyes of the members of your profession which can make any measures that Government may take to curb mal-practices in trade and business, really effective.

You have referred to the moral standard of the accountancy profession. I welcome your assurance that the deterioration of standards in this profession is certainly not of that aggravated character which may be found elsewhere as a result of the war conditions. I trust you will not misunderstand me if I utter a word of warning against complacency in this respect. It is essential to be ceaselessly vigilant about this, all the more so because of the greatly enlarged sphere of your activities. The Institute of Chartered Accountants should continue to exercise unceasing vigilance in seeing that its members conform to the traditions and conventions of the profession and that the rules framed by them are

observed both in the letter and in the spirit. Yours is the privileged task of making the membership of the Institute a hall-mark of distinction in professional circles all over the world. Such a position implies unwearied and unceasing effort on your part.

Government are aware of the importance of your profession and have acknowledged it in practical terms whenever possible. As you know, Government propose to make it obligatory for a businessman who is liable to pay Super-tax to file with the income returns, statements of accounts audited by a Chartered Accountant. Government also propose to amend the law to enable them to appoint any member of the Income-tax Appellate Tribunal – whether Judicial or Accountant – to be the President of the Tribunal. To-day, as you have pointed out, only a Judicial Member can be appointed as a President. Government have also sought to avail of your wisdom and experience in Committees and Commissions whenever they have found it physically possible to do so along with other public bodies which have justifiable claims on Government recognition.

(iii) Quoting from the History of Accountancy Profession – Part I (Page 167-169) by G. P. Kapadia- first before the enactment of the Chartered Accountants Act,

the Bill had a very smooth passage and the Chartered Accountants Act, 1949, described as an Act to make provision for the regulation of the profession of Accountants was passed and received the assent of the Governor General in Council on the 1st of May, 1949 and published by authority in the Gazette of India Extraordinary on 3rd of May, 1949. Thus was the long cherished dream for which stalwarts in the profession had been striving untiringly for years and which had become a symbol of national pride and honour, realized.

There was great enthusiasm amongst the rank and file about the autonomy bestowed on the profession as also realization about the additional responsibility the profession was undertaking to shoulder by the grant of autonomy to it. However, an undercurrent of dissatisfaction was still visible in the minds of some vested interests who had never been able to appreciate the aspiration of the members of the profession in India for achieving autonomy. They continued to exhibit a negative outlook and set on harping that the profession in India could never aspire to gain strength as in the West and that the designation of Chartered Accountants bestowed upon its members would ultimately prove to be unmerited. But it is a matter of great satisfaction to record that the achievements of the Institute during the years of its existence have been substantial and significant.

The autonomy bestowed upon the profession of Accountancy in India was complete in its content and the governmental control was expected to be only minimal. In fact, the Expert Committee had felt that the nominated element in the Council should be kept at the barest minimum and disappear altogether after 5 years.

The Act of Parliament provided for the Institute being both as an examining body and a licensing body unlike other Institutes which serve only as qualifying bodies and the licensing of practice rights by their members is exercised by governmental departments or agencies. In India, the provisions regarding audit are contained in the Indian Companies Act which stipulates that the statutory audit of companies can be conducted by Chartered Accountants alone and under the Chartered Accountants Act none other than a member of the Institute is allowed to practice as a Chartered Accountant.

(iv) The ICAI constituted under the authority of Parliament enjoys a special status wherein the ICAI is responsible for the regulation of the profession. The regulation herein encompasses all facets of education, practical training, examination, licensing, continuing professional education, standard setting, peer review, financial report review and functions which can be seen to be a combination of development and regulatory aspects. As one amongst the largest accounting bodies globally, ICAI has worked

consciously and conscientiously to remain amongst top, by having focused plan and spot on implementation on building regulatory profile.

- (v) The ICAI has all along worked on self-imposed ethos that if we are to see the profession at a higher pedestal ahead, we need to rekindle the process of re-wiring our mind-sets; mind-sets of the minds that we are “For” the nation (profession), “By” the profession and “Of” the National interest.
- (vi) **Ever since its evolution as an integrated regulator, the ICAI’s work programme and the professional conduct of members at work has been considered as two distinct elements by ICAI as two mutually exclusive segments. ICAI has come down heavily on errant members guilty of professional misconduct as part of its larger role of Regulation.**
- (vii) Starting from the scratch on a path of continuous evolution to the present times of high stature, the ICAI has addressed incalculable threats to the profession posed by the changing economic dynamics globally; however, threats unleash a new array of opportunities as well. For this, we are adept in the ways of unlearning and learning newer ways for continued existence. *The competition and innovation landscape is going to cause continued inroads into sovereignty issue and we at ICAI have worked to see that not only we protect the existing turf but are also to gain new corners for sustenance and growth of the profession.*
- (viii) The Constituent Assembly deliberations clearly demonstrate the will and intent of the Constituent Assembly members when it brought into being what today is the Chartered Accountants Act; a legislation which received assent of the Governor General of the Council on 1st May, 1949 and published by authority in the Gazette of India Extraordinary on 3rd May, 1949. The Constituent Assembly in its wisdom perceived this august institution of a much higher stature which should be fully autonomous so as to maintain the quality of profession, professionals and standards of Regulation. It is a sad scenario that every financial market problem creates a vortex of developments and without empathising the role of the Chartered Accountants, phantasmagoria requiem sequence are put in place demeaning the stellar contribution by ICAI.
- (ix) The Constitution of India, which was adopted in 1950, is the Magna Carta for the country and it makes a fine calibration for balancing of powers between the executive “Judiciary” and “Legislature”. While the Constitution of India has followed the tenets of progressive constitutionalism and has allowed for plethora of Constitutional Amendments to take place; the silver lining all through the judgements of apex court in which Union of India was a party is that the basic structure of the Constitution cannot be changed.
- (x) The ICAI through its various standing and non-standing Committees has all along truly acted in the spirit of upholding the will and desire of the law makers and has all along acted as a public interest institution. As a regulatory body which has adequate governmental control; **it has upheld public interest as its forte and miniscule aberrations apart; for which there exists a framework within the Chartered Accountants Act to punish errant members;** it has also asked for additional powers in 2010 to punish the guilty, to be more specific, errant CA firms which are still under the consideration of the Government. It is a corollary of hackneyedness all around; that major problems rather being looked into as governance and larger systemic failures are dubbed as accounting failures whereas in the growth of India and India incorporated as also the economic institutions, there has been a stamp of support in protecting and prompting the stakeholders interest and the profession has stood by the virtues of excellence, independence and integrity in whatever it has taken up.

1.2 Sagacious Journey so far

- (i) The Institute of Chartered Accountants of India has a strong tradition of service to the public interest and to the Indian economy. One of the epithets applied to the Institute

of Chartered Accountants of India is “Partners in Nation Building”. This is an excellent characterisation of the contribution of our profession of accountancy to the world. Regarded as the backbone of Indian financial system, the ICAI has and is truly acting as a partner in nation building.

- (ii) ICAI through ‘The Chartered Accountants Act, 1949’ has been mandated to regulate the accountancy profession in India which inter alia comprises:-
- a. Laying down actionables in accounting and audit with well-defined education, practical training and examination.
 - b. Registering members and practising firms and carry oversight on their extent of compliance in performing professional work.
 - c. Issuing standards on accounting, audit, ethics and rebuild guidance to ensure quality of services.
 - d. To discipline and punish errant members and to enable pro-active reviews through Peer Review Board, Financial Reporting Review Board and Quality Review Board.
- (iii) The sheer performance and upholding Public Trust in Accounting Profession has provided a strong foundation to growth of Indian Economy, which has been credibly served by the Chartered Accountancy profession. The CA profession takes pride in providing selfless service to all segments of the society. The economy’s growth to nearly \$ 3 trillion has been ably supported by ICAI and its members with no frequent or significant abruptions. While the Nation prepares itself for moving to a bigger league, the accountancy profession has its own contribution to this progress march by providing a matured and reliable Financial Reporting and related Governance System as ushered by the ICAI. Financial turmoil as was witnessed in developed economies like US and others which despite a series of reforms in their financial sector are still trying to grapple with subprime crises and virtual collapse of the Financial Systems; has been negated in India, due to stellar contribution of ICAI.
- (iv) The strength of Chartered Accountant fraternity has grown significantly in recent times. The total number of our members has increased to almost 284000 till date. Even more remarkable is the overwhelming interest of students in the profession and their enthusiasm to join the CA fraternity. Currently there are nearly 8,50,000 CA students as well. It is a moment of truth for the profession to be a fundamental edifice to the overall process of national development. The Indian accounting profession through ICAI plays its just and due role to position itself on a wider altar to activities which touch the very core of a sustainable developmental framework. The banking system has been safe from accounting scandals. The sub-prime crises affected all countries, but not India. Recent scams like PNB did not show the involvement of audit profession.
- (v) The profession has moved much beyond from merely playing an accountant role in corporates to role of a strategist and has been contributing to the Government / various regulators in its committees. It is truly adding value to the process of economic and social development in country. Role of the Indian accounting profession is evolving and lending credibility to financial systems and, so is well recognized worldwide. The same is also evident from strength of regulatory resilience when amongst role of other Central Financial Regulators like Reserve Bank of India, ICAI through its members and firms lent crucial support in vulnerable times of the great financial crises when the Indian Financial Markets remained insulated from the global turmoil. The significant FDI inflows have been reflective of confidence in Indian economy thanks to the Indian Accounting Profession. CAs have conducted themselves in a manner that maximised governance and confidence in Indian economy. Even when Accounting Standards (AS) were not mandatory for companies to follow till 1998, ICAI had been ensuring same by putting responsibility on

members to ensure that financial statements comply with Accounting Standards when they express audit opinion. Even today for LLPs, non-corporate entities, the AS are not mandatory for preparers and it is ICAI which ensures that financial statements comply with Accounting Standards.

(vi) The ICAI continues to enjoy a commendable standing with various Government and Regulatory authorities, such as Ministry of Corporate Affairs, Ministry of Finance, Ministry of Commerce and Industry, Reserve Bank of India, Central Board of Direct Taxes, Comptroller and Auditor General of India, Securities and Exchange Board of India and Insurance Regulatory and Development Authority to name a few. It is often called upon to share its expertise, experience and expectations on matters of mutual and professional interests. On all such occasions, the ICAI's viewpoints have not only been appreciated, but were also largely accepted. Examples of Involvement of ICAI in National Organizations stand as under; to name a few:

- Presentation before Parliamentary Committee for drafting of economic and other legislations as also special purpose committee(s) of Government of India.
- Drafting of Income Tax Laws
- Drafting of Company Law
- Capital Market – Development and Regulation
- Corporate Governance
- Accounting & Utilization of Governmental resources
- Suggestions on matters related to World Trade Organisation to Government
- Non-Banking Financial Companies
- Insurance Sector

The profession has lived up to its vision and expectations as one of the most vibrant forces of socio-economic growth, integral to the success of the nation.

(vii) ICAI has reinforced the role that the accountancy profession has to play in providing high quality financial information, facilitating market discipline, and fostering confidence of various stakeholders in the financial markets by being a prudential regulator. ICAI has been focusing on the intrinsic quality of Chartered Accountants through strong regimen of quality education & intentionally benchmarked training, continuous professional development of members in niche & emerging areas. It has also been improving Quality of Financial Reporting and Assurance function through strong framework of standard setting and enforcement besides enforcement of legislative framework for improving quality of professional services.

1.3 Spotlight on ICAI—From Who's Who of India

(i) Having responded since its inception to the great beliefs and expectations of the India's greats, who led and strengthened the foundations of our country, *The Institute of Chartered Accountants of India today stands tall and strong through its members and firms to lay the strong foundation of Indian Economy when it set for itself for Socialistic, Democratic Republic. Some of the marquee statements by policy makers on ICAI's role so far are fairly and largely vindicating the ICAI role as a public-interest Institution and eloquently epitomise what ICAI had resiliently stood for.*

(a) **President of India Hon'ble Shri Ram Nath Kovind:** *“Adherence to a fair taxation system is much more than merely providing revenue to the government. It is part of the same social contract that underpins our Constitution. Under this Constitution we have given ourselves certain rights but also certain responsibilities. Taxes are*

what we pay to get social benefits in the form of public goods and services, health and education facilities, better infrastructure, law and order, and secure borders... chartered accountants have a key role in advancing such a culture. They are both facilitators of tax payers and of the taxation system as well as watchdogs of public trust... I am confident that ICAI and its members will keep up efforts to build a nation defined by Tax Transparency, Tax Predictability and Tax Compliance.” “The success of ICAI as a body of professionals is a matter of pride for our country. The community of Chartered Accountants have played a role in the critical transition to GST. I must commend the efforts of all of you.”

(In his address to CA Fraternity on CA Day, 1st July 2018)

- (b) **Prime Minister of India** (the then Chief Minister of Gujarat) **Shri Narendra Modi:** *...the responsibility of a chartered accountant is no less than that of a doctor..! A doctor when serves the patient, and even if he cuts off a part from the patient’s body, the patient likes him, he remains grateful and thanks the doctor. Why..? Because he saved him..! But when an auditor conducts the audit, we say that this auditor needs to be changed..! He says that sir, all I have done is for your well-being. You should stay in the boundaries of law, follow the rules and maintain transparency, and then client says... I will rather find a more practical person. And **till date, I could not understand what in the world this word ‘Practical’ means..!***

(Address, National Convention of CA Students in Ahmedabad on 29th June 2013)

- (c) **The then President of India Shri Pranab Mukherjee:** *The current economic environment poses many issues in the financial and accounting world and chartered accountants today have a greater role to play in advising the management and users of the financial statements...A hallmark of the accountancy profession is its obligation to act in the public interest...I am also happy to note that the ICAI has been formulating new Accounting Standards as well as revising the existing Accounting Standards from time to time with the objective of bringing the Indian Accounting Standards in line with the International Accounting Standards (IASs)/ International Financial Reporting Standards (IFRSs), as issued by the International Accounting Standards Board (IASB). With formulation of Indian Accounting Standards which are IFRS compliant, India has got a definite edge over other countries of the world. The ICAI has, through its intensive capacity building measures, also ensured that India today possesses a large pool of IFRS trained professional accountants.*

(Address, ICAI International Conference in Kolkata on 21st November 2013)

- (d) **The then Comptroller & Auditor General of India Shri Shashi Kant Sharma:** *The Chartered Accountants provide professional service to the corporate sector and other stakeholders in matters relating to accounting and auditing, taxation and corporate governance issues. The new Companies Act 2013 has entrusted the Chartered Accountants with greater responsibilities in the above areas. With its emphasis on continues professional competence and adherence to high standards of auditing profession. I am sure the Institute will successfully meet its increased responsibilities with confidence and success. I congratulate the Institute for its efforts and extend my best wishes for all its future endeavours.*

(Message, *The Chartered Accountant*, July 2014)

- (e) **The then Union Finance Minister Shri Arun Jaitley:** *If there is one profession which is an integral part or almost co-existent and growing along with the growth of the economy, nobody else is more consistent with it than the profession of chartered*

accountants. Many corporations are today headed by CEO, who graduated from amongst you. A chartered accountant is well equipped to be a regulator. A chartered accountant is well equipped to be a business manager.

(Address, 66th CA Day on 1st July 2014)

- (f) **The then Union Commerce & Industry Minister** (the then Union Railways Minister) **CA. Suresh P. Prabhu:** *As a Chartered Accountant, I can vouch for the fact that switching over to accrual accounting is today a global imperative for all governments as well as big business entities. As a big accounting reform in the country, the Accrual accounting can simply present a better picture of financial performance besides tracking historical trends and recording and measuring transactions... The accountancy profession provides the backbone of financial discipline in India... I believe that the accountancy profession has been and will always be a critical factor in India's economic growth provided it sticks to the spirit, values, excellence and ethics as propounded by founding members of the profession...The future of the CAs is very bright and it is required that the Institute fine- tunes and upgrades the training programmes of the future CAs keeping in view the future challenges, faced by the profession... It should come out of its traditional role of client centric approach and emerge as representative of the civil society to maintain financial ethics and propriety in the civil society.*

(Interview to *The Chartered Accountant* in July 2015)

- (g) **The then Union Railways and Coal Minister** (the then Union Minister of State (Independent Charge) for Power, Coal and New & Renewable Energy) **CA. Piyush Goyal:** *The profession, over the years, has clearly become a pre-eminent profession in the scheme of things in India. I think chartered accountants are not only accountants for businesses any more, they are not only accountants for Government any more, but in some sense, the chartered accountancy profession has become like an in-keeper, a profession which ensures probity in public life, which ensures that things are run well, the machinery of Government performs its duties well, businesses are honest to their system, honest to their stakeholders, and in that sense, I think, both nationally and internationally, the chartered accountancy profession has truly held the Indian flag high, has redeemed itself with excellent performance and I do believe that we have a great role to play in the years to come and making India the economic superpower of the world that we have all set out to do. I am sure this effort for global dominance that India is hoping to have in different spheres of life will be incomplete without the active participation of all of you in this room and all chartered accountants in India and all over the world who have come out of our Institute and are truly serving mankind and truly serving the world in the best possible manner...If at all there is one word which we often used to describe the Hon'ble Prime Minister, it was bharosa. All of you chartered accountants are the epitome of that bharosa that India and Indians have in this profession. I believe every chartered accountant brings with him and his signature, bharosa to the people of India, trust to the people of India, and it is your signature which adds value to whatever report whatever accounts whatever certifications that people put up for Government, put up for different requirements...The work that you are doing whether it is as a master of the Swachh Bharat Abhiyaan, that Hon'ble Prime Minister had nominated the Institute for last year, whether it is the work for the audit of the school toilets...Our contribution in that mission, our contribution in that programme is truly praiseworthy.*

(At CA Day function, New Delhi, 1st July 2015)

- (h) **SEBI** (Securities and Exchange Board of India) **Chairman Shri U. K. Sinha:** *I acknowledge the all-beneficial role being played by the ICAI and Indian accountancy profession in India... we regard ICAI as a partner in our overall mission. No efforts of the SEBI can be implemented without the support of the ICAI and accountancy profession. If we analyse the role of the ICAI, it has come up with flying colours in the capacity of educator and certifications. It has been setting standards with foresight and comprehensiveness... However, there is still a lot of scope in improvement in regulatory role so as to further improve the integrity and financial system of the country... we need to further improve peer review mechanism... I also call upon Indian accountancy profession to think in terms of going to the next frontier of accounting which is 'Integrated Reporting' and should adopt it in India.*

(Address, ICAI International Conference in Indore on 8th August 2015)

- (i) **Union Minister of State for Civil Aviation** (the then Union Minister of State for Finance) **Shri Jayant Sinha** *recommend the Indian accountancy profession for playing an important role in development of economy...the Institute has rendered outstanding services with utmost diligence to the Government in maintaining the nation's financial health... India is a lightly taxed nation and CAs should help the government collect due taxes and raise the tax-GDP ratio to 20 per cent. Along with tax officers, chartered accountants too have a responsibility to ensure that due taxes are collected by the government...You are responsible along with tax officials. We have to get our tax: GDP ratio from 16/17 per cent to well over 20 per cent... you, because you are CAs, experts, you know India is not a highly taxed country. We have very moderate taxes in India... As our economy heads for substantial growth in the ensuing years, the Chartered Accountant fraternity assumes an extremely important role as a partner of the Nation in manoeuvring the financial growth of the economy... India relies heavily on the Accountancy professionals who are the trusted advisors to the investors as well as to the policy makers. The Government places heavy reliance on the CA fraternity to keep it informed on the sound working of its strategies. The risk assessment of the national policies to be implemented by the Government is another arena which is dependent on the expertise of the Accounting professionals. The role of the accounting profession is critical in lending credibility to financial markets and for building the India's economy into a global power.*

(Address, ICAI Annual Function, 11th February 2016)

- (j) **Chief Minister of Goa** (the then Union Defence Minister) **Shri Manohar Parrikar:** *During my term as Chief Minister of Goa, I successfully revived the mining scenario in Goa by introducing interesting offers and schemes. It is always better to correct the system if the system is flawed, and never to destroy the system. As the then Chief Minister of Goa, I am very glad to tell you that after consulting many chartered accountants, I could ramp up the income of Goa by recovering money from mines. An amount of 2000 crore rupees was generated in just two-year span, which is considerably big for Goa. I used the suggestions of chartered accountants in the matters relating to assessment of mining, VAT issues, etc. I have no problems in interacting with chartered accountants even in the Ministry of Defence, subject to security clearance. I would also like to call upon ICAI for an exchange of ideas...I would urge you to support the Government and the Prime Minister's vision by participating (in that) or even pointing out to us there are some errors we are doing. I can assure you one thing; we don't commit any error on purpose. Intentions are good...The right professional body should bring it and should not be worried about the consequences, which I think is required today.*

(Address, 68th CA Day Celebration, 1st July 2016)

- (k) **Chief Minister of Jharkhand Shri Raghubar Das:** *The Chartered Accountants are playing a crucial role in the management of financial system. With globalization and progress of economy, a rising number of businesses are being set up each day. This has brought into light their importance as Chartered Accountancy is the core of all businesses. My best wishes on 'Chartered Accountants Day'.*

(Message, The Chartered Accountant, August 2016)

- (l) **The then Chief Minister of Jammu & Kashmir Ms. Mehbooba Mufti:** *ICAI has an onerous responsibility of ensuring that its members conform to the exacting standards of accountancy. This has a direct bearing on the nature of corporate governance in this country, particularly in an environment where space for free enterprise is progressively increasing across many sectors. Investors have always kept an abiding faith in the accountants, because of their ability to check malpractices and, in the process, help protect their investments. Accountants have to ensure that the investors' faith in them is not eroded. ICAI would also need to consider evolving a value-based framework for the accountants. A system, which is underpinned on ethics, has always proved to be enduring. This is also necessary, as the chartered accountants are increasingly being associated these days in mounting oversight on the public moneys by way of certification of the spends made by the public entities... I hope that the ICAI would continue to provide not only the competent leadership to its members, but also keep guiding both the public and private sector institutions in improving their accounting regimes.*

(Message, The Chartered Accountant, August 2016)

- (m) **Vice-President of India** (the then Union Urban Development, Housing and Urban Poverty Alleviation and Information & Broadcasting Minister) **Shri M. Venkaiah Naidu:** *I am deeply impressed with the glorious 67 year-past of the ICAI and its reigning national and international infrastructure and network, and consider it to be a privilege to be at the ICAI as Chief Guest. I would like to take this opportunity to request its leadership to take the institution to new frontiers and heights professionally as the Chartered Accountants today play an important role in the development of the nation. I would like to advise the CA professionals to keep themselves updated in knowledge quotient in order to maintain their legacy of dedication and ethical work...I would also like to compliment ICAI and appreciate its efforts in the matter of Income Declaration Scheme which resulted in huge reporting and collection of black money with the Government.*

(Address, ICAI International Conference, 22nd October 2016)

- (n) **The then Union Minister of State for Parliamentary Affairs, Water Resources, River Development and Ganga Rejuvenation** (the then Union Minister of State for Finance and Corporate Affairs) **Shri Arjun Ram Meghwal:** *I am deeply honoured for being invited as the Guest of Honour of the International Conference of ICAI, the prestigious and second largest accounting body of the world. I believe that integrity has to be among the fundamentals for all professions and their practitioners, particularly the Chartered Accountants. I would like to appeal the CA professionals to continue extending their complete support to the Government, especially in its fight against corruption using their conscience and integrity.*

(Address, ICAI International Conference, 22nd October 2016)

- (ii) The aforesaid marquee references (for more details of these, refer to **Annexure A**) have made ICAI stand tall over a period of nearly seven decades and represent some of the opinions expressed publicly at ICAI platforms by leading visionaries including President of India (in office), Vice-

President of India (in office), Prime Minister (in office) and most of Cabinet Ministers and other galaxies. These sum up stellar role of ICAI in national economy continually and perpetually and have put ICAI as the principal protagonist in the financial reporting and assurance value chain in India and upholding fiscal probity. Chartered Accountants' signature continues to command an awe of respect and authority in what they accomplished for India.

- (iii) Strong economies need strong and credible regulatory institutions and it has been a quixotic scenario today that the CA profession which has been the elixir to Indian economy; the role and contribution of CA profession is now intended to be supplemented through other Regulatory organ like NFRA. A public trust institution which has seen a sagacious journey of nearly seven decades in public interest; its role and authority; if intended for being supplemented through a new regulatory role; is a myopic approach. Finding succour in embracing perches may see the ship charter in unknown waters and it would be a mere duplication of efforts being done by ICAI rather than settling the core issues of sustenance..

Chapter 2

ICAI–Towards Nation-building

- (i) With the mission of Indian Chartered Accountancy profession to be valued trustees of World Class Financial Competencies, Good Governance and Competitiveness; it is important to look into the structural framework of ICAI which has helped it in furthering its mission over the journey of seven decades so far.
- (ii) The Regulatory role to ICAI envisaged the Chartered Accountants Act 1949 laying down standards of entry level requirements encompassing all facets of education, training, examination, licensing, continuing professional development, standard setting, peer review, financial report review, Disciplinary and Quality Assurance. *Through its various Standing and non-standing Committees, ICAI has been able to perform its functions as a regulator, standard setter, promoting professionalism and developing futuristic education system in India.*
- (iii) As part of ICAI's drive to continue to benchmark the accountancy profession with the best global practices, we have converged to global standards in great deal while keeping Indian interests in high stead. The future of the profession lies in its ability to change, evolve and adapt to changing environment. A central element of the reforms and of the ICAI's mission is its standard-setting role. ICAI, recognizing the fact that high quality standards provide the foundation for development of a proficient, high quality accountancy profession, has a robust standard setting mechanism.
- (iv) The country has moved from a socialistic model to laissez faire economy and in this, the Chartered Accountancy profession has played a core. Many of the regulatory bodies like SEBI, CCI, IRDA and PFRDA are consequence of Financial Sector Reforms. CA profession contributed to Regulatory Resilience in vulnerable times of the great financial crises when Indian markets remained insulated from the global turmoil. Investment flows to India has increased due to investment climate trust supported by ICAI. Every financial market problem in India has created a whirlpool with alleged role of CAs in spotlight. It generally has been a collative governance failure and without empathising the role of the Chartered Accountants, nihilism around CA Profession is being spread.
- (v) As a regulatory body which has adequate Government Participation (Council and Disciplinary Committee mechanism), ICAI has upheld public interest as its forte. Oversight is integrated already in the ICAI structure through 8 Government Nominees in 40 members Council, as also two government nominees in Disciplinary Committee and one in Board of Discipline. The Council deliberations and decision-making process is built on consensus and the Government Nominees were on board in regard to the decisions taken by the Council from time to time. Further, the same also holds good for the proceedings of the Disciplinary Committee, wherein the presence of Government Nominees is mandatory. Further as would be evident from the table below, the Board of Discipline/Disciplinary Committee has been very proactive in holding a number of meetings and the presence there at.

Fig.2.1: Meetings of Board of Discipline/ Disciplinary Committee held from April 2008 to April 2019

Board of Discipline Section 21A	114
Disciplinary Committee Section 21B	205
Disciplinary Committee Section 21D till 2015	147

- * The presence of Government nominees is mandatory in the meetings of Disciplinary Committee. [u/s 21B]
- * Around 70 per cent of the meetings of BoD is attended by the Government nominee, though her/ his presence is not mandated.

2.1 Regulatory

2.1.1 Recognition through Internationally-Benchmarked Education and Training

- (i) The Institute undertakes educational activities through its Board of Studies. The Institute enrolls students for the Chartered Accountancy Course, imparts theoretical education and monitors practical training to be undergone by them as per the requirements of the Chartered Accountants Regulations, 1988. It also holds qualifying examinations for its registered students and issues Certificate of Practice to Members, intending to practice the profession.
- (ii) The Board of Studies is responsible for formulating and implementing policies and programmes relating to education of students. The Board of Studies strives to provide a strong foundation of knowledge, skills and professional values that enables students to grow as wholesome professionals and adapt to changes throughout their professional career. One of the main activities carried out by the Board of Studies on continuous basis is preparation and continuous revision of comprehensive study material of all subjects prescribed for students of the Chartered Accountancy courses viz., Foundation, Intermediate and Final Courses.
- (iii) Reference is made to role of Accountancy Education for an Outcome-based Learning approach to Regulation-based education for a well-rounded professional by exposure to Accounting standards, Auditing Standards and Attestation of financial statements; (which can be seen at **Annexure B**).

2.1.2 Compliance with International Standards on Auditing and International Accounting Standards

- (i) **Why do we need Technical Standards on Accountancy/Auditing and Ethics?**
 - Standards improve the quality of financial reporting
 - Provides investors with insight of the audit which facilitate them to make decisions diligently
 - Partially mitigate the information advantage possessed by the auditor as a professional expert that might motivate the auditor to under-audit;
 - Standards lay down the format of Auditor's report, which creates uniformity; and promotes comparability
- (ii) A sound financial reporting backed by strong corporate governance, high quality financial reporting standards is the key to establish a strong regulatory framework in the country. Sound Accounting Standards form the basis to make regulatory mechanism responsive in every country.

- (iii) Realising the significance of Accounting Standards in the financial reporting system of the country, Government of India in 1998 also recognized Accounting Standards under law through amendment in the erstwhile Companies Act, 1956, whereby every company was required to comply with the Accounting Standards and the statutory auditors of every company were required to report whether the Accounting Standards have been complied with or not. Similar provisions are given in the new Companies Act, 2013 also.
- (iv) ICAI spearheaded the implementation of IFRS-converged Indian Accounting Standards (Ind AS). To build, professional competence and skill sets, ICAI has taken a number of steps to ensure smooth transition to new framework. ICAI efforts have yielded the positive result and India has successfully transitioned to Indian Accounting Standards (Ind AS), as all listed companies and companies having net worth of 250 crores or more have already implemented Ind AS. Total of around 25000+ companies today prepare their financial statement under high quality globally comparable financial reporting framework.
- (v) Various steps taken by the ICAI through its Accounting Standards Board (ASB) has worked to strengthen the financial reporting system and regulatory mechanism can be seen in **Annexure B**.
- (vi) Brief History of Evolution of Standards on Auditing (SAs) in India and stringent Auditing Standard setting process can be seen in **Annexure D**.
- (vii) Convergence with International Auditing Standards issued by IAASB:
 - a. ICAI has completed convergence with the International auditing Standards issued by International Auditing and Assurance Standards Board which are the global benchmark for audit quality. The IAASB's standards are globally recognized and accepted and are used in more than 120 jurisdictions worldwide. The Auditing & Assurance Standards Board of ICAI (AASB) keeps track of the developments taking place at the IAASB and starts the process of issuing/ revising any auditing standard as soon as any new/revised Standard is issued by IAASB.
 - b. As mentioned earlier, while formulating auditing standards, AASB also takes into consideration the applicable laws, customs, usages and business environment prevailing in India. Since in India, there is practice of appointing joint auditors in case of audit of large organizations like banks, insurance companies, ICAI has issued one additional standard i.e. SA 299(Revised), 'Joint Audit of Financial Statements'. There is no corresponding standard issued by the IAASB on this aspect.

ICAI has issued a suite of 38 Standards on Auditing (SAs) which need to be complied with mandatorily by the statutory auditors in audit of financial statements. These Standards cover all critical aspects of an audit engagement, beginning from the client acceptance to the final issuance of audit report. Audit planning, understanding the entity, its control environment and associated risks of material misstatements, designing audit procedures, obtaining sufficient appropriate audit evidence, evaluation of written representations from management, using the work of other auditors/internal auditors, forming an opinion on financial statements, preparing audit reports, expressing different types of audit opinions as per circumstances of audit, audit documentation, etc., are some of the critical aspects covered by these Standards.

2.1.3 Ethical Standards- A Hallmark of What Profession Stands for

- (i) The Ethical Standards Board was constituted by the Council of ICAI at its 74th Meeting held in December, 1975 for the formulation of ethical standards for members in response to changing conditions and environment. The purview of Ethical Standards Board has grown over the years as per the contemporary requirements and expectations. The major

role of the Board in enhancing ethical quality through robust disciplinary mechanism is mentioned hereunder:-

- (ii) **Periodic Revision of Code of Ethics:** ICAI brought the first edition of the Code of Ethics for members, then 'Code of Conduct' in November, 1963. It included not only the provisions of the Chartered Accountants Act but also the interpretation of the decisions of Council, various High Courts and the Supreme Court. It may be noted that the Act itself, along with the two Schedules to the Act set out norms for permissible activities for the members of the profession. Section 22 of the Act defines and describes what constitutes 'professional misconduct'. The two Schedules spell in detail the various acts and omissions entailing professional/other misconduct, which are dealt with punishment in accordance with Chapter-V of the Act. The Disciplinary mechanism of the Institute is provided in the Chartered Accountants Act, 1949 and thus with the sanction of law behind, it has effectively been followed since the enactment of the Chartered Accountants Act without any difficulty.
- (iii) **Code of Ethics:** A publication of Ethical Standards Board, has supplemented the Chartered Accountants Act in setting professional ethical standards regulating the relationship of Chartered Accountants with others. Clause-wise commentary in the Code of Ethics, revised from time to time, has attributed to better understanding and superior compliance with the provisions of Code of Ethics.
- (iv) ICAI has in 2009, adopted provisions of IESBA (International Ethics Standards Board for Accountants) 'Code of Ethics for professional accountants' subject to variances, wherever required, tries to make it compatible with Indian laws. Ethical Standards Board keeps track of IESBA developments with regard to Code of Ethics, and accordingly takes further steps for its incorporation. ICAI ESB role in formulating Ethical Standards and provide awareness on Ethical standards and independence can be seen in detail at **Annexure E**.
- (v) The revised ICAI Code of Ethics, 2019 was issued in February, 2019. It is converged with the provisions of IESBA Code of Ethics, 2018 edition, and is the counterpart of Part-A of ICAI Code of Ethics, 2009. The revised Code will come into effect on 1st April, 2020. The existing Code of Ethics will remain effective till then. The revised Code contain many new features like Responding to Non-compliance of Laws and Regulations (NOCLAR) applicable to members in practice and service, Independence Standards for Audit and Review Engagements and Assurance Engagements other than Audit and Review, enhanced guidance on Non -Assurance Services provided to the Audit client, new terms such as "Public Interest Entity", "Key Audit Partner", etc., enhanced description of inducements, framework for addressing breach of the requirements of the Code, Section dealing with "Management Responsibilities", Provisions relating to threats that are created by certain tax services, etc.

2.1.4 Suo-moto Initiatives on Regulation—Financial Reporting Review Board

- (i) Financial Reporting Review Board (FRRB) was constituted in July 2002, by the ICAI as a proactive measure to improve the financial reporting practices in the Country and to improve the quality of audit by the Chartered Accountants. The Board comprises of seven members of the Central Council of the ICAI including Government of India nominee and is assisted by a Secretariat headed by a Secretary, who is a Chartered Accountant. The Board has representations from the office of the Comptroller and Auditor General of India, Insurance Regulatory and Development Authority (IRDA), Central Board of Direct Taxes (CBDT), from time to time. In order to ensure independence of the Board, it has no co-opted members or ex-officio members including the President and Vice- President of the ICAI.

- (ii) The Board aims to develop and maintain an environment of sound financial reporting of Financial Statements and also to improve transparency in financial reporting and good governance, which is important to promote investor confidence in audited financial statements. The Board restricts its reviews to the published financial statements only and do not carry out re-audit or review as to how audit has been conducted by auditors concerned. The FRRB also supports various regulators viz. Qualified Audit Report Review Committee of Securities and Exchange Board of India (QARC-SEBI) in review of significant audit qualifications of the listed companies, Election Commission of India in review of annual audited accounts of political parties and undertakes review of other cases as referred by the regulators from time to time.

The financial statements for review are taken up suo moto, or reference by regulatory bodies like, Ministry of Corporate Affairs, Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Election Commission of India, etc. and cases where serious accounting irregularities in the financial statements are reported in media.

- (iii) **Scope and Functions of the Board:** The FRRB reviews financial statements of corporates with a view to determine compliance with the generally accepted accounting principles in the preparation and presentation of financial statements; compliance with the disclosure requirements prescribed by regulatory bodies, statutes and rules and regulations relevant to the enterprise; and Compliance with the reporting obligations of the enterprise as well as the auditor.

- (iv) **Actions by FRRB based on Review:**

- a. **Auditors:** In case of material non-compliance, which affect the true & fair views of the financial statements, such cases are referred to the Director (Discipline) of the ICAI for initiating appropriate action against the auditor.
- b. If the non-compliance is not of a material nature, the Board issues advisory to the auditor to help/guide auditors towards best practices & transparency in reporting of financial statements.
- c. **Management of the enterprises:** Informs irregularity to the regulatory body (Ministry of Corporate Affairs, Securities and Exchange Board of India, Comptroller & Auditor General of India, Election Commission of India) relevant to the enterprise for appropriate action.
- d. Periodically brings out publication containing pertinent observations during the review.
- e. Publishes major non-compliances observed, in the journal of the Institute.
- f. Conducts Workshops, Training Programmes/webcasts to sensitise the members regarding the non-compliances observed by the Board, during the course of the review.

- (v) **FRRB Milestones:** Cases selected on suo moto basis or as special cases

- a. Completed review of 830 enterprises
- b. 136 cases (16.4%) referred to the Director (Discipline) of the Institute
- c. 131 cases (15.8%) referred to the relevant regulators
- d. In 519 cases (62.5%) non-compliances observed brought to the attention of the auditors of the respective enterprises to ensure its compliance in future.

❖ **Reviewed qualifications of 112 enterprises referred to it by QARC-SEBI and submitted its views on all these cases to SEBI.**

- (vi) FRRB is a proactive regulatory mechanism within ICAI to strengthen sound financial reporting practices and to also improve transparency in financial reporting to promote investor confidence in audited financial statements. The Board is functioning quite effectively and independently to the entire satisfaction of the stakeholders especially regulatory bodies. The Board services have been acclaimed by SEBI, Election Commission of India etc. and the Board continues its journey in pursuit of excellence, independence and integrity.

1. Infirmities noticed and request for their addressal through Government / Regulators.

Fig.2.2: Statistics of Cases referred to Ministry of Corporate Affairs/SEBI/C&AG

Financial Year	No. of cases sent		
	To MCA	To SEBI	TO C&AG
2005-06	12	11	-
2006-07	50	36	-
2007-08	4	4	-
2009-10	10	10	-
2011-12	4	4	-
2013-14	5	5	-
2014-15	3	3	1
2016-17	12	12	4
2017-18	2	2	1
Total	102	88	6

- ❖ **In order to improve the effective functioning of the FRRB, further, ICAI has sought nomination from Reserve Bank of India on the FRRB-A reply has been received from RBI stating that since RBI's role as supervisor of banks and some other categories of financial entities, it may not be appropriate for the RBI to have its nominee on the FRRB.** Considering the role of RBI, in Council Year 2018-19, the Board decided to send request again for nomination but they refused to nominate any official as special invitee on the FRRB.
- ❖ *ICAI's request to RBI to provide the list of top 10 borrower companies for review of financial statements to ascertain the quality, compliance and report by auditors vide letter dated September 18, 2017 is yet to be responded by RBI.*
- ❖ **ICAI also sought nomination from Securities and Exchange Board of India (SEBI) on the FRRB being regulator for protecting interests of investors-A reply has been received from SEBI that since FRRB reviews the compliances, inter alia, with the Accounting Standards and Standards on Auditing issued by the Institute which is an "operational issue", SEBI, therefore, is not nominating any officer on FRRB.**

However, in Council Year 2018-19, the Board decided to send request again for nomination. In response to it, SEBI had sent nomination on FRRB as a special invitee. This year again Board as sought nomination from SEBI vide letter dated_15 March 2019, however, reply from SEBI is awaited.

2.1.5 Peer Review Board

- (i) The peer review mechanism was introduced by the Council of the Institute, by setting up of the Peer Review Board in March, 2002, with the objective of providing guidance to

its members and to maintain as well as enhance the quality of attestation functions. The establishment of the Peer Review mechanism was a **proactive pursuit of ICAI** aiming to upgrade and maintain audit and assurance quality standards and to guide its members in improving their performance and ensuring adherence to various standards issued by ICAI from time to time and to meet the demands of high quality assurance, consistency and greater transparency.

- (ii) **How Peer Review has strengthened the control functions and Quality of Audit**-Peer Review is carried by peers who are experts in their field having the minimum required experience, and are additionally trained on the process of peer review before they are assigned the peer reviews. The peer review mechanism is a mentoring process for the practice units whereby the practicing firms are able to learn from their peers about where they are deficient and where there is scope for improvement in the services provided by them to the society. Accordingly, they update themselves so that the society at large is benefitted from the efficient services provided by the auditors. Peer review is carried out for audit firms in general and not only the big audit firms or firms providing audit assurance services to a specific category of organisations. Peer review has been very well received by the audit firms. Looking at the benefits provided by the peer review process, requests are often received from practice units suo moto to have their firms peer reviewed, so that they can improve the efficiency of the services provided by them.
- (iii) The peer review of auditors is directed towards maintenance as well as enhancement of quality of assurance services and to provide guidance to members to improve their performance and adherence to various statutory and other regulatory requirements. Such objective of the peer review process makes it amply clear that the Reviewer evaluates the procedures followed by the practice unit in rendering such a service. Accordingly, where a practice unit is not following the prescribed Standards, the Reviewers are expected to recommend measures to improve the procedures followed by the practice units.
- (iv) The objective of peer review is to maintain and enhance the quality of assurance services by providing appropriate guidance rather than simply pointing out deficiencies of the practice unit. To elaborate further, the key objective of peer review is not to identify isolated cases of engagement failure, but to **identify weaknesses that are pervasive and chronic in nature**. For instance, absence of formal planning of an audit represents a serious deficiency that needs to be remedied by the practice unit. The conclusion, therefore, is that the **peer review seeks to identify and address patterns of non-compliance with the quality control standards**.
- (v) **Recognition of Peer Review by various Authorities**
- a. The Securities & Exchange Board of India (SEBI), has made it mandatory with effect from April 1, 2010 for the listed entities, that limited review / statutory audit reports submitted to the concerned stock exchanges shall be given only by those auditors who have subjected themselves to peer review process and who hold a valid certificate issued by the 'Peer Review Board' of the Institute.
 - b. The Comptroller and Auditor General of India (C&AG) has recognised Peer Review Board's work; now it seeks additional details from the Chartered Accountants firms about their Peer Review Status in the application form for allotment of audit for Public Sector Undertakings. Furthermore, from last few years the office of C&AG annually seeks details from ICAI of the firms which have been issued certificate by the Board.

Measures taken by Peer Review Board to strengthen the Peer Review process can be referred to in the **Annexure F**.

Fig.2.3: Fresh reviews to be initiated under New Categories

	No. of firm Found	Letters Sent	Reviews yet to be initiated
Internal and concurrent auditors of Bank	9881	1242	8639
Services provided on Tendering	139	139	0
NBFC	1282	1282	0
PSU	115	115	0
Tax Audits	952	952	0
Newly established firms	51	51	0

Number of Peer Reviewers with the Peer Review Board is 5965 as on 15.05.19.

Enlargement of the ambit of peer review by incorporating new criteria for selection of firms for review: As a regulator for review of assurance services of CA firm in India, Peer Review Board has increased its scope of assurance services coverage on the basis of the following criteria as per direction received from Council, to increase the coverage of Peer Review:

Increase of coverage in 2016:

- a. Services provided on basis of tendering by CA firms,
- b. Statutory Auditors of Banks & PSU,
- c. NBFC in which Public Deposits are accepted,
- d. Insurance Companies
- e. Internal & Concurrent Auditors of Banks

Increase of coverage in 2017:

- a. Tax Audit.
- b. Newly established firms have also now been included in the ambit of Peer Review on receipt of suomoto application from the practice unit.
- c. Further, cases/ matters , referred by QRB, FRRB have also been taken into consideration, before Peer Review Certificates are being issued and proper instruction as per the case , are being informed to Reviewer, for cases referred by Government authorities.
- d. Issues raised by members are also considered by the Board for improving the quality of review. Accordingly instructions are given to the reviewers and practice units.

Accordingly, 3581 firms have been identified under new categories and peer review has been initiated since November, 2016. During the Council year 2017-18, 418 reviews have been initiated on suomoto applications received and 959 reviews have been initiated by the Board for subsequent cycle of peer review of firms whose certificates have expired. During the Council year 2017-18, 1228 peer reviews have been completed and certificates issued by the Board. Follow up is being done with the remaining firms to expedite the process and submit report.

With effect from 2014, the Board has been empowered to refer cases to Disciplinary Directorate, with the approval of the Council, where report of reviewer continues to be adverse,(after considering the nature and materiality of deficiencies reported).

Chapter 3

Ensuring Quality through Robust Disciplinary Mechanism

3.1 Path Trodden and Road Ahead

- (i) Keeping pace with changing economic scenario, ICAI not only performs its statutory duties as a regulator of the profession of Chartered Accountancy in India by formulating Accounting Standards, but also enforces the ethical standards as laid down in Code of Ethics and pro-actively takes action against its erring members, found guilty of professional and/ or other misconduct through its well-defined disciplinary mechanism as provided under the Chartered Accountants Act, 1949 and the Rules framed thereunder.
- (ii) Under the laid down disciplinary mechanism, a mandatory duty has been cast upon the Disciplinary Directorate to look into any alleged lapses/irregularities committed by a small cross-section of its members across the country so as to lay down a strong foundation of credibility for the future members joining the profession. While, most of the members of the profession are providing selfless dedicated services through their professional expertise and experience to the Society and world at large, yet there is a constant need to caution and to set right the negligible few who inadvertently fall on the wrong side of the law, through its Disciplinary mechanism.
- (iii) Despite its impeccable record of decisions in disciplinary matters through a system of natural justice evolved over the decades, to the world at large, the disciplinary mechanism of the ICAI has been looked at as a stumbling block where things get unexplainably delayed and cases are handled with perhaps a possible leniency while deciding quantum of punishment. This **perception gap** gets a multi-dimensional focus whenever certain corporate scam(s) is/ are unearthed and when the investigating/regulatory agencies of the country come up with a major fraud which portray the role of Chartered Accountant(s) in negative light of doubt and suspicion. The increasing frequency with which such scams/ frauds are unearthed and the magnitude of coverage of such matters in the social media call for a deeper foray into the provisions and procedures enshrined in the disciplinary mechanism of ICAI evolved over the last several years so as to appreciate the time and efforts involved in a quasi-judicial procedure towards the ends of justice.
- (iv) The ICAI disciplinary mechanism, as a whole underwent major reforms by way of amendments in the Chartered Accountants Act, 1949 in the year 2006 and the resultant Rules framed thereunder. The intent behind such changes/amendments was to specifically address the need to fast-track the entire process resulting in cutting short certain procedural formalities and eventually ensuring that the justice is delivered in the shortest possible span of time. The significant changes after the amendments by way of the Chartered Accountants (Amendment) Act 2006, are given below:

Fig.3.1: List of Significant Changes Post-Amendments by way of Chartered Accountants (Amendment) Act 2006

Provisions under the Chartered Accountants Act, 1949	Provisions under the Chartered Accountants Act, 1949 as amended by The Chartered Accountants (Amendment) Act, 2006
Every Complaint/Information of professional and/or other misconduct received against members of the Institute were required to be processed by obtaining Written Statement of the Respondent, Rejoinder of the Complainant and Comments of the Respondent.	Every Complaint/Information of professional and/or other misconduct received against members of the Institute are required to be processed by obtaining Written Statement of the Respondent and Rejoinder of the Complainant only. (The stage of obtaining comments of the Respondent on the rejoinder of the Complainant omitted)
The papers relating to the Complaint/Information i.e. the Complaint, Written Statement, Rejoinder, Comments and additional documents, if any, are placed before the Council for formation of its prima facie opinion.	The papers relating to the Complaint/Information i.e. the Complaint, Written Statement, Rejoinder and additional documents, if any, are considered by the Director (Discipline) (who is statutory authority created under the provisions of the amended Act) for formation of prima facie opinion.
The Council forms its opinion as to whether a member is prima facie guilty of professional and/or other misconduct or not and in case the member is prima facie guilty refers the matter to the Disciplinary Committee for enquiry.	<p>(a) The Amended Act provides for the setting up of (a) Board of Discipline which looks into the cases of professional /other misconduct falling under First Schedule (minor offences) and (b) Disciplinary Committee which looks into cases of professional misconduct falling under Second Schedule and/or pertaining to both Schedules (major offences).</p> <p>(b) The Board of Discipline/ Disciplinary Committee, as the case may be, considers the prima facie opinion formed by the Director (Discipline) and decides to either close the matter or advise the Director (Discipline) to further investigate the matter or proceed further for enquiry.</p> <p>(c) The Board of Discipline/ Disciplinary Committee, as the case may be, conducts the enquiry and gives its findings as to whether the member is guilty or not of the alleged misconduct. In case the member is found not guilty, the Board of Discipline/Disciplinary Committee, as the case may be, orders for closure of the case.</p>
The Disciplinary Committee conducts the enquiry and submits its report to the Council for its consideration The Council considers the report of the Disciplinary Committee. In the event of the member being held guilty for professional misconduct under the First Schedule, the Council is required to provide an opportunity of hearing to the Respondent before awarding punishment. In respect of professional/other misconduct falling under the Second Schedule, the Council recommends punishment to the concerned High Court(s) and the High Court(s) in turn finally award the punishment.	Upon receipt of findings wherein the member is found guilty, the Report of the Board of Discipline/ Disciplinary Committee, as the case may be, is considered by the respective Body for award of punishment and wherein upon affording opportunity of hearing to the member concerned, necessary punishment as provided under the Act is awarded on a case to case basis.

Provisions under the Chartered Accountants Act, 1949	Provisions under the Chartered Accountants Act, 1949 as amended by The Chartered Accountants (Amendment) Act, 2006
While the scope of punishment ranges from reprimand to removal from Register of Members for varying periods, the same requires ratification by the Hon'ble High Court (in cases pertaining to Second Schedule) before the punishment is implemented.	In the new disciplinary mechanism punishment(s) are directly awarded by the Board of Discipline/Disciplinary Committee, as the case may be, and the punishment include financial penalty and / or reprimand or removal from membership for definitive periods as prescribed under the Act including removal of name of the member from Register of Members permanently. The aggrieved members can approach the Appellate Authority under Section 22G of the Chartered Accountants Act, 1949, (As amended in 2006)
The scope of punishment was defined to mere reprimand and removal from membership for specific periods.	The scope of punishment has been enlarged to provide for award of financial penalty apart from removal from membership for varying periods including permanent removal and implement the same instantaneously without referral to High Courts.

- (V) In addition to the above, the Council has recommended further amendment(s) in the Act/ Rules so as to enlist firm(s) of Chartered Accountants also under the ambit of disciplinary mechanism as also imposing harsher penalties for various offences especially in matters relating to public interest and/or cases causing loss to public.

Details of the cases disposed by the Disciplinary Committee and Board of Discipline (after being referred for further enquiry) during the last five Council years:

Fig.3.2: Details of Cases disposed by Disciplinary Committee and Board of Discipline (after being referred for further enquiry) during 2014-2019

Year		Cases wherein hearing concluded ¹	Orders of punishment passed ²
2014-15	DC	53	21
	BOD	9	14
	Total	62	35
2015-16	DC	100	28
	BOD	18	7
	Total	118	35
2016-17	DC	43	23
	BOD	30	8
	Total	73	31
2017-18	DC	56	33
	BOD	58	8
	Total	114	41
2018-19	DC	77	29
	BOD	45	25
	Total	122	54

¹ Cases (referred for enquiry to the BOD/DC after considering the prima facie opinion of Director(Discipline) during the earlier or current year) where hearing has been concluded during the year.

²Cases wherein punishment has been awarded during the current year to the members, who were held guilty after enquiry by the BOD/DC during the earlier or current year.

3.2 ICAI Disciplinary Mechanism

ICAI has been consistently striving to maintain highest standards of ethical values coupled with setting benchmarks in delivering **stringent action** against erring professionals through its well-defined disciplinary mechanism as provided under the CA Act, 1949 and rules framed thereunder. ICAI has been consistent with its quasi-judicial disciplinary mechanism in punishing its errant members, if and when found committing any professional and other misconduct.

- (i) Is it a case of expectation gap or is it just perception gap?

There have been frequent references on the slow disposal rate of disciplinary cases in the ICAI Disciplinary Mechanism, as also on the efficacy of the penalties awarded. This perception gap gets multidimensional focus when certain corporate scam(s) are unearthed. In this regard, it needs to be highlighted that a well-defined procedure has been prescribed under the CA Rules under which the disciplinary mechanism of ICAI functions. The time lines at different stages have been prescribed to ensure that principle of natural justice is followed. Thus, considerable time is involved in processing of these disciplinary cases. However, considering the volume of cases registered with ICAI, currently, the disposal rate of cases is around 60 % which is quite comparable with any of the judiciary functionaries in the country. Also, it needs to be emphasised that the penalty provisions are prescribed under the Chartered Accountants Act 1949. While awarding punishment to the erring members, the gravity of the charge alleged against is evaluated by the Board/Disciplinary Committee. It has been observed over the years that major chunk of the cases received by ICAI relate to certain minor irregularities in the audited accounts signed by the member as auditor or minor non – compliances with the standards of audit and accounting. Thus, the quantum of punishment is determined on a case to case basis considering the gravity of the charge proved against the erring members. Also, in a country as vast as India with a big ticket economy, the number of cases which have been dealt with under the disciplinary mechanism cumulatively over the last 70 years, are in thousands only pointing to the fact that majority of the members are executing their professional assignments in line with the standards laid down by ICAI.

- (ii) There has been an enhanced clamour for the CA profession and increase in the membership over the years, there has also been an undesirable increase in the number of complaints being dealt with by the Disciplinary Directorate and many of them are not pertaining to negligence while conducting professional assignments. While the goal of near negligible and nil number of disciplinary cases could be the ultimate frontier, yet it has been a constant endeavour of ICAI to dispose of all disciplinary matters by way of expediting the process apart from placing important cases of Public Interest on a fast track mode.
- (iii) By virtue of the highest regard and public confidence the profession of Chartered accountancy enjoys, it also runs the risk of being in the spotlight whenever there are symptoms of corporate frauds or scandals that rock the news gallery once in a while. While the professional work by a member of the Institute is generally held in high esteem yet there is a growing tendency to abuse or blame the auditor as and when there are certain unfortunate corporate lapses caused mostly on account of mis- management of affairs of the Company by the persons controlling the levers of authority/power that be. The role of auditors at such times comes under close scrutiny which consequentially which puts the profession at large in bad light.
- (iv) It may be highlighted that in the Satyam matter which will continue to be considered as a landmark case in the history of the Disciplinary Committee of ICAI, as soon as the confession of Mr. Ramalinga Raju came to public knowledge, ICAI began its suo-moto investigation in

the matter and disciplinary action was initiated/concluded against all concerned auditors/officials of the Company. The cases against the members involved in Satyam episode were heard and decided in 48 hearings despite several legal hurdles posed by the individual respondents with some of them being behind bars and challenging the process through petitions filed in the Hon'ble courts of law. The Disciplinary Committee has decided the respective cases by removing the concerned members from the Register of Members permanently and imposing penalty of Rs. 5 lacs on each one of them which is the maximum punishment provided under the Act.

- (v) Further, the hearings/enquiry in all the cases under the old mechanism (Under Section 21-D) have been concluded by the Disciplinary Committee despite some of the Respondents having frequently knocked the doors of Hon'ble Courts of law in their efforts to prolong the matter. The ICAI continuously contested such matters legally and it is a matter of great pride that in matters of all such legal hurdles posed by the Respondents in Courts of Law, the ICAI stand has been upheld. This is a live testimony to the efficacy of the vibrant disciplinary mechanism which always ensures that the guilty are never spared.
- (vi) A brief data in statistical terms of disciplinary cases dealt with at various levels is given below:

Brief Statistics Highlights

Fig.3.3: Cases dealt under Chartered Accountants Act, 1949 [u/s 21D, under old Mechanism] as on 30th April, 2019

Number of cases heard by the Council at prima facie stage	658
Number of cases wherein on being referred to Committee inquiry conducted and concluded by the Disciplinary Committee	448
Number of cases wherein report of the Disciplinary Committee considered by the Council	406
Number of cases wherein Council held the member finally guilty (including cases falling under First, Second and both Schedules)	174
Number of cases wherein Council awarded punishment under First Schedule (minor offences)	97*
Number of cases wherein Council recommends punishment to the concerned High Court(s) (major offences)	140

* It includes cases wherein Council held the members guilty prior to 2008

Fig.3.4: Cases dealt with under Chartered Accountants Act, 1949 (as amended by Chartered Accountants (Amendment) Act, 2006 (New Mechanism) (Since inception till 30th April 2019)

PARTICULARS	BOD	DC
	BOD	DC
Total number of cases registered		4740
Total number of cases dealt with by BOD /DC at prima facie opinion(PFO)Stage		3495
Out of the above, cases closed at PFO Stage		1980
Out of the above, number of cases referred to BOD/DC	1515	
Out of the above, number of cases referred to BOD/DC	500	1015
Number of cases wherein inquiry conducted and concluded	323	545
Number of cases wherein members held guilty	155	215
Number of cases wherein punishment awarded	136	172

- (vii) In the interest of justice and prevailing procedure, the ICAI is bound to keep its quasi-judicial proceedings which are under investigation/enquiry outside the public/media gaze and with a view to not cause any prejudice to the concerned members of the profession involved in such disciplinary matters, no disclosures to public are made about such cases

until and unless the enquiry process is duly completed and the report of such enquiry is ultimately disposed.

- (viii) It may be mentioned that during the last few years, the ICAI by way of constitution of 2 additional Benches of Disciplinary Committees (Two Benches in 2016 & 2017 and Three Benches in 2018) apart from two benches of Board of Discipline in 2018 and 2019) has shown its determination and intensity to wipe out the number of disciplinary cases that have been pending.
- (ix) Amongst many factors which delay the completion of proceedings are the cases which are filed by Regulatory Agencies lacking in documentation. Unfortunately they also do not present their cases before the BOD/DC as and when they are fixed and absent themselves at hearings. The delay also occurs when parties take to legal recourse.
- (x) The Ministry of Corporate Affairs vide Notification dated 29/10/18 amended the Chartered Accountants (Procedure of Investigations and Other Misconduct and Conduct of cases) Rules, 2007 facilitating for conducting of disciplinary proceedings before Board of Discipline and Disciplinary Committee through e-hearing. The necessary infrastructure like seamless internet connectivity between the Head office and five Regional offices, installation of high quality video conferencing system are underway. The above, once in place, shall help in wiping off a sizeable chunk of the disciplinary cases pending at different levels.
- (xi) Keeping in view the earnest need of digitization, the Disciplinary Directorate of ICAI has already initiated steps for development and commissioning of e-filing and automation system and complaint against the erring members can now also be filed online through the link provided on the ICAI's website.
- (xii) Further, it may also be mentioned that with a view to focus specifically on cases which are received from Government Departments/Regulators/News Reports on social media/Matter of Public Interest etc., a specific Bench of Disciplinary Committee has been created to fast track such cases and taking them to its final conclusion in terms of the procedure prescribed under the Chartered Accountants Act, 1949 and the Rules framed thereunder. This Bench of Disciplinary Committee is headed by the President, ICAI and specifically concentrates on cases involving Public Interest to ensure speedy disposal.
- (xiii) Despite all the above, the disciplinary mechanism which is battling Perception Gap as the World at large only looks at pendency levels and not the disposal achieved, is consistently striving to go in for expeditious conclusion of hearings by (i) rejecting frequent requests for adjournment (ii) closing cases ex-parte wherein no party appears despite several opportunities and (iii) clearing cases at prima-facie stage itself so that the pendency is reduced to minimal.
- (xiv) In the recent past, the ICAI is striving to push in amendments to the CA Act and Rules which would add in more transparency and also lead to faster disposal. It can be safely assured that the disciplinary mechanism of ICAI has withstood the test of time in its long life span so far and has won most of the legal cases filed in respect of its proceedings and thus overcoming legal scrutiny of its procedures and decisions arrived at in disciplinary matters. The ICAI will continue to face the challenges of the changing economic scenario, with the proposed amendments in the Act and Rules, digitalization of disciplinary cases and the day is not far off when bigger laurels come the way of this noble profession in respect of its ethical standards set as also its disciplinary mechanism both in terms of quantum and quality of decision making.
- (xv) Current disposal time by the Disciplinary Committee has been brought down to on an average around 3 to 4 years as against the judicial time taken which span between 5 to 10

years. Further, the Disciplinary Committee has two Government nominees out of 5 total members and similarly Board of Discipline has one Government nominee out of 3 total members.

- (xvi) The manner of composition of Disciplinary Committee is in itself a reflection of its integrity and independence whereby out of total 5 members of the Committee, 2 are being nominated by the Central Government. The Central Government by virtue of Rule 16(3) has mandated the presence of Government nominee 'a must' for holding any meeting of the Committee. As far as composition of Board of Discipline, out of total 3 members 1 is nominated by the Central Government. Though, the presence of the nominee of the Central Government is not mandatory in the Rules in case of BOD yet his attendance is generally ensured to maintain independence and transparency in the conduct of the proceedings. The nominees of the Central Government are amongst the persons of eminence having experience in the field of law, economics, business finance or accountancy, their vast experience and knowledge is a great asset in expeditious and judicial disposal of the disciplinary cases in a fair and just manner. Another principle of good governance followed is that though the Rules provide that all decisions have to be taken by majority, however, till date all decisions have been taken unanimously.

Penalties as per Section 132 of Companies Act, 2013 vis- à-vis Chartered Accountants Act, 1949

S. No	Particulars	The Companies Act 2013 (Under Section 132)	First Schedule of The Chartered Accountants Act, 1949 (Under Section 21A)	Second Schedule of The Chartered Accountants Act, 1949
1	Individual	not less than one lakh rupees, but which may extend to five times of the fees received	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 anyone 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; impose such fine as it may think fit which may extend to rupees one lakh. The punishment is awarded in terms of Section 21A (3) of the Chartered Accountants Act, 1949.	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 and Second Schedule, it shall afford to the member an opportunity of being heard Before making any order against him and may thereafter take anyone 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 lakh. The punishment is awarded in terms of Section 21B (3) of the Chartered Accountants Act, 1949.

2.	Firm	not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;	Does not have power to take action against firms.	Does not have power to take action against firms.
3.	Debarring	debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.	Remove the name of the member from the Register Upto a period of three months	remove the name of the member from the Register permanently or for such period, as it thinks fit

3.3 Quality Review Board—Powerful Oversight Mechanism

- (i) In exercise of the powers conferred u/s 28A of the Chartered Accountants Act, 1949, Quality Review Board (QRB) has been constituted by the Central Government as an independent body to review the quality of services rendered by chartered accountants in the country and its review process contributes towards an increasingly robust and transparent financial reporting system in the country. Sec. 28B of the Chartered Accountants Act, 1949 provides that QRB shall perform the following functions namely:-
- to make recommendations to the Council with regard to the quality of services provided by the members of the Institute;
 - to review the quality of services provided by the members of the Institute including audit services; and
 - to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.
- (ii) Since FY 2012-13, QRB has formalised a distinct and strong system of independent review of statutory audit services of the audit firms auditing accounts of top listed and other public interest entities in India. QRB's reviews involve assessment of the work of statutory auditors while carrying out their statutory audit function so that QRB is able to assess (a) the quality of audit and reporting by the statutory auditors; and (b) the quality control framework adopted by the audit firms in conducting audit. The major focus of the reviews is on compliance with technical standards, relevant laws & regulations, quality of reporting and firm's quality control framework.

However, the Ministry of Corporate Affairs, vide letter F.No.7/1/2019-CL-1 dated 30th January, 2019, has clarified to the Quality Review Board that in view of Sec.132 (2) of the Companies Act, 2013 r/w Rule 9(4) of NFRA Rules, 2018, the issue of QRB reviewing audits of the companies/bodies corporate specified under Rule 3 of the NFRA Rules, 2018 will only arise in case a reference is so made to QRB by NFRA, and not otherwise.

Rule 3 (1) of National Financial Reporting Authority Rules, 2018, as notified by Central Government on 13 November, 2018, inter alia, provides that the Authority (read NFRA)

shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service under sub-section (2) of section 132 or undertake investigation under sub-section (4) of such section of the auditors of the following class of companies and bodies corporate, namely:-

- a. companies whose securities are listed on any stock exchange in India or outside India;
- b. unlisted public companies having paid-up capital of not less than rupees five hundred crores or having annual turnover of not less than rupees one thousand crores or having, in aggregate, outstanding loans, debentures and deposits of not less than rupees five hundred crores as on the 31st March of immediately preceding financial year;
- c. insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of sub-section (4) of section 1 of the Act;
- d. any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and
- e. a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds twenty percent of the consolidated income or consolidated networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

Rule 9(4) of NFRA Rules, 2018 provides that the Authority (read NFRA) may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 (38 of 1949) or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.

Accordingly, in view of the aforesaid limitation in the role of QRB, now QRB would be able to conduct quality reviews of audits of entities other than those specified under Rule 3 (1) of NFRA Rules, 2018, namely, private limited companies, unlisted public companies of below the specified thresholds, and those referred by NFRA under Rule 9(4) of NFRA Rules, 2018.

- (iii) Though the Quality Review Board was constituted in the year 2007, however, since FY 2012-13, QRB has formalised a distinct and strong system of independent review of statutory audit services of the audit firms auditing accounts of top listed, other public interest entities and other in India. QRB's reviews involve assessment of the work of statutory auditors while carrying out their statutory audit function so that QRB is able to assess (a) the quality of audit and reporting by the statutory auditors; and (b) the quality control framework adopted by the audit firms in conducting audit. The major focus of the reviews is on compliance with technical standards, relevant laws & regulations, quality of reporting and firm's quality control framework.

Fig.3.5: Details of Reviews conducted and Recommendations made by Quality Review Board (financial-year-wise)

S. No.	Particulars	2012-	2013-	2014-	2015-16	2016-17	2017-18	2018-19	Total
1.	Total number of Statutory Audit assignments of Companies/entities selected for initiating Quality Reviews during the financial year	37	56	123	134	102	111	40	603
2.	Total number of final reports accepted by the Quality Review Board	37	56	123	132	98	25	–	471
3.	Total number of cases recommended to the Council of the ICAI for consideration and appropriate action u/s 28B(a) of the Chartered Accountants Act, 1949	04	10	14	01	01	–	–	31
4.	Out of the total number of cases recommended to the Council of the ICAI for consideration and appropriate action u/s 28B(a) of the Chartered Accountants Act, 1949 as at 3 above:								
a.	Total number of cases where Council decided to refer the matter to the DC	02	02	02	01	01	–	–	09
b.	Total number of cases where Council decided to issue appropriate advisory to the concerned Audit firm/s	02	07	10	–	–	–	–	19
c.	Total number of cases closed by the Council	–	01	02	–	–	–	–	03
5.	Total number of cases where appropriate advisories have been issued to concerned Audit firm/s u/s 28B(c) of the Chartered Accountants Act, 1949 under intimation to ICAI	05	26	77	85	57	15	–	265

The Council has now decided that cases recommended by the QRB to the Council for referring to the Disciplinary Directorate for taking appropriate action shall be directly forwarded to the Disciplinary Directorate of the Institute and will only be noted by the Council.

- (iv) In line with the international best practices for an independent audit oversight:
- QRB is statutorily required u/s 28B of the Chartered Accountants Act, 1949 to conduct review of quality of audit services provided by the Chartered Accountants in India including in respect of audits of public interest entities. **However, this statutory power is now sought to be restricted, by way of MCA clarification as aforesaid in preceding paras, to reviewing audits of the companies/bodies corporate other than those specified under Rule 3 of the NFRA Rules, 2018 and for which a reference is so made to QRB by NFRA;**
 - QRB is exercising that responsibility directly by conducting reviews of audit firms in India;
 - **QRB has adopted risk based approach for selection of audit engagements for conducting audit quality reviews;**
 - QRB has majority of Board members who are non-practitioners. 6 out of 11 members of the Board including Chairperson are nominated by the Central Government who are all non-practitioners while 5 are nominated by the Council of the ICAI. Currently, the QRB Board comprises majority of non- practitioners with (as a matter of fact) 8:3 ratio as ICAI Council has also nominated 2 non-practitioners on the Board;
 - Funding of QRB is free of any undue influence from the profession. U/s 28D(2) of the Chartered Accountants Act, 1949, the expenditure of the Quality Review Board shall be borne by the Council of the ICAI. With a view to ensuring independence in its functioning, the budgetary estimates for the expenditure of the Quality Review

- Board is drawn-up by the QRB itself and the funds are provided by the ICAI, out of its common pool of funds;
- QRB is operationally independent from any external interference and from commercial, or other sectoral interests, in the exercise of its functions and powers, including not being controlled in its governance by audit practitioners;
 - QRB has devised its own Procedure for review of audit firms which also empowers it to publish the findings observed during the review in any manner considered appropriate. Accordingly, QRB publishes periodic reports on the findings observed in an aggregated manner which are hosted at the website for the information of all concerned stakeholders and as necessary guidance to CAs for improving quality of their audit services in future as well as sent to the concerned Ministries/Regulatory bodies/other concerned Authorities for information; and
 - **While cases of material non-compliances and those requiring significant improvement are recommended to the Council of the ICAI for taking necessary action u/s 28B(a) of the Chartered Accountants Act, 1949, in other cases, requiring improvement, QRB issues advisories to Audit firms for improvement u/s 28B(c) of the Chartered Accountants Act, 1949 which are subsequently followed-up for compliance.**
- (v) U/s 28B(a) of the Chartered Accountants Act, 1949, the recommendations of QRB are required to be made to the Council of ICAI which are finally considered as per the Disciplinary mechanism constituted under the overall framework of Audit oversight mechanism currently prevalent in India under the Chartered Accountants Act, 1949. **However, with a view to providing greater independence to the QRB, the ICAI Council has suo moto decided to recommend to the Central Government for making appropriate amendments in Sec.28B of the Chartered Accountants Act, 1949 so that the recommendations of the QRB for taking disciplinary action against the member/s can directly be referred to the Disciplinary Directorate instead of placing the same first before the Council. The Council also decided that till the appropriate amendments in the Act are made, such recommendations of the QRB be directly forwarded to the Disciplinary Directorate in line with the procedure being followed by Financial Reporting Review Board (FRRB) constituted by it and simultaneously be also placed before the Council for its noting.** It may further be mentioned that u/s 15(2) (o) of the Chartered Accountants Act, 1949, the ICAI is statutorily required to include the details of action taken on the QRB's recommendations in its Annual Report which is laid before the Parliament of India. This provision duly ensures accountability of ICAI on the QRB's recommendations.
- (vi) In terms of the requirements of Sec.28B(c) of the Chartered Accountants Act, 1949, QRB also issues advisories on its own to the concerned Audit firms for improvement in the quality of their services which are also followed-up for compliance.
- (vii) QRB inspections are carried out by a large team of **Technical Reviewers (TRs)** who are engaged by the QRB directly, on an engagement basis, from across the country. These TRs are practicing professionals and possess requisite experience and expertise essential to carry out the inspections. They are bound to ensure that there is no conflict of interest with respect to the Audit firm and the selected audit file subjected to review/inspection by them and are also required to give a separate declaration in each case to the Board of QRB to the above effect and that any violations thereof would be treated as misconduct and liable for action under the Chartered Accountants Act, 1949. Further, as an additional measure to ensure independence, it is also ensured that TRs of a different city/ region than the city/region of the Audit firm are sent to the Audit firm to review. Any cases of even slightest threat to their independence are regularly brought to the notice of QRB, from time to time. Thereupon, QRB takes necessary remedial action. **QRB considers**

confidentiality of information pertaining to the quality review assignments to be of paramount importance. Accordingly, TR as well as all the members of the review team are required to submit a confidentiality declaration.

- (viii) **Quality reviews initiated by the QRB are designed to identify and address weaknesses and deficiencies related to how the audits were performed by the Audit firms. The major focus of the reviews is on compliance with Technical standards, relevant laws & regulations, quality of reporting, firms' quality control framework. In addition to evaluating the quality of the audit work performed on a specific audit, the review includes review of certain aspects of the firm's practices, policies, and procedures related to audit quality and its quality control framework.** These TRs report audit deficiencies which are then considered by a Working Group of the Board of QRB. This Group also includes majority of non-practitioners (2:1) and has sufficient audit expertise. This Group is Chaired by the Senior Officer of the O/o the Comptroller & Auditor General (C&AG) of India. The recommendations of this Group are considered by the Board of QRB.
- (ix) By engaging more than 100 TRs and allowing them to further engage up to 3 qualified professionals, coupled with adequate safeguards to avoid conflict of interest and maintain confidentiality of information obtained, QRB is effectively able to utilize resources of over 400 qualified professionals attracting talent from all across the country. Since, all these TRs are hired on engagement basis, QRB is also not required to maintain office infrastructure at different places nor are they required to re-locate themselves, deriving advantages of technological advancements. It was consciously thought that given the huge numbers of public interest entities and Audit firms in India, creation of a permanent resource base would soon become unsustainable.
- (x) Realizing that achieving a balance between expertise and independence is a real challenge in establishing and operating an effective audit oversight system, due to a mammoth number of public interest entities and the Audit firms to be subjected to review/inspection by the QRB on a recurring basis in India, it was thought that this unique model, is not only cost effective and allows necessary flexibility but also ensures availability of necessary expertise to the QRB. It is well recognized that inspections could be most effective only with the involvement of experienced audit professionals provided there are adequate safeguards in place to avoid conflict of interest and maintain confidentiality of information obtained. All these safeguards are scrupulously maintained by the QRB in its inspection program. QRB has also issued a Technical Guide on Conducting Quality Review. **This Technical Guide, which aims to set uniform benchmarks and practices for conducting reviews, deals in great detail about practical aspects of conducting quality reviews by the TRs such as basic principles of conducting the review, terms of review, quality control in a review, planning, conducting and reporting aspects of the review etc.**
- (xi) **Since FY 2012-13, QRB selected more than 600 review assignments for review of statutory audits of around 480 top listed, other public interest entities and certain private limited companies in India. These entities, selected on a risk based approach followed internationally, from various industries represent more than 85% market cap of the stocks listed on NSE and BSE. QRB has selected more than 300 Audit firms, who had performed these audits, for conducting their reviews according to a set procedure. Since FY 2012-13, based upon 459 completed reviews, 30 cases have been recommended to the ICAI Council for consideration and further action in terms of the requirements of Sec. 28B(a) of the Chartered Accountants Act, 1949 and in 255 cases appropriate advisories have been issued by the QRB to the concerned Audit firms, in terms of the requirements of Sec. 28B(c) of the Chartered Accountants Act, 1949, highlighting their shortcomings and advising them towards improvement in the quality of their services which are also followed-up for compliance. Of the cases recommended to ICAI Council, in 5 cases prima facie opinion has found them to be guilty and these cases are at the**

hearing stage before DC/BoD. In 19 cases ICAI had issued advisories to concerned Audit firms. Accordingly, all these reviews are being taken to a logical conclusion with the pursuit of improving the overall quality of audit services in the country through an independent review system.

- (xii) In order to provide guidance to the Audit firms for ensuring improvement in the quality of their services, QRB also publishes periodic reports 'Report on Audit Quality Review', providing key audit quality review findings in an aggregated manner and providing necessary guidance to the Audit firms for improvement in future. Through these reports, QRB also seeks to guide members and Audit firms to conduct root cause analysis of the review findings so as to mitigate the real causes of deficiencies in their quality control mechanism. These reports are publicly made available at QRB website (www.qrbca.in) for the information of all concerned stakeholders and also sent to the Government, various other regulatory bodies, ICAI Council etc. as well as published in the Journal/ website of the Institute and mass mailed to the members of the Institute. QRB also conducts programmes for wide dissemination of the key findings amongst the members of the Institute.
- (xiii) *The whole review mechanism is a strong deterrent to errant audit practices. Also, a huge number of audit firms have reacted responsibly by taking action to improve compliance and overall audit quality. It is believed that reinforcing market confidence through audit reliability and increasing audit transparency are real challenges today. Overall, the practice of quality audit and audit quality review conducted by QRB usher in greater reliability and transparency and increase confidence in audits in the country.*

Chapter 4

Company Law Amendments and its Silhouette on Role of Chartered Accountants

- (i) The Companies Act, 2013 was notified on 29th August, 2013. It had introduced significant changes and, inter *alia*, provided for disclosure to stakeholders and a provision regarding accountability of directors, auditors and key managerial persons. It also provides for investors' protection and corporate governance.
- (ii) In view of the difficulties in smooth implementation of the Companies Act, 2013, many of the amendments have been brought from time to time within a period of five years. Also, the Government has been issuing Circulars, Notifications, Companies (Removal of Difficulty Orders to address the issues in the Act.
- (iii) To ensure and facilitate ease of doing business in India, as many as 16 amendments have been made to the Companies Act, 2013 through the Companies (Amendment) Act, 2015, mainly removing various practical difficulties in law like requirement of minimum capital is being done away with, common seal is optional now, transactions between holding company and wholly owned subsidiary are exempt, except offences of fraud, all other offences are bailable and winding up cases would be heard by a two member bench instead of 3 member bench, etc.
- (iv) Major amendments have taken place through Companies (Amendment) Act 2017, and a total 93 Sections and 14 sub-sections have been amended. This is a continuous evolving process as the new law is trying to stabilise to the requirements and expectations of the Governments, stakeholders and the economy. To our mind, the Government is contemplating the amendments in the Companies Act, 2013 mainly to
 - a. address difficulties in implementation owing to undue stringency of compliance requirements,
 - b. facilitating ease of doing business for companies, including start-ups, in order to promote growth with employment
- (v) The Ministry of Corporate Affairs has issued of 16 minor the Companies (Second Amendment) Ordinance, 2019 on 19th February 2019. A total of 29 sections were amended and 2 new sections were inserted through the earlier ordinances, which were promulgated on 2nd November 2018 (Ordinance 9 of 2018) and on 12th January 2019 (Ordinance 3 of 2019).
 - a. It is based on the recommendations of the Committee to review offences under the Companies Act, 2013, so as to fill critical gaps in the corporate governance and compliance framework as enshrined in the Companies Act, 2013.
 - b. This will incentivise compliance of law while simultaneously meting out exemplary punishment for serious violations.

There was an urgent need for bringing out and implementation of the various provisions of the Companies Act 2013, accordingly, the Companies (Second Amendment) Ordinance, 2019 was promulgated by the Cabinet. The provisions that are part of the Ordinance shall be applicable with effect from 2nd November, 2018. Amongst others, following are the important amendments recategorization of 16 minor offences as purely civil defaults which will declog special courts, stringent provisions with reduced timelines for creation and modification of charges, transfer of approval for certain routine functions such as change of financial year and conversion of public to private companies from the National Company Law Tribunal to the Central Government, breach of ceiling on directorship being made a ground for disqualification to be appointed as a director in a company, making non-maintenance of registered office and non reporting of commencement of business grounds results in removal of names of companies from the Register Of Companies.

- (vi) Still concerning the transparency of doing the business, disclosures to the various compliance, adoption of the best practices, procedures as are enshrined in the accounting and auditing standards, the corporates are taking time to adjust and aligning their business operations in conformity with the changes in implementation of so many standards. The knowledge and understanding of these requirements by the corporates and foreign corporates about the law of the land which itself is getting settled, requires considerable amount of time.
- (vii) Amendments to the Companies Act, 2013 and the Rules thereunder are frequently undergoing changes. To adapt and follow these amendments requires considerable time not only for the companies, other stakeholders including professionals. The results cannot be envisaged in the short run as the Companies Act, 1956 went for a complete overhaul after a period of 66 years.
- (viii) More important to highlight is the fact, that the earlier 1956 Companies Act which contained more than 600 sections and as many Schedules to the Act were condensed into the new Companies Act, 2013 with 470 Sections. Further adding that, though this is a holistic Act and a well maiden attempt by the Government, the notifications of the various Sections of the Act have been more or less completed only in the recent past, the Act being notified in 2013.
- (ix) ICAI is conscious that there should be a complete segregation of the specialisation of the attestation function which should be entrusted to only to the domain of the particular profession rather specifying various other categories of professionals.
- (x) ICAI also believes that even after so many changes/ amendments, there is a scope for further changes especially relating to Accounting and Auditing chapters.
- (xi) In view of the above mentioned points, it may be inferred that the Ministry administering the Companies Act and the Chartered Accountants Act is same but the treatment given to the chartered accountants is on different footings.
- (xii) It is pertinent to note that the Companies Act, 2013 has significantly enhanced many other provisions, pertaining to Accounts, Audit and Corporate Governance which can deliver the objectives of ensuring independence and discipline very well.
- (xiii) This is sought to be strengthened by the supportive and deterrent mechanisms to enable highest level of safeguards being built into the Audit process:
 - Compulsory term of appointment of auditors for 5 years as against one year earlier.
 - Rotation of auditors after 5/ 10 years.
 - Limits of number of audits. Exemption from the limit of twenty companies was provided to the following types of companies:
 - One-Person Company, Dormant Companies, Small Companies and Private Companies having paid up share capital less than Rs 100 crore.
 - Restrictions on Auditors from rendering certain other services.

- Higher levels of resignation protocols including reasons.
 - Mandatory Compliance with Accounting Standards (143 (3)) (previously was also there)
 - Mandatory compliance with Auditing Standards (143 (9))
 - Compulsory Internal audits for large enterprises to strengthen the statutory audit framework.
 - Reporting on Internal Financial Controls which is process rather than results focused.
 - Audit Committees for large non-listed Companies to ensure oversight over the audit function.
 - Institution of Vigil mechanism to deter frauds and enable detection.
 - Duty to report on adverse issues relating to maintenance of accounts.
 - Additional reporting requirements under CARO.
 - First time introduction of penalties including criminal liability on the Audit profession.
 - Disclosure of Disciplinary Cases pending against partners prior to acceptance.
 - Class Action Suits.
- (xiv) Similarly entity level discipline is sought to be enhanced by significant controls over
- Internal Financial Controls Reporting,
 - Mandatory internal audits for large enterprises,
 - Loan to Directors, etc. and Loan and investment by company
 - Related party transactions
 - Acceptance of deposits
 - Code of independent directors
 - Enhanced board responsibility, etc.
- (xv) These controls enshrined in the Act, in addition to the efforts of ICAI will enable higher audit quality especially for public interest entities.
- (xvi) The Government should reanalyse the result of these welcome stringent requirements prescribed for the accountancy profession as well as corporates for improvement of corporate governance before concluding that Section 132 is required for economic growth and enhancing the interest of investor.
- (xvii) Action against an individual for the same offence multiple times, i.e., the Chartered Accountants Act, 1949, the Companies Act, 2013, MCA, SEBI, SFIO, NCLT, etc., is against the constitutional provisions. Hence any action by other bodies will amount to regulatory overlap.

In our opinion, matters pertaining to banking are best dealt by RBI and of capital market by SEBI who are special bodies set up by respective Acts of Parliament. On similar lines ICAI which is set up by a separate Act of Parliament for regulating the profession of chartered accountants should be empowered to regulate all aspects of matters related to Chartered Accountancy.

All statutory regulators like SEBI, RBI, IRDA, PFRDA, IBBI, etc., have on similar lines prescribed criteria (financial and/or experience) for granting licenses or equivalent for entities/ professionals they regulate and it is the concerned statutory regulator which enforces discipline over its licencees; the disciplinary mechanism is not entrusted to a separate body. But in the case of chartered accountants, numerous regulatory authorities are imposing penalties.

Further there is another range of penalties provided under the Chartered Accountants Act, 1949. Hence a person being punished under all the Acts is not only leading to double jeopardy but even beyond that. It is stated that charging an individual for the same offence number of times is against the constitution. By such provisions, we are not creating a congenial atmosphere for business, making cost of compliance too steep and going beyond the policy objective of the Government of India of "Ease of doing business".

- (xv) Incremental benefits by creating NFRA need to be re-examined as it will have adverse impact on the profession of chartered accountancy and also it is against the interest of the nation.

Chapter 5

Economic Offences—Collective Governance Failure/Regulatory Failure or Aberrations

- (i) Under the regulatory powers provided to ICAI, it has been *inter alia* framing rules for enhancement of quality of services rendered by Chartered Accountants whether as members or as part of Partnership Firms/LLPs. The said authority available to ICAI is on account of legitimate provisions of the law as it stands today and has not been usurped suo moto.
- (ii) The Chartered Accountants Act is primarily for the regulation whereas post 1990s enactments leading to formation of SEBI and many other regulatory bodies deal with aspects of both regulation and development. Prime focus of ICAI has been to fulfil its avowed duty of regulation in India and the same is consistent with the regulatory profile enshrined under the provisions of the Chartered Accountants Act 1949.
- (iii) In case of economic legislations, insofar as their jurisdiction, outreach, enforcement provisions are concerned; there are multiplicity of regulatory controls extending from SEBI, Ministry of Corporate Affairs, RBI and Ministry of Finance (Financial Intelligence Unit) as far as suspicious transactions /reporting is concerned. Whatever cases have come to light in Indian Corporate history till now relating to financial scams, they can be best attributed as part of overall lack of governance and effective internal control mechanisms. It would be highly imprudent to generally single out Chartered Accountancy as on being the wrong side of compliance mechanism.
- (iv) As the country moved from a socialist-driven model to a Market-driven economy; the regulatory profile of the bodies have also changed but ICAI has maintained its monolithic stature and its Members have upheld the provisions of the Chartered Accountants Act in their actions. With the progress of a market-driven economy; regulators like SEBI, RBI and office of C&AG of India also indirectly started having an interface with the domain of ICAI and the same has been discussed herein-under.

a. **SCODA and QARC at SEBI**

The SEBI Committee on Disclosures and Accounting Standards (SCODA) was originally set up in 2006 to advise the market regulator on disclosure requirements by companies at the time of listing and thereafter, as also about the accounting standards to be followed by various intermediaries. SCODA is a standing committee of SEBI that examines various issues relating to disclosures and accounting standards in respect of listed entities and makes recommendations to SEBI on the subject.

Based on recommendations of SCODA, SEBI had, vide circular dated August 13, 2012, put in place a mechanism to review the audit qualifications contained in the Audit report. The primary objective of the said mechanism is to review the audit qualifications and ensure

that the impact of such qualifications is known to the investors. Accordingly, SEBI had constituted the 'Qualified Audit Report Review Committee' (QARC) with representatives from the ICAI, Stock Exchange (SEs) etc. The recommendations of QARC were to include:

- i. Rectification of the qualification in terms of clauses 5(d)(i) & 5(d)(iii) of the Circular (**hereinafter referred to as 'rectification/rectify'**).
- ii. Restatement of books of accounts in terms of clause 5(d)(ii) read with the Clarificatory Circular dated June 05, 2013 (**hereinafter referred to as 'restatement/restate'**).

Further, for the cases where QARC recommends **restatement**, the Circular also provided for seeking an opinion from the Financial Reporting Review Board of ICAI (FRRB) on whether the audit qualifications are justified, before advising the company to restate. The aforementioned Circular was applicable to all the Annual Reports submitted' after December 31, 2012.

Qualified Audit Report Review Committee (QARC)

The Securities and Exchange Board of India (SEBI) had set up Qualified Audit Report Review Committee (QARC) in its endeavour to improve the quality of financial reporting by listed entities. The QARC among other members had representatives of the ICAI and the stock exchanges. SEBI has sought support from ICAI-FRRB in processing the qualified annual audit reports referred to by the stock exchanges. FRRB had been assigned the role to assess the materiality of the qualification contained in auditor's report, based on which QARC could even direct the entity to **restate** its books of accounts. SEBI had referred cases to ICAI FRRB till Council Year 2015-16 and on all the cases referred to FRRB reply was submitted within the given timeframe. **FRRB has reviewed qualifications of 112 enterprises referred to it by QARC-SEBI and submitted its views on all these cases to SEBI.**

b. Regulatory Framework of Bank Audit and Inspection by RBI

Credibility of an institution particularly that of financial institution depends on the internal controls and supervision mechanism which can promptly detect irregularities, if any, and take corrective measures and ensure non-recurrence of irregularities. Business of banking is susceptible to frauds, it is, therefore, necessary to have an internal control and supervision mechanism for ensuring that no person is in a position to violate procedures, rules, regulations, guidelines and do an unauthorised act detrimental to the organisation which remains undetected for a long period of time. Therefore, audit and inspection plays crucial role in success of banking operations. In India, The legal and institutional framework for bank supervision is provided under the Banking Regulation Act, 1949. *"To keep a close watch on financial markets and avoid recurrence of crisis in the financial system, the Board for Financial Supervision was set up under the aegis of Reserve Bank under Reserve Bank of India (Board for Financial Supervision) Regulations, 1994 with the objective of paying undivided attention to the supervision of the institutions in the financial sector."*

As per the Banking Regulation Act, every banking company accounts need to be verified by the statutory auditors. These statutory auditors are appointed by banks. Apart from the statutory auditors, if need arises, special audit is being conducted from the same or different auditors. Internal audit is being conducted by banks own staff. Further inspection audit is being conducted by Reserve Bank of India.

One of the objectives of the inspection audit is to oversee the audit function and its various mechanism put in place.

Presently the following types of inspection are carried out/ coordinated by the Inspection Department of RBI.

- Management Audit and System Inspection
- ISA Audit
- Snap Audit
- Concurrent Audit
- Control of Assessment Audit

c. **Supplementary Audit by CAG**

The prime responsibility for preparation of financial statements in accordance with the financial reporting framework prescribed under the Companies Act, 2013 or other relevant Act is of the management of an entity. The statutory auditors appointed by the Comptroller and Auditor General of India under Section 139 of the Companies Act, 2013 are responsible for expressing an opinion on the financial statements under Section 143 of the Companies Act, 2013 based on independent audit in accordance with the Standards on Auditing of ICAI and directions given by the Comptroller and Auditor General of India. The statutory auditors are required to submit the audit report to the Comptroller and Auditor General of India under Section 143 of the Companies Act, 2013.

The certified accounts of selected government companies along with report of the statutory auditors are reviewed by Comptroller and Auditor General of India. Based on such review through supplementary audit, significant audit observations, if any, are reported under Section 143 (6) of the Companies Act, 2013 to be placed before the Annual General Meeting. As the responsibility of auditor is to help the management in enhancing the quality of financial reporting, i.e. readability, reliability and usefulness to different stakeholders, the CAG introduced more intensified, innovative, focused and result oriented approach to financial audit by 'the System of Three-Phase Audit'.

The Three Phase Audit System was introduced with the following objectives in selected public sector enterprises falling under categories of 'Listed', 'Navratna', 'Miniratna' and 'Statutory Corporations' for the financial statements of 2008-09 on consensus basis after discussion on the objectives and methodology of audit approach with the management and statutory auditor concerned:

- to establish an effective communication and a coordinated approach amongst the statutory auditors, management and CAG's audit for removal of inconsistencies and doubts relating to the financial statements presented by the CPSEs. Three Phase Audit an intensified, innovative, focused and result oriented approach to financial audit introduced by CAG to improve the quality of financial statements of CPSEs. Three Phase Audit Report No. 9 of 2016 21
- to identify and highlight errors, omissions, non-compliances etc., before the approval of the financial statements by the management of the CPSEs and provide an opportunity to the statutory auditors and the managements of the CPSEs to examine such issues for taking timely remedial action.
- to reduce the time of CAG's audit after the approval of financial statements by the management of the CPSEs.

Thus, Three-Phase Audit brings substantial qualitative transformation in the audit process and methodology by enabling the management of CPSEs to rectify the accounts in the light of accepted comments on financial statements. The Phase – I and Phase – II of the Three-Phase Audit approach are extended provisions of Section 143 (5) of the Companies Act, 2013. The audit observations under first two phases are treated as preliminary observations and communicated to the statutory

auditors. The last phase of audit (Phase-III) is conducted after approval of the financial statements by the management and audit by the statutory auditors which is same as conducted earlier.

- (v) It is a fact that the caprice and malice of a fugitive mind is difficult to be tracked even under the most stringent of legal provisions and global instances of fraud have been outside the purview of process of audit control which is intended to represent a reasonable and fair view of the financial information produced before the auditor who basis his opinion on such information provided as also the certifications by the management.
- (vi) The financial scams cases which have come to notice in India call for an integrated report of regulation wherein each organ associated with the trail of information as also movement of flight of capital takes introspection of the system of checks and balances in place.
- (vii) There is no doubt in accepting the fact that public interest is the foremost consideration whilst regulating the profession by ICAI. In that process experiments in certain jurisdictions should not be taken as only solution if there exist reasonable process of evolution within the existing framework in India.
- (viii) The other important aspect with special reference to the situation in India is different from other developed countries. In our country businesses which are not publically accountable entities have a major contribution in the GDP. Furthermore there is still a very substantial contribution of state owned entities in GDP. This state of economic development raises the issue of priorities for economic managers. The foremost priority in this region is 'documentation' and 'corporatisation'. This process, with larger public participation, would result in reduction of cost of capital that would accelerate the rate of economic growth. However, one of the primary issues in economic development is lack of inappropriate governance in the public sector. In this situation, the matter of further regulatory mechanism in the accounting and auditing profession should only be undertaken through a process of evolution rather than by following the accidental experiences in other regions.
- (ix) 'Public interest', 'Trust' and 'Confidence' in financial reporting is very relevant. Increase of publically accountable entity's contribution in the GDP would require concerted efforts for proper regulation of accounting profession in all its related fields. However, while undertaking any legislation or similar action in this area there has to be a detailed analysis of historical perspective, legislative mechanism in existence, and the priorities for economic development.

Quality of Governance—Capacity of the Regulators

- (x) We, in India, are going through a process of reform in state run bodies and institutions. There has been a general feeling that there is a need for larger 'public-private partnership' in all sectors and solely government regulated bodies do not represent a correct model. Those bodies where discretion is wholly placed on state intervention do not yield encouraging results. The primary reason for the same is not entirely the issue of corruption or in competence. It is more of a matter of capacity building and human resource constraints. Any discussion on oversight and regulatory mechanism has to account for the experiences, even in developed countries, and level and capacity of governance in societies of our region, and gradual degradation where there is excessive discretion.
- (xi) The second aspect is licensing and regulation of auditing profession. There had been a strong demand for certain manner of licensing of firms allowed to conduct audit of the public interest companies and entities. It is felt that the process of 'audit' has to be independent for which necessary safeguards have to be provided in the regulations such as **QCR**, restriction on services to be allowed to be conducted by auditors of public companies etc. ICAI has already taken various measures to ensure the independence of audit.

- (xii) The last aspect of disciplinary proceedings against the delinquents is an important issue. It is repeatedly stated and instances are quoted for the perception that appropriate independence does not exist if disciplinary proceeding are wholly left to the professional bodies. It is important to note that for the purpose of undertaking disciplinary action against a delinquent auditor there is a need for technical knowledge or expertise of the same or of higher level in the same field. A surgeon's negligence in an 'operation' can only be ascertained by another senior surgeon. It cannot be done by an engineer. Thus the primary consideration in the matter of disciplinary proceeding is the involvement of professionals in disciplinary actions. Such a body of persons can only be made available on continue basis by a professional body only. Nevertheless a final analysis would require independent persons to make a final decision. This leads to higher level of independence for disciplinary process within the purview of a professional body.
- (xiii) In this situation there is a need for engaging with professional regulatory bodies with greater involvement and interaction of multi regulators, through nominations in the Council, strengthening of Quality Review Board rather than going through any process of establishment of any other regulatory or oversight arrangement like NFRA which arrangement is seemingly hyperbole and anachronistic.
- (xiv) Regulatory Organisations like ICAI carry a unique dispensation and carry with it an institutional legacy which is time tested and evolved like darwinism in tandem with the economic scenario in India. The Parliament has given to profession the Chartered Accountants Act and under that a Quality Review Board which acts as an oversight model.

QRB performs all functions in a completely independent manner. QRB has 11 members including Chairperson and ten members appointed from persons of eminence having experience in the field of law/economics/business/finance/accountancy. Chairperson and five members are nominated by Government of India and other five by ICAI Council. Majority of members are nominated by Government of India including senior officers from Ministry of Corporate Affairs, Comptroller & Auditor General of India, Securities and Exchange Board of India, Law Ministry. QRB has been functioning in a fully independent manner in public interest without any undue influence from audit profession.

Chapter 6

Leveraging NFRA towards Symbiotic Relationship with ICAI

- (i) Overhaul of the entire Companies Act, 1956 in the interest of ease-of-doing-business in India, for better corporate governance, strengthening the existing system in terms of compliance, procedure and process by taking to 360 degree e-mode and further achieving the avowed motto for 'make and made in India' campaign really pegged the reaping benefits in terms of country ranking in the ease of doing business. India improved its rank by 23 Positions in ease of doing business with a jump of 23 positions against its rank of 100 in 2017. As per the World Banks' Doing Business Report (DBR, 2019) India is placed now at 77th rank among 190 countries assessed by the World Bank. In a period of two years India has improved its rank by 53 position. It was a herculean task for different regulators for all round coordination and cooperative effort in achieving the acclaimed result so far by any Government. Global Business World partners look for release of funds in any micro part of the universe provided there is ease. The Companies Act is the pivot and the wicket. That the old archaic Act, 1956 posed several limitations and road blocks in terms of its heavily overloaded provisions and it was not compact in terms of understandability, interpretation and construction in lieu of other allied laws in the country. The effort of the Ministry of Corporate Affairs in converting a law statue into Rules was a forerunner in the annals of history of company law in India. The Act 2013, thus in its entirety brought in provisions reinforcing compactness, understandability and ease for interpretation and construction in lieu with other allied laws.
- (ii) The Chapters relating to accounts and audit were thoroughly revised and for the very first time, to bring more transparency and disclosure auditing standards were made part of the law and also ensuring that internal audit being mandated for companies with a certain threshold limit under section 138. The ICAI had its own guidance note on internal audit and internal financial control system and procedure manual for its members much ahead earlier and introduction of internal audit mechanism is a welcome step.
- (iii) Regulatory functional mechanism is a sine-qua-non of any new and upcoming law. Overseeing and monitoring aspects took the prime motive of the Companies Act, 2013 and in the said direction, the law created establishment of Serious Fraud Investigation Office (SFIO) and to clear the huge backlog of cases in the erstwhile Company Law Board benches, the National Company Law Tribunal was formed.
- (iv) The National Advisory Committee on Accounts Standards (NACAS) earlier was dealing with introduction of accounting standards and the intention of the Government was to extend its scope to the auditing standards.
- (v) In the many earlier Bills there was no mention of any overseeing and monitoring body exclusive to the area of accounting and auditing and its institution and its members.

- (vi) Among all sections that are contained in the Companies Act, 2013, Section 132 regarding constitution of National Financial Reporting Authority was subject to lengthy deliberations and discussions before notifying the same. That the inclusion of the section was fraught with various legal, regulatory, constitutional issues are quite obvious, was not something new and ICAI has time and again fervently requested the Government *not to notify the section*, and that instead an alternative mechanism be worked out within the existing regulatory framework. The Ministry of Corporate Affairs during the Rules making process relating to various sections in the Companies Act, 2013 was very supportive for postponing the notification of the section till now and also has been in the consultative process with the ICAI on the ways and means by which the issue can be resolved.
- (vi) While looking at the genesis of the a similar section in the Companies Bill, 2008, vide clause 118, very particularly the intention of the Government was to extend the scope of **NACAS to NACAAS**. (*National Advisory Committee on Accounting Standards to National Advisory Committee on Accounting and Auditing Standards*). In other words, the National Advisory Committee on Accounting Standards will extend its scope so as to cover within its ambit the Auditing Standards as well. Extract of the 21st Report of Parliamentary Standing Committee Report on Finance on Companies Bill, 2009 suggested in Para 9.23 of the said Report is:
- 9.23 *The Committee while welcoming the introduction of auditing standards as a concept in the Bill, would like the National Advisory Committee on Accounting and Auditing Standards (NACAAS) to be institutionalized not only as a body for setting up auditing standards but also as a quasi-regulatory body for generally supervising the quality of audit undertaken. The Committee would expect the Ministry to clearly delineate the role and responsibilities of this body accordingly.*
- (vii) Further, the said committee noted that in the Para 37 of its Report:
37. The Committee acknowledges the Ministry's acceptance of the Committee's views and suggestions for **ensuring independence of auditors, providing safeguards to retain credibility of the audit process and creation of a supervisory mechanism for this purpose**. The Committee would recommend that the proposed body namely, NACAAS would be given sufficient mandate not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector. It should, therefore, be manned by professionals. Its role may be expanded depending upon experience gained.
- (viii) Added further, the Parliamentary Standing Committee has stated in the Para 81:
81. The Committee note that National Financing Regulatory Authority (NFRA) has been set up as an oversight body having quasi-judicial authority including suo-moto investigation powers in cases of professional misconduct by a Chartered Accountant/firm of Chartered Accountants, imposition of penalty thereof, debarring members of the Institute of Chartered Accountant of India (ICAI), if proved guilty, etc. The Committee further note that the constitution of NFRA is a result of the recommendation of the Standing Committee on Finance which examined the Companies Bill, 2009 and recommended that the scope of the National Advisory Committee on Accounting Standards (NACAS) as included in the Companies Act, 1956 should be expanded not only to set and oversee auditing and accounting standards, but also to monitor the quality of audit undertaken across the corporate sector. The Committee further observe that similar oversight bodies also exist in other countries, for example, Financial Services Authority (FSA) in United Kingdom and Public Company Accounting Oversight Board (PCAOB) in United States of America. However, as issues relating to conflict of mandate with regard to disciplinary matters between the NFRA and the Act governing the Institute of Chartered Accountants of India have been raised, the Committee desire that the Ministry may ensure that in the process of constituting NFRA, it does not create two parallel jurisdictions, governing the same

issue. The Committee would like the NFRA to function as an oversight body without any jurisdictional conflict or overlap. This aspect may be addressed, when the rules governing NFRA are finalised by the Ministry. **(Extract of 13th Report of Parliamentary Standing Committee on Finance in April, 2015)**

(ix) Added further, the Parliamentary Standing Committee has stated in the Para 3.21:

3.21. Consistent with its position on strengthening the oversight of corporate audit, the Committee desire that the existing mechanism in this regard under the ICAI Act should be streamlined and strengthened without needlessly adding to regulatory levels. This may be undertaken in consultations with the Institute of Chartered Accountants of India (ICAI), which is the designated elected self regulatory body for professional audit in the country. Necessary amendments to the ICAI Act may be brought before Parliament, if required, for this purpose so that adequate transparency can be ensured in maintaining accounting and auditing norms as well as ethical standards with a view to protecting the interest of investors and stakeholders. (Extract of 37th Report of Parliamentary Standing Committee on Finance in December, 2016)

Hence on various factors, the Parliamentary Standing Committee on Finance conceived and came to a thoughtful, purposeful, constructive and conclusive proposal without encroaching the territorial jurisdictional authority of an already time tested authority and institute, i.e. (ICAI). Therefore, the constitution of NFRA was, therefore, not on proper lines and would again lead to a duplication and multiplicity of one more regulatory authority on the same subject. It was for these reasons that implications of NFRA would be far from reality and expectations and considering the present set of scenario for rectification of the situation will not be a panacea rather its purpose will be self-defeating.

Having stated as above, question arise, whether the introduction of NFRA suffice to solve the purpose for which the Government is contemplating or would it turn out to be more counter-productive or encounter oriented to tackle crisis happening here in and there.

The brainstorming in house and among the fraternity of the profession raised the following questions rather questioning the authenticity or the very fact of constitution of such an authority for various purposes as the Government envisages in the near future. The complications which will fraught with Section 132 require serious, consultative and constructive process again even after notification of the Section and the Rules thereon. The ICAI as an authority set up under an Act of Parliament in 1949 wishes and expects the Government to rethink again the constitution of another authority over an authority that is time tested and self-regulatory on accounting and auditing.

(x) Let us critically look at clause-by-clause analysis, the lacunae, conflicts and jurisprudential issues which are embedded in Section 132:

Pointer 1

1. Sub-section (1) of Section 132 states that the Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

Analysis

Response from the Extract of Companies Law Committee Report in February, 2016 is already well compounded and clear on the constitution of NFRA.

National Financial Reporting Authority

9.9 *The Committee noted that ICAI has submitted a letter dated 18th August 2015, wherein ICAI had raised concerns with respect to constitution of National Financial Reporting Authority (NFRA). It was stated that the ICAI is already discharging its regulatory functions with regard*

to discipline through a robust mechanism wherein Board of Discipline and Disciplinary Committee with Government nominees has been entrusted with the responsibility, the Chartered Accountants profession sees constitution of NFRA as an interference in the functioning of the profession, multiple layers of regulation would lead to delay/duplication of work and, therefore, suggested for omission of Section 132.

The Committee deliberated in detail on the matter and felt that in view of the critical nature of responsibilities wherein lapses have been seen to cause serious repercussions, the need for an independent body to oversee the profession is a requirement of the day. Major economies of the world have already established such regulatory bodies. The Committee by a majority view recommended that NFRA should be established early. Consultation may, however, be carried out with ICAI with regard to the jurisdiction of NFRA and the ICAI representation on NFRA.

Our humble and fervent appeal to the Government is again reiterated that please have consultation with us and our representation be heard.

Pointer 2

Sub-(2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—

- (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
- (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

Analysis

On sub-clauses (a), (b) & (c) as mentioned above, our response would be that NACAAS is already engaged and doing the above functions. Besides, ICAI in standing tall, has set up various committees (such as FRRB, PRB, Internal Audit Standards Board, Valuation Standards Board etc.) which are not existent in Government's regulatory frame work. There are enough number of mechanisms, checks and balances that are currently available with the ICAI and MCA is well aware.

Further in sub-clause (c), the words highlighted as above are ...oversee the quality of the service of the professions associated with ensuring compliance with such standards,.... It is not clear as to the intention of using such phrases used in the section. The Chartered Accountancy profession is at a higher pedestal and under Section 28 (B) of the Chartered Accountants Act, 1949, the quality review board is tasked with the quality of review of the services provided by the members of the Institute including audit services. The ICAI is a body under an enactment of Parliament since 1949 entrusted with the task of ensuring compliance of accounting and auditing standards.

Who are the other professions associated is not yet clear. Also, it is stated in the said sub-clause that NFRA will oversee such other matters connected with service. Already, in the Companies Act, 2013, Section 144 prescribes certain services not permitted to be undertaken by a CA in practice.

Pointer 3 (on sub-clause 4)

- (4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
- (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:
- (i) Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;
- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
- (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) summoning and enforcing the attendance of persons and examining them on oath;
- (iv) issuing commissions for examination of witnesses or documents;
- (c) where professional or other misconduct is proved, have the power to make order for—
- (A) imposing penalty of—
- (i) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
- (ii) not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
- (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Explanation—For the purposes of this sub-section, the expression “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

(vii) Analysis

- (i) The thought process and ideas never and nowhere hinted at the constitution of National Financial Reporting Authority (NFRA). It was a surprise and sudden move and even the Hon’ble Parliamentary Standing Committee on Finance in its reports had earlier expressed its concern to the multiplicity of existing regulators in the financial markets and corporate affairs.
- (i) Again, the issue, not a panacea, is that no other institute or body would initiate proceedings under the Companies Act, 2013 once NFRA initiates the proceedings, will be fraught with jurisdictional or constitutional or legal problems as each and

³ Substituted by the Companies (Amendment) Act 2017

every other institute or body are set up under an enactment of Parliament and, therefore, supremacy over the other and each and every other will raise points and counter points. Rather it would be prudent to allow ICAI to continue to endeavour in Regulation.

- (ii) Another factor is that the NFRA would be doing rather duplicating the same powers as are currently under the ICAI Act, 1949 and its disciplinary mechanism for which we are requesting the Government to strengthen us with more powers as are envisaged in the section. This would be a panacea instead of NFRA duplicating and doing the role and responsibilities of ICAI. Also there are companies which would still not come under the purview of the Companies Act, 2013 and who would be monitoring the same is still a larger and big scale question, as members of the profession are rendering services in various capacities in various other companies which may or may not come the jurisdiction of NFRA.
- (iii) Similarly under this sub-section “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949. It needs examination since NFRA will be squarely and wholly duplicating and multiplying its skill sets and powers with the jurisdiction of Chartered Accountants Act, 1949 rather under the Companies Act, 1949. This requires brainstorming consultative process, before the Government constitutes NFRA.

(viii) Proposal in G- 20 meet in 2010

In G- 20 meet in 2010, it was proposed that Standard Setting and oversight would not be under same umbrella. The constitution of NFRA Board under the Act was proposed with the objective of not having Standard Setting and Regulation under the same set up.

However, a super body has been introduced with the same set up as of ICAI (which is a statutory body created under an Act of Parliament), duplicating the entire process.

Decision of Union Cabinet on Establishment of National Financial Reporting Authority (NFRA)

(a) Jurisdiction of NFRA

The Union Cabinet at its meeting held on 1st March, 2018 has decided for Establishment of National Financial Reporting Authority and in its Press Release it has been mentioned that “the jurisdiction of NFRA for investigation of Chartered Accountants and their firms under section 132 of the Act would extend to listed companies and large unlisted public companies, the thresholds for which shall be prescribed in the Rules.

The Central Government can also refer such other entities for investigation where public interest would be involved.”

As on 31st January, 2018, Out of the 1,143,292 active companies limited by shares; 1,072,257 were Private and 71,035 were Public companies, segregated into 7,247 Listed and 63,788 Unlisted Companies.

(b) Role of ICAI as per Press Release

It has been mentioned that the inherent regulatory role of ICAI as provided for in the Chartered Accountants Act, 1949 shall continue in respect of its members in general and specifically with respect to audits pertaining to private limited companies, and public unlisted companies below the threshold limit to be notified in the rules.

This is to mention here that Section 132 (4) provides that no other institute or body shall initiate or continue in such matters of misconduct where National Financial Reporting Authority has initiated an investigation under this Section.

(c) Role of Quality Review Board as per Press Release

The Quality Review Board (QRB) will also continue quality audit in respect of private limited companies, public unlisted companies below prescribed threshold and also with respect to audit of those companies that may be delegated to QRB by NFRA. Further, ICAI shall continue to play its advisory role with respect to accounting and auditing standards and policies by making its recommendations to NFRA.

(D) Background for Constitution of NFRA as per Press Release

The need for establishing NFRA has arisen on account of the need felt across various jurisdictions in the world, in the wake of accounting scams, to establish independent regulators, independent from those it regulates, for enforcement of auditing standards and ensuring the quality of audits to strengthen the independence of audit firms, quality of audits and, therefore, enhance investor and public confidence in financial disclosures of companies.

Suggestions for Amendments to Companies Act, 2013 and Chartered Accountants Act, 1949, consequent to the decision of the Union Cabinet to set up NFRA**(a) Transitory Provision:**

A transitory provision similar to section 21(D) of Chartered Accountants Act may be inserted in the Companies Act providing that prior to the implementation of the Section 132 of the Companies Act, 2013, in all cases where complaint/information has been received, inquiry is commenced or notice is issued, the Disciplinary authority under the Chartered Accountants Act will continue the inquiry and pass final orders notwithstanding the implementation of Section 132 of the Companies Act, 2013. This is specifically needed to harmonise the provisions of section 132 (4) (a) which provides as under:

“Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section.”

(b) Enabling power under Chartered Accountants Act to notify the NFRA orders:

Section 20 (2) of the Chartered Accountants Act, 1949 empowers the Council to remove from the Register the name of any member in respect of whom an order has been passed under the Chartered Accountants Act. NFRA is constituted under the Companies Act and is empowered to debar the member or the firm from practice as the member of the Institute. *A consequential amendment is required under the Chartered Accountants Act empowering the Institute to implement the orders of NFRA under the Companies Act 2013 whereas section 21 of Chartered Accountants Act empowers to implement orders of Board of Discipline and Disciplinary Committee under Chartered Accountants Act, 1949.*

(c) Notification of order debarring a Chartered Accountant from practice:

Section 2(17) of the Companies Act, 2013 defines a Chartered Accountant as under: *“Chartered Accountant” means a Chartered Accountant as defined in clause(b) of Sub Section (1) of Section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub section (1) of Section 6 of that Act.*

Section 132(4)(c) (B) of Companies Act 2013 provides that: *“debarring the member or firm from engaging himself or itself from practice as member of the Institute of Chartered Accountants of India referred to in clause (e) of subsection (1) of section (2) of the Chartered Accountants Act, 1949 for a minimum period of six months or such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.”*

Section 20(2) of the Chartered Accountants Act 1949, provides as under: “The Council shall remove from the Register the name of any member in respect of whom an order has been passed under this Act removing him from membership of the Institute”

From the above provisions, it is clear that the Chartered Accountants Act, 1949 or Companies Act, 2013, needs to be amended to give effect to provisions of Section 132 of the Companies Act, 2013 which provides for debarring a member from practice whereas Chartered Accountants Act provides for removal from the Register of members.

(d) **Amendment in Section 132 (4) (c) (B) to enable ICAI to take action against Firm of Chartered Accountants:**

Chartered Accountants Act does not empower ICAI for taking punitive action against a Firm of Chartered Accountants.

An appropriate amendment to be made in Section 21 of the Chartered Accountants Act, to enable the Institute to initiate action either suo moto or on a reference made to it by Central Government or by any other Government agency in any matter of professional or other misconduct committed by any member or firm of Chartered Accountants except as provided in Section 132 of the Companies Act, 2013 and Rules framed thereunder.

Provided all cases received and registered in the Disciplinary Directorate of ICAI as on the date of the implementation of Section 132 of the Companies Act, 2013 will be dealt as per the disciplinary authority under the Chartered Accountants Act.

(Explanation: ‘Firm’ shall have the same meaning as assigned to it in Section 4 of the Indian Partnership Act, 1932 and includes LLPs as defined in Clause (n) of Sub Section (1) of Section (2) of LLP Act, 2008 and the sole proprietorship registered with the Institute.)

(e) **Register of Firms:**

The current provisions of Chartered Accountants Act, 1949 do not provide for taking punitive action against a firm of Chartered Accountants and therefore there is no requirement as such of maintaining the Register of Firms. In view of Section 132 envisaging taking action against firms and to give effect to the orders passed under section 132 of the Companies Act 2013 by the ICAI, there is, therefore, a need to amend the Chartered Accountants Act to empower it to maintain the Register of Firms to enable it to implement the orders passed under Section 132 of the Companies Act 2013.

Writ Petitions against Constitution of NFRA

In October, 2018, two writ petitions have been filed in Madras High Court and Delhi High Court challenging the constitutional validity of Section 132 of the Companies Act, 2013. In both the writ petitions, ICAI has been impleaded as one of the Respondents.

For the Writ Petition filed in Delhi High Court, while admitting the petition, the Hon’ble High Court passed the order that in the meanwhile no disciplinary action against the members of the petitioner Association and Respondent No.3 (the Institute) shall be initiated by the National Financial Reporting Authority (NFRA) by virtue of powers conferred upon it under section 132(2) and 132(4) of the Companies Act, 2013’.

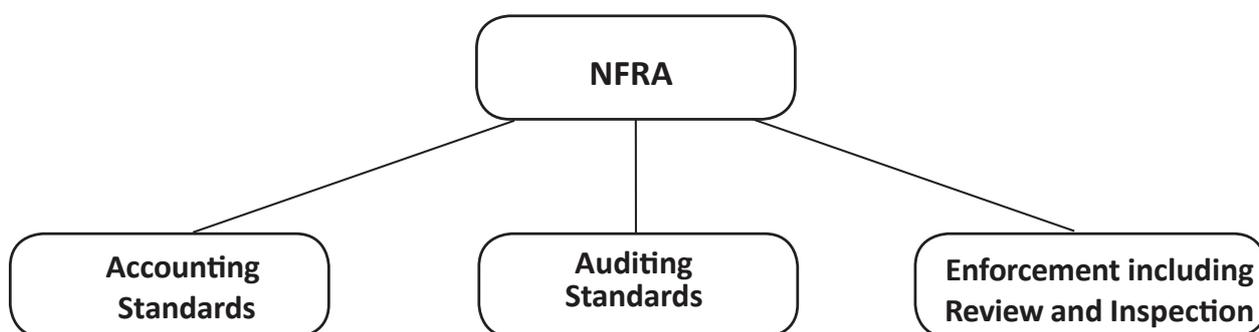
The Case is subjudice.

Section 132 of Companies Act, 2013

Section 132 of the Act provides for the creation of National Financial Reporting Authority for matters relating to accounting and auditing standards, monitoring and oversee the quality of service of the professions under the Act. A copy of Text Section 132 of the Companies Act is enclosed as **Annexure G.1**.

Key functions of NFRA as envisaged by the Act include:

- i. Recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors.
- ii. Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed.
- iii. Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed.
- iv. Have the power to investigate, either suo moto or on a reference made to it by the Central Government, for specified class of bodies corporate or persons, into the matters of professional or other misconduct committed by any member or firm of Chartered accountants.

**Fig.6.1: Structure of NFRA****Regarding Rules for NFRA as notified as on 13th November, 2018**

- A. Draft Rules issued by MCA on NFRA for public comments in October, 2013

The Ministry of Corporate Affairs had issued Draft Rules for NFRA in October 2013 for public comments. A copy of the Draft Rules is enclosed as **Annexure G.2**.

ICAI had submitted suggestions on the Draft Rules on NFRA. A copy of the Suggestions submitted is enclosed as **Annexure G.3**.

The suggestions were prepared on the basis of Special meeting of Council held in October, 2013.

- B. **Draft Rules regarding enforcement provided by MCA in December 2016**

In December 2016, MCA provided draft rules regarding enforcement and sought inputs on the procedure to be followed while dealing with complaint /information cases under NFRA Rules. Accordingly, necessary inputs were provided. A copy of the inputs made is enclosed as **Annexure G.4**. The MCA wanted to keep it confidential.

- C. **Draft Rules regarding enforcement provided by MCA in December 2016**

In June 2018, another set of Draft Rules of National Financial Regulatory Authority were provided to ICAI vide letter dated June 5, 2018 of MCA for comments. The major Concerns of ICAI with reference to the Draft NFRA Rules, June 2018 were the following:

- i. Registration of Auditors with NFRA
- ii. Process related to Registration and Cancellation of Registration of Auditors
- iii. Eligibility Criteria to become the auditor over and above Section 141 of the Companies Act 2013 including Fit and Proper criteria

- iv. Co-operation with National and International organisations and Regulators
- v. No collaboration with Quality Review Board
- vi. Direction to ICAI for recommending accounting and auditing standards
- vii. Filing of various reports/ returns to NFRA
- viii. Intimation to NFRA about appointment as an auditor in a company
- ix. Reporting requirement from the auditor in case of non-compliance of accounting standards
- x. Prescription by NFRA of the standards on audit quality including indicators etc.
- xi. Taking help from outside experts
- xii. Deposition of 50% amount before going into appeal
- xiii. Penalties
- xiv. Code of Ethics by NFRA

D. NFRA Rules as notified by MCA on 13th November 2018

On 13th November 2018, the Central Government notified NFRA Rules, 2018. Further while going through the NFRA Rules 2018 as issued by MCA, it was found that the concerns have been addressed and the Rules pertaining to the above are not required.

The Status of Major Concerns is provided below:

S. No	Draft NFRA Rules June 2018	NFRA Rules November 2018
1.	Registration of Auditors with NFRA	No Registration required
2.	Process related to Registration and Cancellation of Registration of Auditors	Not required
3.	Eligibility Criteria to become the auditor over and above Section 141 of the Companies Act 2013 including Fit and Proper criteria	Not required
4.	Co-operation with National and International organisations and Regulators	Only with International Forum of Independent Audit Regulators
5.	No collaboration with Quality Review Board	Will work in tandem with QRB
6.	Direction to ICAI for recommending accounting and auditing standards	Withdrawn, cannot direct ICAI
7.	Filing of various reports/ returns to NFRA	Only an Annual Report is to be filed, various other filing and reporting requirements have been withdrawn
8.	Intimation to NFRA about appointment as an auditor in a company	Not required only company has to intimate
9.	Reporting requirement by the auditor in case of non-compliance of accounting standards	Withdrawn, reporting only in case of auditing Standards non-compliance
10.	Prescription by NFRA of the standards on audit quality including indicators etc	No Prescription by NFRA
11.	Taking help from outside experts	Can take help from experts
12.	Deposition of 50% amount before going into appeal	Brought down to 10% from 50 %
13.	Penalty and Punishment	CA Act 1949 provides for harsher penalties and punishment
14.	Code of Ethics by NFRA	No separate Code of Ethics by NFRA

The Concerns and Suggestions on the NFRA Rules, 2018 are under consideration of the Council and the same will be submitted to MCA after approval of the Council.

- (ix) ICAI reiterated its suggestions submitted to Parliamentary Standing Committee on Finance on 31st May 2016 which is placed as **Annexure G.5**.

Fig.6.2: ICAI Representations on National Financial Reporting Authority on Autonomy

S. No	Date	Particulars
1.	12.10.2018	Letter submitted to MCA wherein it has been mentioned that the Council of the Institute had considered the matter of constitution of National Financial Reporting Authority under section 132 of the Companies Act, 2013 and was of the prima facie opinion that it is unconstitutional and ultra-vires of the provisions of the Chartered Accountants Act, 1949 and therefore decided to constitute a group of its members to further examine the matter and larger stakeholder consultations.
2.	30.09.2018	Letter to Secretary MCA mentioning that the Draft Rules should be prepared in consultation with ICAI.
3.	30.07.2018	Appeal to Hon'ble Prime Minister of India requesting to consider non notification of NFRA.
4.	18.07.2018	Made presentation on the Concerns in Draft NFRA Rules 2018 to Secretary MCA
5.	05.07.2018	ICAI Suggestions on the Draft Rules, 2018 were submitted to the Ministry of Corporate Affairs.
6.	18.06.2018	Letter to Secretary MCA informing that the Draft NFRA Rules, 2018 overreach beyond what is contained in the substantive provisions of the Companies Act 2013
7.	08.05.2018	ICAI Suggestions on Draft NFRA Rules 2013 submitted to MCA
8.	17.03.2018	Request letter has been sent to Principal Secretary to Prime Minister of India seeking appointment of Hon'ble Prime Minister of India to discuss Cabinet decision dated 1st March, 2018.
9.	16.03.2018	ICAI concerns regarding decision of Union Cabinet regarding NFRA have been submitted to Hon'ble Finance and Corporate Affairs Minister Shri Arun Jaitley
10.	15.03.2018	ICAI concerns regarding decision of Union Cabinet regarding NFRA have been submitted to Secretary MCA
11.	18.05.2017	Issues in the Companies Act 2013 and Rules thereunder – Suggestions for modifications, submitted to MCA
12.	16.09.2016	Replies to the points raised by the members of the Hon'ble Parliamentary Standing Committee on Finance at its 2nd meeting on 30th August, 2016 were submitted to the Hon'ble Committee
13.	30.08.2016	Presentation made by ICAI to Hon'ble Parliamentary Standing Committee on Finance at its 2nd Oral Hearing
14.	09.08.2016	ICAI Concerns and Suggestions regarding constitution of National Financial Reporting Authority (Section 132 of the Companies Act, 2013) submitted to Shri Veerappa Moily
15.	05.07.2016	Replies to the points raised by the members of the Hon'ble Parliamentary Standing Committee on Finance submitted to the Hon'ble Committee
16.	10.06.2016	ICAI suggestions on the Issues and Concerns on the Companies (Amendment) Bill 2016 and the Companies Act, 2013 as submitted to the Hon'ble Parliamentary Standing Committee on Finance were submitted to MCA
17.	03.06.2016	ICAI suggestions on the Issues and Concerns on the Companies (Amendment) Bill 2016 and the Companies Act, 2013 presented Orally and submitted to the Hon'ble Parliamentary Standing Committee on Finance
18.	31.05.2016	ICAI suggestions on the Issues and concerns in the Companies Act, 2013 and Rules thereon as submitted to the Hon'ble Parliamentary Standing Committee on Finance
19.	11.02.2016	ICAI Suggestions on the Report of the Companies Law Committee submitted to MCA through online Portal

S. No	Date	Particulars
20.	28.11.2015	ICAI Recommendations on the Stakeholders suggestions on Chapter IX, X and Other Suggestion for consideration of Companies Law Committee submitted to MCA
21.	18.08.2015	ICAI Concerns on constitution of NFRA submitted to Joint Secretary MCA
22.	31.03.2015	ICAI Concerns on constitution of NFRA submitted to Chairman Standing Committee on Finance Shri Veerappa Moily
23.	16.04.2015	Major concerns of ICAI related to Constitution of National Financial Reporting Authority (section 132) and Harsh Penalties on Auditors (Section 147) submitted to MCA
24.	07.04.2015	Representation on Ease of doing business in India – Changes required in the Companies Act, 2013 submitted to Hon'ble Minister of Finance, Corporate Affairs
25.	11.03.2015	Representation on Issues in the Companies Act 2013 and Rules thereunder - Suggestions for Modifications submitted to MCA
26.	05.08.2014	Issues in the Companies Act 2013 and Rules discussed with JS MCA
27.	01.07.2014	Representation on Issues in the Companies Act 2013 and Rules thereunder - Suggestions for Modifications Submitted to MCA
28.	25.02.2014	Views on Companies Bill 2012 sent to Ministers
29.	27.01.2014	Major Issues and Concerns in the Companies Act 2013 submitted to MCA the Hon'ble Prime Minister of India
30.	03.12.2013	Major Issues in the Draft Rules under the Companies Act 2013 discussed with Additional Secretary MCA
31.	18.11.2013	ICAI Suggestions on Draft Rules (3rd Phase) under The Companies Act, 2013 submitted to MCA
32.	19.02.2013	PPT on Companies Bill 2012 presented to the Hon'ble Minister for Corporate Affairs
33.	05.07.2012	Views/Suggestions on the Companies Bill, 2011 submitted to MCA
34.	23.02.2012	Views/Suggestions and PPT sent by President ICAI to Parliamentary Standing Committee on Companies Bill 2011
35.	November, 2010	A detailed PPT on the Report of Parliamentary Standing Committee on Finance on Companies Bill 2009 presented to MCA
36.	28.10.2010	PPT presented before MCA on the Report of Parliamentary Standing Committee on Finance on Companies Bill 2009
37.	28.10.2010	Further Views/ Suggestions sent to MCA on the Report of the Parliamentary Standing Committee on Finance on Companies Bill, 2009
38.	27.10.2010	PPT presented before MCA on the Report of Parliamentary Standing Committee on Finance on Companies Bill 2009
39.	27.10.2010	Views/Suggestions on the Report of the Parliamentary Standing Committee on Finance on Companies Bill, 2009 sent to MCA
40.	24.05.2010	Answers to the Questions raised by the Parliamentary Standing Committee on Finance on Companies Bill, 2009 on 24.05.2010
41.	24.05.2010	PPT (Extract of then Clause 118 relating to NACAAS provisions) presented by way of Oral Hearing to the Parliamentary Standing Committee on Finance on Companies Bill, 2009
42.	31.03.2010	Suggestions on Companies Bill 2009 (Extract of the Clause 118 relating to NACAAS provisions) submitted to MCA

Chapter 7

The Way Forward

Regulating the Accounting Profession—International Scenario

- (i) It is said that a sound global financial architecture depends on an independent accounting profession supported by the highest professional standards, an effective regulatory framework, and strong corporate governance. ICAI has always remained committed to continued enhancement of the relevance of the accounting profession. This goes to increasing the effectiveness and value of the role of professional accountants to fulfil legitimate expectations and demands in enhanced business reporting and sustainable value creation. The regulatory and Standard-setting framework internationally has been under constant scrutiny for enhancing transparency and strengthening the existing regulatory and standard-setting mechanisms to avoid these recurrences in the future. The regulatory framework globally and currently is undergoing transition all across with emphasis rightly shifting to improvise on the regulatory system. It is imperative to gain knowledge of the scenario world over in terms of regulation of the accountancy profession for reviewing our Indian scenario.

Accounting Profession –At a Global Radar

- (ii) It is true to state that accounting profession globally is facing the heat of distrust among the external stakeholders and a time has come when the accounting profession has to reinforce the trust and credibility in order to remain relevant. The series of frauds and financial scandals have paved way to increase in the distrust.
- (iii) It is important to understand that quality, accuracy and reliability of reporting is one of the prime importance of accounting profession and these factors collectively are responsible for creating a atmosphere of trust on the external stakeholders relying on the financial information on the premise of which many important decisions are based.
- (iv) The Future of Audit does not depend upon the development of the independent regulatory body, but depends upon the quality of audit. It is important that the Rules and Regulations should try to improve upon the system of audit and the independence of the auditors rather than strengthening the penalty laws. Technology has brought a revolutionary change in the expectations from the Accountants and Auditors and in order that the accountancy profession remains relevant, the accountancy profession needs to adapt to the change and gear up with the changing needs of time.
- (v) The global platform picture is also undergoing a radical shift with recent launch of Reviews in the UK accountancy sector with an objective to demonstrate an open minded approach to questions about the purpose of audit and its social usefulness. The post crisis reconstruction have lead to studies in the UK Accountancy sector that has reinforced the trust on the accuracy and reliability of corporate reporting which is a lifeblood of financial markets, but has also put criticisms on the financial regulator. There are serious concerns which have arisen on the issue of conflict of

interest and auditor independence . Questions around competition, resilience, conflict of interest, regulatory weakness and the nature of audit has contributed to crisis of trust in the audit industry.

- (vi) *This has been a matter of regular debate amongst various other Indian regulators as to whether the accountancy profession should move to external regulation like the financial reporting councils/ PCAOB operating elsewhere. Given the track record of ICAI and the fact that such models of external regulation i.e. de-linking of professional membership, licensing and disciplinary amongst different bodies when put in place in other developed markets have failed to deliver the desired results; whereas the ICAI system of regulation with system of twenty per cent given governmental effective participation, where decisions are on consensus in almost all issues and policy matters, has been time tested and has evolved through the constant and consistent evolution in tandem with development in the Indian market which have its unique aspiration and expectation from accountancy world. The emerging paradigms globally, rally the point of more transparency, autonomy and greater involvement of the regulators in the standard-setting process and regulation of the profession.*
- (vii) What started as a knee jerk reaction to spate of Financial Crises in other parts of world and particularly in the UK economy and US economy, is at best a good case study when examined in the Indian Context. The ICAI has attached paramount significance to the professional and ethical conduct of its members and it had suo motu instituted a Peer Review Board (PRB) and a Financial Report Review Board (FRRB) within ICAI to improve and strengthen the quality of attest functions for the members of ICAI and these two organs are in existence since 2002. These two organs coupled with ICAI's disciplinary system and an independent Quality Review Board, constituted by Government of India, go beyond the existing work profile of a PCAOB prototype.
- (viii) In each of the countries depending on the legislative framework and the size of the economy, the accountancy profession has evolved and there is no best fit approach of regulation or a model structure which can be applied across all the jurisdictions. Given that scenario, it is questionable to implement overseas oversight models on lines of NFRA in India as the ICAI has been associated with the evolution of Indian Economy since last seven decades and this growth has been a symbiotic relation in tandem with the evolution of Indian Economy. To highlight few of the glaring elements of a rather different model of public regulation.
1. Many countries Accounting bodies do not have a statutory status.
 2. Often quoted example of Oversight body-PCAOB setup early 2002 post SOX Act (Enron/ Arthur Anderson)
 - (a) PCAOB is a body part of Capital Market Regulator.
 - (b) Security Exchange Commission exercises oversight on PCAOB.
 3. Generally, multiple accounting body members are entitled to practice accounting in those countries as they did not have a focused statutory body like ICAI and hence need for a unified regulator.
 4. The Audit coverage is different in different jurisdictions; many countries non public interest entities require only accountant report.

The Indian Model of disciplinary mechanism has developed sui generis and it is important to strengthen the existing framework of Disciplinary and Quality Review Board to get the most optimal results. In the mature economy like India, experimentation with models replicated from overseas may also be counterproductive as in the current proposed model of NFRA as reasoned above.

- (ix) The ICAI also invites attention to the 2006 amendments to the Chartered Accountants Act 1949 which have drawn a part of the implementation regime arising out of the report of the Naresh Chandra Committee (A Committee Constituted by Ministry of Finance and Company Affairs) on Corporate Audit and Governance as submitted to Govt. of India in November 2002 and another

Report of the Committee on Regulation of Private Companies and Partnership submitted to Ministry of Finance, Govt. of India in July, 2003 by same Committee.

- (x) Naresh Chandra Committee, in 2002, also deliberated long and hard on the issue of whether it was necessary to establish a new, independent Public Oversight Board (POB) for supervising the work of auditors — such as the one proposed in the SOX Act. The Committee had felt that there is no need at this point of time to set up yet another new regulatory oversight body. However, the Committee felt that there is a need to establish an efficient and professional body which can be entrusted to provide transparent and expeditious auditing quality oversight which in form of Quality Review Board is already in place. With these considerations in mind, the Committee has recommended the setting up of independent Quality Review Board.
- (xi) While causing amendment to the Chartered Accountants Act in 2006; the Policy makers have been conscious to strengthen the profession by inculcating development in terms of total revamping of disciplinary system, Quality Review Board. ICAI iterates that creation of another oversight body like NFRA on model of PCAOB is also not called for as the Indian Profession through its Existing Governance Mechanism in place fully takes care of the autonomy to the process of Quality Control & Disciplinary Functions.
- (xii) In the Council of the Institute, twenty per cent of the Council strength is nominated by the Government of India. Unlike other countries which are not creation of the relevant statutes; the profession in India has an inherent element of regulatory strength attached to it. There is active participation of Govt nominee and without him quorum is not counted, the Appellate authority is chaired by Govt nominee, ARB majority and chair is Govt nominee, there are govt nominees in almost all committees of ICAI, Chair of ICAI AC is a Govt nominee etc. ICAI has been functioning with fair amount of Govt involvement always and none of the Govt nominees have ever expressed any concern on functioning. The Disciplinary Directorate Head is appointed by Council and is not an executive position. It enhances independence. Therefore, separation of certain function as stated above is unfounded and is not borne out of reality. The existing oversight structure is what has been considered appropriate by policy makers as of now. Even recently few months back the parliamentary standing committee on finance, which look at the amendment in the Companies Act 2013 mentioned:-

Quote

“few months back had interalia recommended that there be no overlapping regulators”-

Unquote

- (xiii) What is of importance is that existing mechanisms are functioning reasonably well and are time tested and have withstood efflux of time.
- (xiv) Further, Section 30 C of CA Act, 1949 gives power to Central Government to issue directions in the event of non-compliance by the Council of any of the provision of this Act which aspect include giving of general or special directions as it considers necessary. Till so far, there has been no occasion giving rise to invocation of said provision. Further, Section 30A gives power to Central Government to direct regulations to be made or to make or amend regulations.
- (xv) It can be concluded that message is required to be sent across the various interest groups and public at large stating the role of ICAI in regulating the accounting profession in India and anchoring the overall economic development by its functional contribution as a regulator, standard setter and finally as a Partner in Nation Building. To conclude, we highlight the following:
- ICAI is a creation of the Parliament of India.
 - With seventy years of sagacious existence, it has been holding the nerve of the economic system by providing sound framework of governance reporting practices and disciplining its members for espousing the interest of the stake holders.

- Being a prudential regulator an instrument of the Government, it has been actively associated with the various reformative steps initiated by the Departments of Government, State Governments, State-run municipal bodies, regulators and alike.
 - The Government from time to time has appointed different committees which have in one or another way have gone into working of the Institute, the important ones being:
 1. Naresh Chandra Committee appointed by Department of Corporate Affairs (DCA) under the Ministry of Finance and Corporate Affairs on corporate governance issues in 2002 after which came the provisions relating to Quality Review Board.
 2. JJ Irani Committee constituted by Government of India on Company Law in 2004.
 3. Joint Committee on Stock Market Scam and Matters relating thereto constituted by in 2002.
 4. High Level Committee constituted by Ministry of Corporate Affairs in 2017.
- (xvi) All the above from time and again have visited the working of the Institute and while expressing their satisfaction over the current state of affairs and the various laudable initiatives, these committees have upheld the work programme of ICAI and the impeccability integrity and the autonomy of the system at work has been held in highest esteem.
- (xvii) Further, it can be noted that ICAI Council, drawn from a respectable and eminent chartered accountants and with twenty per cent Government representation, is an embodiment of professionalism, and is fully competent to carry out structural changes in the alignment of the profession in the new trade order—a cause which it has been most diligently and effectively espousing for last about seven decades.
- (xviii) Insofar as Section 132 of Companies Act 2013 is concerned, Companies Act punishment can have effect only to the extent that a person cannot do work for a company; a punishment under Companies Act, cannot prevent a person from doing work for non-corporates, Mutual fund (trust)-huge public interest, doing tax audit, rendering consultancy services. The point is the whole law is badly thought through and it speaks poorly about the negative attitude/ hurriedness to bring some provisions with malafide ulterior motives.
- (xix) ICAI further reiterates the contents of its letter(s) dated 14th March, 2018 which is reproduced herein verbatim and also letter dated 8th May, 2018 (**Annexure I**):

14th March 2018

Shri Injeti Srinivas, I.A.S.

Secretary, Ministry of Corporate Affairs Government of India

Shastri Bhawan Rajendra Prasad Road New Delhi – 110 001

Dear Sir,

Sub: Press Release dated 1st March 2018 on the decision of Union Cabinet regarding NFRA

This has reference to the Press Release dated 1st March 2018 about the approval of Union Cabinet on formation of National Financial Reporting Authority (NFRA). It has been mentioned that the decision aims at establishment of NFRA which is one of the key changes brought in by the Companies Act, 2013.

On the need of NFRA it has been mentioned in the communication that “The need for establishing NFRA has arisen on account of the need felt across various jurisdictions in the world, in the wake of accounting scams, to establish independent regulators, independent from those it regulates, for enforcement of auditing standards and ensuring the quality of audits to strengthen the independence of audit firms, quality of audits and, therefore, enhance investor and public confidence in financial disclosures of companies.”

(emphasis supplied)

Enhancing investors and public confidence in financial disclosures of companies, no doubt, is of paramount importance for the overall economic development of any country and needs to be nurtured and established with sound corporate governance practices, business ethics, credible regulatory environment and transparent policies. The ICAI has always been at the forefront and the standards formulated by ICAI on auditing and accounting are based on International Standards on Audit (formulated by IAASB of IFAC) and International Financial Reporting Standards (formulated by IASB) with no significant differences. ICAI has never diluted its position on accounting and auditing standards.

The establishment of NFRA will create another layer of oversight body, and is not in line with the ultimate objective of Ease of Doing business. The decision to establish NFRA because of “need felt across various jurisdictions in the world, in the wake of accounting scams, to establish independent regulators” also has its own limitations as world over number of corporate and accounting scams continue to take place especially in United States of America (USA) where even after formation of PCAOB on the basis of Sarbanes Oxley Act 2002 banking sector mortgage scams occurred in 2008-2009. Proposed NFRA is broadly modelled on the Public Companies Accounting Oversight Board (PCAOB) of the USA which is a voluntary Organisation and also overseen by capital market regular U.S. Securities and Exchange Commission (SEC). Also, there are high costs involved in running such bodies like US PCAOB or UK FRC. Summary of Financials is given below:

	US PCAOB (2016 AR)		UK FRC (Mar 2017 AR)	
	US\$	INR Equiv (1US\$ = INR 65)	GBP	INR Equiv (1GBP=INR 90)
Total Revenue	254.7 Mn	1,655 crore	31.75 Mn	286 crore
Total Expenses	249.7 Mn	1,623 crore	29.27 Mn	263 crore
Staff Strength	876 (Budget 2017)		158	

It is also observed that in most countries, the oversight bodies had nominees who were past practitioners & dominated by few firms and Government nomination process requires improvement. The Institute of Chartered Accountants of India (ICAI) has this unique model of governance where democratically elected persons of eminence in the profession perform the regulatory function, with active participation of Government nominees, who are not from accounting fields hence bringing diversity and desired balance in the quasi judicial process.

In the above background we would like to place the following for your kind perusal:

1. **ICAI is an Autonomous Constitutional body, set up under Specific Law**

The ICAI, an autonomous regulator of accounting and auditing profession, since its inception in 1949, has been in the forefront of good governance practices by propagating sound and resilient accounting and auditing practices and its role as Knowledge based National standard setter, and as an educator has been its hallmark of its sagacious existence of 69 years. Members of the ICAI are contributing to public interest and national growth with the sole motto of Independence, Integrity and Excellence.

The ubiquitous status granted to ICAI is through the Chartered Accountants Act, 1949 that has been enacted even before the Country adopted its Constitution. For every legislation, its scope or jurisdiction to which it shall be limited is defined in its preamble or scope. For example, the scope of Service tax law was extended to whole of India except the state of Jammu and Kashmir (J&K). Therefore, demand of Service tax in J&K was unconstitutional and ultra-vires the Act. Similarly, The Chartered Accountant Act, 1949 is a specific law enacted under Constitution of India for Chartered Accountants having preamble “An Act to make provision for the regulation of the profession of Chartered Accountants”, whereas the preamble of Companies Act, 2013 reads as “An act to consolidate and amend the law relating to companies”. A plain reading of both the Preambles indicate that the absolute powers to regulate the profession of Chartered Accountants under the Chartered Accountants Act 1949 rest with the Council of the ICAI and not under the Companies

Act or any other Act. The forefathers have thought through well ahead of time and have set up a separate and specific constitutional body for regulating the profession of auditing and accounting, considering that this profession serves companies, non-corporates, taxation authorities interests etc. and it would be unwise to have an accounting body confined to a section.

ICAI as per the Act of Parliament, regulates the profession of Accounting by establishing criteria for person to be a Chartered Accountant and regulate them. The criteria to be a Chartered Accountant is established as demonstration of knowledge and skill through a series of exams and practical training.

All Statutory Regulators like SEBI, RBI, IRDA, PFRDA, IBBI, etc., have on similar lines prescribed criteria (financial and/or experience) for granting licenses or equivalent for entities/ professionals they regulate and it is the concerned Statutory Regulator which enforces discipline over its licences; the disciplinary mechanism is not entrusted to a separate body. But in the case of Section 132 of the Companies Act, the bulk of the enforcement powers in respect of CAs are proposed to be transferred to NFRA.

2. Genesis of Independent Oversight

The whole genesis of independent oversight has been initiated from the G-20 meet in 2010 wherein it was proposed that Standard Setting and oversight would not be under same umbrella. The constitution of NFRA Board under the Act was proposed with the objective of not having Standard Setting and Regulation under the same set up.

In the current ICAI set-up, Standard Setting is done by the Government on the recommendation of the NACAS, Quality control and Monitoring is done by the Quality Review Board (QRB) constituted by the government, and enforcement is done by the ICAI, having due independence in each function and no conflict of interest. However, in the proposed NFRA set-up entire functions of Standard Setting, Monitoring and Enforcement have been proposed to bring under a single body which itself is against the proposal of G-20 meet as stated above.

3. Oversight is part of Inherent ICAI structure

Public oversight is inherent in the ICAI structure since its inception. At present, 8 members of the ICAI Council are nominated by the Government of India, Disciplinary Committee has 2 Government Nominees in each of the Committee; Board of Discipline has 1 Government nominee. In both, the Board of Discipline and Disciplinary Committee decisions are taken on consensual basis and there are hardly any instances in the past where any of the Government Nominee has recorded his / her dissent on the decision of the BoD/DC. Further, various High Courts have also, in almost all the cases, upheld the decisions taken by the Council of the ICAI against the erring members.

In addition, ICAI has self-regulated oversight mechanism in the form of 'Peer Review Board' to regularly access quality of services rendered by members and 'Financial Reporting Review Board' to review compliance with the reporting requirements under various applicable statutes, Accounting Standards and Auditing Standards issued by the ICAI. In both these Boards as well all Standing and Non-standing Committees of the ICAI Government nominees are providing due oversight as Members.

4. Restriction on Jurisdiction of Quality Review Board

It is pertinent to mention here that Quality Review Board (QRB) which has started its operations in the year 2012-13 has 6 Government nominees out of 11 Members and the Chairperson is also a Government Nominee. Hence its independence cannot be questioned. QRB, selected 585 review assignments for review of statutory audits of 443 top listed and other public interest entities representing more than 85% market cap of stocks listed at NSE/BSE which indicates quality oversight. The Press Release dated 1st March 2018 also restricts the jurisdiction of the QRB mentioning that "The Quality Review Board (QRB) will also continue quality audit in respect

of private limited companies, public unlisted companies below prescribed threshold and also with respect to audit of those companies that may be delegated to QRB by NFRA.” As such QRB will not have open jurisdiction over the listed companies until such companies are referred by NFRA to QRB. Such decision to curtail the domain of QRB may also hamper QRB’s membership application of International Forum of Independent Audit Regulators (IFIAR).

While Quality Review Board(QRB) has already been in existence since last 4-5 years through a well-considered policy deposition; bringing in NFRA as well does not seem to serve any public policy objective. It is important to allow QRB to evolve & stabilize. It is the need of the hour to strengthen QRB rather than reinventing a new body like NFRA. From, ICAI end, we have recently resolved to let QRB refer cases directly to BoD/DC, strengthening the functioning of QRB

5. **Stringent provisions in the Chartered Accountants Act, 1949 for professional misconduct by a Chartered Accountant vis-a-vis the Companies Act 2013**

a. **Penalty for Professional misconduct as per The Chartered Accountants Act 1949**

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 may take any one or more of the following actions, namely: -

- i. reprimand the member;
- ii. remove the name of the member from the Register permanently or for such period, as it thinks fit;
- iii. impose such fine as it may think fit, which may extend to rupees five lakhs.

b. **Penalty for Professional misconduct as per The Companies Act 2013**

Section 132 of the Companies Act provides that where professional or other misconduct is proved, Central Government has the power to make order for—

- a. imposing penalty of—
 - i. not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - ii. not less than five lakh rupees, but which may extend to ten times of the fees received, in case of firms;

- b. *debaring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority*

It is clear from the above that the penalties prescribed by the Chartered Accountants Act (decided in 2006) are far more stringent than the penalty prescribed by the Companies Act, 2013. Therefore, instead of penalising the members through Companies Act 2013, the same may be done through the Chartered Accountants Act, 1949, the Parent Act governing the profession.

National Financial Reporting Authority proposed to be established under the Companies Act will have the power to act against a Firm whereas ICAI sought this power in the year 2010 itself and our request is still under consideration of the Government. The system would have been more contemporary in the last 7 years had the required amendments were incorporated in 2010. Frauds cannot be eliminated with the another layer of oversight but early action is a deterrent which we have showcased in Satyam matter where ICAI completed action in 3 years despite various constraints.

We have proactively constituted 2 Benches of Board of Discipline and 3 Benches of Disciplinary Committee to expeditiously clear all pending cases. We have also constituted a 'Shell Companies Review Group' under FRRB of ICAI to specially look into the matters of Shell companies and "Tax Assurance Review Board" to oversee quality of services rendered under Taxation domain. We have always acted proactively to ensure success of the reform process.

*Even in the matter of irregularities concerning Punjab National Bank (PNB), the Disciplinary Directorate of ICAI has suo moto started its investigation as per the Chartered Accountants Act, 1949 and Rules framed thereunder. Various other proactive steps have also been taken which are enumerated in **Annexure A**.*

6. Consequential Amendments Required

On perusal of Section 132 of the Companies Act, 2013 and the related provisions of the Chartered Accountants Act, 1949, we observe that consequential amendments are required to be incorporated in the Chartered Accountants Act, 1949 as well as Companies Act 2013, if the provisions relating to Section 132 have to be notified and operationalised. Some of the Amendments required are contained in Annexure B. These are initial comments based on contradictions noticed in the Chartered Accountants Act vis a vis provisions of NFRA under Section 132 of the Companies Act, 2013.

7. Other sections of Companies Act dealing with Investigation

It is also noted that various other Sections of the Companies Act 2013 also deals with the investigation of Company, viz.:

- a. *Section 210- Investigation into the Affairs of the Company by Central Government.*
- b. *Section 212- Investigation into affairs of company by Serious Fraud Investigation Office.*
- c. *Section 213- Investigation into company's affairs in other cases on the order of NCLT.*

The proviso to Section 132 (4) (a) states "Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section; "Consequently, SFIO for example will not be able to pursue the cases further in view of this proviso nor it would be able to withdraw its investigation in view of absence of any related provision in the Companies Act as of now.

8. Multiplicity of Regulators

Notification of Section 132 of the Companies Act 2013 will also lead to multiplicity of regulators which will cause more delay in the overall processes.

Constitution of multiple bodies will create multiple layers. Multiple regulatory authorities governing the audit profession would hinder the growth of the profession and is also against the constitutional right of a professional. It would create overlapping structures, reduce efficiencies, waste time and drain resources. The need of the hour is to provide more accountability and strengthening the existing system. Consequently, it is reiterated that Section 132 of the Companies Act, 2013 need not be notified as creating yet another Institution will not serve the purpose.

Also, in our view, matters of banking are best regulated by RBI and of capital market by SEBI who are special bodies set up an Act of Parliament, just like ICAI and their regulatory actions cannot be taken over by a separate body constituted as one of the elements of the Companies Act 2013.

9. Framework for Assurance Engagements

Auditors are required to carry out audits of financial statements in accordance with the Standards on Auditing (SAs) issued by ICAI which are harmonised with the International Standards on

*Auditing. We would like to mention that the as per **Framework** for Assurance Engagements “For Assurance engagements relating to historical financial information in particular, such engagements which provide **reasonable assurance are called audits.**” While an audit does not guarantee financial statements’ accuracy, it provides users with a reasonable assurance that an entity’s financial statements give a true and fair view in conformity with the applicable financial reporting framework.*

The users of the audited financial statements also need to appreciate the inherent limitations of an audit. The first limitation of audit is the fact that it is conducted on a test basis since examination of all the transactions of the auditee is neither possible nor practicable. The auditor examines the samples drawn from a population of a class of transactions, analyse its results to form an overall opinion about the entire population of a class of transactions. The second limitation of an audit is the fact that much of the audit evidence is persuasive rather than conclusive in nature.

It is more difficult for the auditor to detect a fraud than an error because fraud usually involves acts designed to conceal it, such as collusion, forgery, deliberate failure to record transactions, or intentional misrepresentations being made to the auditor. Though the Companies Act, sec 143(12) requires reporting on fraud to the Central Government, however it does not require the auditor to carry out a roving investigation to detect fraud. It is important to note that every fraud not detected does not mean that the auditor has not done his engagement properly.

10. **Partner in Nation Building**

The Institute has always contributed in national growth and organized 470 programmes on Income Declaration Scheme 2016. ICAI suomoto introduced the mandatory KYC norms for CAs effective from 1st January, 2017 and also introduced Certificate Course on Anti-Money Laundering. In addition, thousands of our members took the “Clean Money Pledge” and we made presentation before Parliamentary Standing Committee on Benami Transactions (Prohibition) Act.

*ICAI has left no stone unturned for smoother implementation of GST and submitted hundreds of suggestions in 7 stages out of which about 130 suggestions have been accepted by the Government. With the conduct of **3,289 programmes in 2017 on GST**, ICAI ensured that awareness about the GST reached to all the stakeholders including those in the informal sector and we believe that much credit for wider tax base and increased tax revenue is also linked to all these efforts. To support small businessmen and traders, throughout the country 125 GST Sahayata Desks have been operationalized by ICAI.*

We are proactively taking lead to evolve the nascent profession of Insolvency Professionals in India, through the formation of first Insolvency Professional Agency of India i.e. Indian Institute of Insolvency Professionals of ICAI (IIPI). It is significant to note that till date, 60% of total Insolvency professionals in India (888 out of the 1497 nos.) are registered with IIPI. For propagating this new area we have also partnered with World Bank Group (WBG) for conducting joint training programmes, entered into arrangement with the ICAEW for knowledge sharing and launched Learning Management System (LMS) comprising literature on the entire syllabus.

11. **Oversight Mechanism distinct in each Jurisdiction**

The Audit profession Oversight mechanism around the world is distinct in each jurisdiction, indicating that there is no “one size fits all” approach. Each country has adopted an approach based on the state of domestic economy, the maturity of accounting profession, the domestic conditions, laws and requirements. The jurisdictions which have had independent oversight also had their own share of complex problems and regulatory failures and emulating such models could go against our common law tradition where our legal processes have been customized to best suit the ground realities. However, the basic principles of ‘independence’ and ‘public interest’ are of utmost importance to ICAI and the Institute already functions under an Inherent oversight system.

Globally, almost in all countries accounting bodies are Non Profit Organisations (NPOs) who are self-regulated. In these countries, the capital market regulator or a Government sponsored organisation has the oversight function. Our approach should have been to encourage other countries to follow our model of being a statutory body instead of approving the establishment of NFRA.

In view of the above submissions and with due respect to the decision of Union Cabinet, we request that the need is to strengthen the existing mechanism without restoring to establishment of another regulatory level.

Further, we also like to bring to your attention of that severe penalties have already been imposed on auditors of Companies under the Companies Act 2013 and that rotation of auditors is also implemented very recently. Impact of all these changes needs to be analysed and documented before bringing any further change.

We are in the process of detailed analysis of the provisions of Section 132 of the Companies Act 2013 and further views on amendments to be made in the Companies Act 2013 and Chartered Accountants Act, 1949, will be submitted to the Ministry of Corporate Affairs (MCA) for its consideration.

In view of the above, it is requested that:

1. **The decision to notify Section 132 should be reviewed and re-examined as it is not in the interest of the nation as well as profession and there are number of conflicts between the Chartered Accountants Act 1949 and the Companies Act 2013 as well as within the provisions of various Sections of the Companies Act 2013 that needs to be addressed.**
2. **Consequent to the amendments, the draft proposals of the High Level committee set up by the Government to strengthen the ICAI may kindly be quashed.**

We hope that you would favourably consider our concerns outlined above and we would be happy to meet you in person to discuss each and every aspect mentioned above in greater detail. You may appreciate that we have always endeavoured to work with the Government on various initiatives and have consistently worked on addressing all the concerns of the MCA. Thereby, we are aggrieved with the decision to establish the NFRA has been taken without addressing our concerns. We are also aggrieved that the entire exercise of Rule making for NFRA is being done without taking the Institute into confidence. The Institute has selflessly served the nation over the 68 years and looking for suitable opportunity before any final decision on these aspects.

Thanking you,

Yours sincerely,

CA. Naveen N.D. Gupta

Encl: As above

- (xvi) MCA do not have either Peer/Review/Internal Audit Deptt to review the annual financial statements that arrive in their MCA 21 or 2.0 system. What do they have is only provisions enshrining them with powers that they do not exercise, whereas in contrast ICAI has strong, robust mechanism with insufficient powers. ICAI proceedings are **stricter/no escapism mechanism by the erring member** as compared to that of civil court jurisdiction.
- (xvii) While the aim of Accountancy function is to subserve the public interest by promoting an investment climate of trust; it has to be seen that provisions like NFRA would impede the ease of doing business by associating multiple regulations without bringing the intended impact. An already complex business regime will be gagged further and an extrapolation of imported governance model is likely to trigger many a complex scenario which is unfathomable now.



Annexure A

Who's Who of India Speak on Accountancy Profession and Professionals

Union Finance Minister and First Indian RBI Governor Shri Chintaman Dwarakanath Deshmukh: *I need not say that the Government are very much interested in the progress of your Institute. Apart from the fact that the growth of Indian commerce and industry can take place on right lines only if your profession develops simultaneously, the establishment of your Institute with an autonomous status is a development in the professional field, the success of which must be wished for earnestly by all right-thinking persons... The Institute of Chartered Accountants should continue to exercise unceasing vigilance in seeing that its members conform to the traditions and conventions of the profession and that the rules framed by them are observed both in the letter and in the spirit. Yours is the privileged task of making the membership of the Institute a hallmark of distinction in professional circles all over the world...Government are aware of the importance of your profession and have acknowledged it in practical terms whenever possible...I can give you the assurance that in all matters with which your profession is closely associated, the Government will be only too eager to avail of your wisdom and experience...*

(Address, 2nd Annual Meeting of ICAI Council on 11th- 13th August 1951)

First Comptroller and Auditor General of India Shri V. Narhari Rao: *I have a natural sympathy and affinity with the profession of Chartered Accountants and the Institute. I expect, therefore, to be treated as one of you and not as an outsider... You may rest assured that it will be my endeavour to devise ways and means of utilising your profession to assist me in the discharge of my statutory responsibilities. You will no doubt appreciate that the nature and scope of audit under me is somewhat different on account of Constitutional reasons, but it should not be difficult for experienced Chartered Accountants to adjust themselves...In conclusion, may I repeat that Chartered Accountants have a very important role to play in the National Economic of this country especially in the field of Industry and Commerce. An independent and efficient Body of Chartered Accountants is the best insurance against black marketing and tax dodging.*

(Address, 3rd Annual Meeting of ICAI Council on 13th August 1952)

Union Deputy Finance Minister Shri Manilal C. Shah: *...it is always fruitful to remind ourselves of the importance of the accountancy profession and of the part it plays in the economic development of the country...I am very glad to note your assurance that the Members of the profession are fully alive to their responsibilities and duties, to the Government as well as to the public...I had the occasion and privilege to mix with some young friends of the Chartered Accountants profession in Ahmedabad, and I had then stressed this very point to those young friends there;--that your profession is a very, very important profession in the economic set-up of the country, particularly in the economic set-up of the country that we have in our infant democracy. You all know that our ideal—mine as well as yours—is the establishment of a welfare State in India.*

(Address, 11th meeting of ICAI Council on 12th September 1953)

Second Prime Minister of India (the then Union Minister of Commerce and Industry) **Shri Lal Bahadur Shastri:** *Your profession has always been doing a vital and important work in various fields and it was only but proper that with the help of the Government. radical changes were brought about in your organisation and its working since the country became free. I cannot conceive what would happen if there were no accountants and no auditors. Not only the mute shareholders in a private company but the industries and the economy of the country as a whole would suffer without your help and adequate guidance... I am very glad to know that the relations of your Institute with the Government have been continuously cordial Regulation by any profession of its own business is always better and more desirable than regulation by Government.*

(Address, Annual Meeting of ICAI Council on 13th September 1958)

Second President of India (the then Vice-President of India) **Dr. Sarvepalli Radhakrishnan:** *The moment we won our freedom, we tried, and we are trying to consolidate our country. After that, our greatest ambition is to establish socialistic pattern of society and pour social and economic content into the pattern of democracy...We are building these huge dams, hydro-electric projects, fertiliser factories in public sector and they are steadily on the increase. But all these will avail nothing unless we are able to induce confidence in the public that we are able to get adequate returns for the monies we are spending on these huge enterprises. And, therefore your profession has a very vital part to play...In matters relating to the public enterprises which we undertake, our duty should be to see that monies spent are properly spent and that there is no wastage. That is a thing which you have to promote. You will help us in maintaining high standards of public behaviour by your frank and candid accounting and auditing. It is therefore essential that you maintain high standards...you have it in your power to do your best to expose corruption, fraud, leakage and wastage. You must be able to do it.*

(Address, Meeting of Madras Region of ICAI on 5th June 1959)

Union Minister for Commerce and Industry Shri K. C. Reddy: *I am glad to know that cordial relations exist between the Institute and the Department of Company Law administration and hope that they will continue to be so in future as well. It is needless to say that the successful pursuit of the objects for which this Institute was formed requires the continued existence of such a healthy relationship, based on mutual trust, sympathy and cooperation.*

(Address, 12th Annual Meeting of ICAI Council on 14th September 1961)

Union Minister for Industry Shri Nityanand Kanungo: *We are, of course, no strangers. I have the advantage, and privilege, of being closely and formally associated with the affairs of your profession ever since I took over charge of the Department of Company Law Administration, and in that capacity, I am glad to say, that I have made friends not only with some of the eminent representatives of the profession, but also with not a few of the interesting problems facing you... Your reference to the happy relations existing between you and the Department of Company Law Administration is, I hope, no formality. On behalf of Government I can tell you that the Department values this co-operation no less than you and would like to be a partner in laying the foundation of a deep understanding with your Institute. Next year, Shri Kanungo again came to ICAI to inaugurate its Council's 14th Annual Meeting on 14th September 1963 and he repeated his glorified sentiments about the continued association between ICAI and Department of Company Law Administration.*

(Address, 13th Annual Meeting of ICAI Council on 11th September 1962)

Planning Commission Deputy Chairman Shri Ashok Mehta: *You rightly claim that yours is a profession, whose loyalty is commanded by the Charter of the Institute, as it were, by the Court of Peers which ultimately guides, directs and determines your professional Code of Conduct. The predilections and prejudices of those who engage your services must necessarily influence you to a much lesser degree... I think you will have to function in the next decade or so with a certain amount of missionary devotion, with sights raised high, with widening horizons, with greater acceptance of responsibility, with willingness to draw attention to new and changing problems which cannot be easily understood by the general public. In what precise*

manner you will be able to play this role of educator is again for you to decide, but I think you have already begun the process.

(Address, 15th Annual Meeting of the ICAI Council on 17th September 1964)

Union Minister of State for Finance and Planning Shri Bali Ram Bhagat: *Integrity or efficiency alone cannot produce the desired result. A good system of law and order can with dishonest fringe of society, but it cannot create the state of mind which makes on efficient-it depends upon certain attitude of mind and certain social values. It is here a chartered accountant plays an important role. His certificate or report on the accounts is some sort of a proof or assurance against malpractices. Thus, it has great impact on the society... In a developing economy, Chartered Accountants could really act as a friend, philosopher and guide to the managements. Their responsibilities are growing day to day with the progress of industries in our country... In the growing context of industry, the need for maintenance of proper accounts in business houses vis-à-vis the service of a qualified accountant is being felt everywhere in business houses as well as in Government. In framing the national policies for industrial growth and for emulating the plans for future development, your expertise knowledge and experience would be of great assistance to the Government.*

(Address, 16th Annual Meeting of ICAI Council on 20th October 1965)

Vice-President of India (the then Union Law Minister) **Shri Gopal Swarup Pathak:** *I have got very happy memories of my association with the members of your profession. When I was practicing in the courts, there were numerous occasions when I had to work with Chartered Accountants. In company cases when intricate questions of accountancy arose, I had to take the assistance of Chartered Accountants... I am reminded of Article 38 of the Constitution, which reminds us, both the Chartered Accountants and the lawyers, of certain obligations that we owe to our nation. The concept of the Welfare State which we are endeavouring to build up a based upon certain principles of justice — economic, social and political, which principles must inspire all the institutions of the country. Yours is one of those institutions... It is very heartening to find that this Institute is endeavouring to keep pace with the needs and necessities of the modern times...I was glad to find that the way in which the chartered accountancy is developing in the country to-day will enable it to assist the nation in many other respects.*

(Address, 17th Annual Meeting of ICAI Council on 12th September 1966)

Union Minister of State for Industrial Development and Company Affairs Shri K. V. Raghunatha Reddy: *I think that the Accountants' profession is like that of Lawyers who are always described as Officers of the Court. Though a Lawyer is engaged by a private party, he is not considered to be a person who has no duty to any other person except to his client for whom he appears...the role of an Accountant and his duties in relation to the social purpose which he has to fulfil is first, as a servant of the society or you may call him, if you do not like my expression "servant of society", you may call him as "Officer of the Society" and, then, he is an Auditor to any private firm in which his services might have been engaged full time or even as part-time for the purpose of analyzing the accounts and rendering help...Mr. President, you have also referred that you must have a role in public life, if I understand it properly. The accountants are already playing a very important role in the public life as members of the Legislature, members of Parliament and, you may feel proud and it is a matter of pride for everybody that one of the members of the profession is a Minister in a State holding the portfolio of Finance and Education.*

(Address, 18th Annual Meeting of ICAI Council on 16th September 1967)

President of India (the then Union Minister for Industrial Development and Company Affairs) **Shri Fakhruddin Ali Ahmed:** *As the Minister in charge, I have had occasion to deal with some matters concerning your members and profession. I, therefore, welcome this opportunity of coming in closer contact with the experts in the profession and also paying a tribute to the manner in which the Institute has been attempting to build up healthy traditions for the guidance of the profession of accountancy... the profession of accountancy is of great importance in our country which is aiming to diversify our economy through industrialisation...*

(Address, Inauguration of Annexe to ICIA Main Building and 19th Annual Meeting of ICAI Council on 13th September 1968)

Chief Justice of India Shri M. Hidayatullah: *...when accounts certified by a chartered Accountant were presented to the courts, they instinctively felt that everything must be right because the profession of Chartered Accountants had established itself for honesty, integrity and good work.*

(Address, 21st Annual Meeting of ICAI Council on 16th September 1970)

Comptroller & Auditor General of India Shri S. Ranganathan: *More than a couple of decades back I was Secretary of the then undivided Central Board of Revenue and as such had something to do with the formulation of tax policies in regard to both direct and indirect taxes. From then on, and for many years thereafter, and even now, I have been intrigued why private and public enterprises should not, as a rule, have persons possessing knowledge, experience and qualification in tax laws, such as Chartered Accountants to look after all their tax affairs...In framing these draft assessments, you should certainly be given the necessary amount of independence to state the facts correctly and apply the legal provisions objectively. The form and manner of drafting such orders can be settled in consultation with professional bodies like the Institute of Chartered Accountants of India, Institute of Company Secretaries, etc., and you may even get the assistance of the Taxation department concerned.*

(Address, Tax Executive Seminar, New Delhi, 20th November 1971)

Union Law, Justice and Company Affairs Minister Shri H. R. Gokhale: *...if the Chartered Accountants fail to live up to the dignity expected of them, and fail to look beyond the narrow interests of the shareholders and see the public interest in its wider sense, or if they do not help the Government to root out the evils of tax evasion and black money, they will not be worthy of the trust reposed in them by the Society through the various statutory enactments conferring on the Chartered Accountants special powers and responsibilities. In this regard, I am happy to note that the Institute have been very vigilant and has endeavoured to uphold the dignity and high standards of the profession.*

(Address, 24th Annual Meeting of ICAI Council on 14th September 1973)

West Bengal Governor Shri Anthony Lancelot Dias: *Much has been written and said in recent times about the social responsibilities of Chartered Accountants. I have no desire on this occasion to launch into a discussion on this subject. I find that as a professional body your Institute is well aware of its role in both ensuring a high degree of skill among your members and instilling into them the need for observing the highest ethical standards... The Government and others who have an interest in the matter immensely benefit, I am sure, from your suggestions and recommendations flowing from research.*

(Address, Inauguration of EIRC Building of ICAI on 14th April 1977)

Union Finance Minister Shri Hirubhai Mulljibhai Patel: *I am happy to see that public- sector enterprises are keeping their accounts satisfactorily...I am glad to note that the training provided by the Institute is comprehensive and the cost is low. Special efforts should be made by the Institute for bringing to the notice of the college students especially in rural areas, the opportunities available to them in the field of accountancy and finance. I am glad to note that the institute proposes to provide special training facilities to the socially and economically backward sections of the society. The training provided by the Institute should aim at developing an attitude of mind and not merely to teach various techniques. I am glad to note that efforts are being made in association with international institutions to improve accounting and reporting standards and encourage innovative thinking...I would like to congratulate you on the steps taken by the Institute to improve accounting standards.*

(Address, 28th Annual Meeting of ICAI Council on 16th September 1977)

Union Law, Justice and Company Affairs Minister Shri Shiv Shankar: *...all Chartered Accountants have to ensure strict adherence by the private corporate sector of the accounting norms and the prescribed standards. Since audit is compulsory, it is for the Chartered Accountants to ensure that the accounting norms and standards as prescribed are strictly enforced. For this purpose, it is also necessary to strictly enforce a code of professional conduct and discipline amongst Chartered Accountants. I am aware that the Institute attaches great importance to this aspect, and I have seen that the Disciplinary Committee of the*

Institute has in fact taken up a number of cases where members may not have conformed to the strictest norms and codes of conduct as laid down.

(Address, 31st Annual Meeting of ICAI Council on 16th September 1980)

President of India (the then Union Finance Minister) **Shri Pranab Mukherjee:** *The role of an accountant is more important in a developing country than in an industrially developed country. The developing countries, like that of ours, are constantly striving to make their economies self-reliant and in the process try to absorb the latest innovations in science and technology for faster growth...Though the accounting profession has been rendering a useful service to the community in these spheres of activity, I am sure, there are areas for improvement by playing a more positive role and the adoption of more sophisticated management techniques.*

(Address, 10th CAPA Conference, 21st November 1983)

Union Law, Justice and Company Affairs Minister Shri Jagan Nath Kaushal: *It is now realized that the professional accountants have special expertise which is to be harnessed to resolve the financial problems of the business community. They are recognised specialists in a highly technical field and should be willing and eager to do their part in any effort to help the community which requires their skill in the measurement and communication of financial and economic data. Accountants, as organized professionals, have the responsibility to transcend the internal viewpoint of private sector organizations and help them evolve decisions for more efficient utilization of resources and equitable allocation of business income...I am sure, your profession is poised for a meaningful participation in the national endeavour for more production, more employment, more wealth and a just and fair distribution of that wealth amongst the haves and have-nots.*

(Address, 10th CAPA Conference, 25th November 1983)

Union Minister of Law and Justice Shri Ashoke Kumar Sen: *...this Institute during its life of 36 years made a place of its own not only in the corporate sector but also in the public life of the country. The Government is depending more and more on the efficiency and the skill of the accountants bringing to the notice of the Government, the public and the shareholders and all those associated in business, the information that they should know. For instance, our labour laws depend very largely on the accountants. The entire quantum of bonus depends on the accountants' certificates and the balance sheets and it will be unworkable without their help...yours' is a noble profession to carry out a mission by discharging fully and truly the responsibilities you owe not only to yourself but also to the public whom you serve.*

(Address, 36th Annual Meeting of ICAI Council on 16th September 1985)

Union Minister of Industry and Company Affairs Shri Veerendra Patil: *...Your reports are now increasingly articulate. You have now to report whether you consider the accounts true and correct. You examine the past, you record faithfully your opinion about it, you have to explain why things happened as they did in the past and why you anticipate what is likely to happen in the future and provide some guidelines for the future development of business. I have no doubt that much can be done by a conscientious auditor to expose dishonest dealings. This has been demonstrated in many cases and I congratulate the members of the profession who raise its prestige by their courageous action. Praising the actions of CA professionals, the Union Minister expressed the expectations of the then era:...in a developing economy as in India, you have to function with a certain amount of missionary devotion, with greater acceptance of responsibilities and willingness to draw attention to new and changing problems which cannot be understood by the general public. Apart from performing normal functions of an accountant and auditor, you should also play the role of educator.*

(Address, Laying of foundation of G.P. Kapadia National Academy of Accounting and Northern India Regional Council of ICAI on 11th July 1985)

Union Industry Minister Shri J. Vengal Rao: *The profession of accounting and audit has made great strides over the last two centuries. It has also added new dimensions with far reaching implications. With the passage of time, trade, industry and business have grown to proportions beyond the imagination of the*

trading community of the 17th or 18th Century...I visualize a bright future for the accountancy profession in all spheres of the country's efforts to achieve economic self-reliance. I am confident that the profession will continue to improve its image.

(Address, 38th Annual Meeting of ICAI Council on 15th September 1987)

Union Law, Justice and Company Affairs Minister Shri H. R. Bhardwaj: *The remarkable growth of your profession both in quantity as well as quality exhibit your quest for continuous learning, concern for observing a strict code of conduct as well as your desire to bring about harmonisation of accounting and auditing practices in the country at par with those prevailing in other countries of the world. Over the years, the Government has increasingly relied on the professional expertise of chartered accountants in discharge of various important duties such as tax audit... I am very much impressed that the Institute keeping pace with the information revolution swing across the country and you have developed several software programmes to facilitate smooth functioning of various departments and section the Institute.*

(Address, 45th Annual Function of ICAI on 16th January 1995)

Prime Minister of India Shri Atal Bihari Vajpayee: *The Indian Chartered Accountants have succeeded in meeting the rapidly changing demands of the Indian economy in this era of liberalization and globalization. This could not have been possible without the institute laying special emphasis on continuous education and training of your members. This progressive mindest provides a model for other professions. Another feature of your Institute which pleases me is that it is perhaps the only Institute in the world which undertakes the complete range of activities relating to its members and students, and I am particularly happy to note that you have made special endeavours to articulate accounting and auditing standards and improve the quality of corporate functioning.*

(Address, Golden Jubilee celebrations of ICAI on 1st July 1998)

Union Law, Justice and Company Affairs Minister Shri Arun Jaitley: *One of the reasons why I am extremely pleased to be here is that amongst the various professional organisations in India, the Institute of Chartered Accountants stands out clearly with distinction. The distinction because it is not merely a body as we see in many other areas which only represent the fraternity who raises issues and raises demands and get into the activities of populism. But this profession of chartered accountants is predominantly a body which is involve in the maintenance of the highest standards had always as a child aspired to be a chartered accountant... We have a fortune of having a very distinguished chartered accountant as a part of the Government. He has used his experience of a chartered accountant in varied areas from environment, chemicals & fertilisers and currently he heads the Ministry of Power, Mr. Suresh Prabhu. I just share with you an incident of how having a mind of chartered accountant is beneficial...As I said the Institute has tried to maintain the standard of excellence, I don't think there is any Institute whose examination is as difficult as yours.*

(Address, 51st Annual Function of ICAI on 22nd June 2001)

Vice-President of India Shri Bhairon Singh Shekhawat: *I am extremely happy to be amidst this gathering of eminent professionals who have been greatly concerned about the WTO challenges before the country. I compliment the Institute of Chartered Accountants of India for having pioneered the initiatives for creating professional awakening, facilitating identification of concerns and making comprehensive recommendations on issues relating to conduct of negotiations for various agreements of WTO and their implementation.*

(Address, ICAI function on 22nd February 2003)

President of India (the then Union Finance Minister) Shri Pranab Mukherjee: *Let me complement ICAI for their initiative to work with financial institutions in streamlining and fine tuning the financial reporting, auditing and accounting architecture of India. Such efforts create greater awareness among stakeholders about the challenges and opportunities that we have before us and help in identifying issues that need to be addressed for accelerating and sustaining the development tempo...*

(Address, 42nd Annual Conference of SIRC of ICAI in Kochi on 27th November 2010)

Comptroller & Auditor General of India Shri Vinod Rai: *The contribution of the ICAI in regulation of the accounting profession and providing leadership has been exemplary. The members of the ICAI should continue to uphold high standards and discharge their professional duties with due diligence. Each member of the Institute must play a role in enhancing professionalism, credibility and ethics. Maintaining independence and ensuring compliance of reporting obligations under the relevant statutes, laws and standards is of utmost importance. The accounting profession is in a very dynamic phase in its history. It is imperative to keep pace with the rapid developments and adopt globally accepted best practices. The ICAI as a premier accounting body has, therefore, its role cut-out...*

(Interview, The Chartered Accountant, July 2010)

Chief Minister of Goa Shri Manohar Parrikar: *Chartered Accountants can act as pillars of honesty and integrity, and the nation can rely on them. The Indian CA professionals can play a proactive and very effective role in responsible governance of financial management and discipline. I seek sincere help of Indian CAs in plugging the leakages in the state treasury and thereby help in further development of Goa. I would say that this (ICAI) is another institution which should maintain its quality, fight all the way for it. You should ensure that your credentials remain impeccable. If that happens, then I think this country can definitely rely on you as a pillar of honesty and integrity.*

(Address, 317th Meeting of ICAI Council on 13th-15th August 2012)

Governor of Goa Shri Bharat Vir Wanchoo: *CAs are critical stakeholder in enabling process of sustained growth. I am aware of the history of your Institute and I am deeply impressed by the achievements made by the Institute during the six decades of its existence. The Institute of Chartered Accountants of India is one such organisation whose contribution in providing valuable inputs to the Government in the process of formulation of its economic plans is very well recognised and appreciated. It is a matter of satisfaction that this Institute has, over the years, maintained excellent standards of professionalism and rendered splendid service to the nation...My tribute to all those who have nurtured and developed this prestigious institution to its current stature and level.*

(Address, 317th Meeting of ICAI Council on 13th-15th August 2012)

Union Railways and Coal Minister (the then Lok Sabha MP) CA. Piyush Goyal: *CAs can play a proactive role in improving public governance in India. There is an urgent need to improve the system of public governance in India. India and Indian polity need to be pro- active in public governance and for that to happen every Indian should rise above the chaltahai approach and attitude. Aspirations of young and dynamic India can be realised only through strong and effective public governance mechanism and its effective implementation. We CAs, who are well-informed and educated and come from creamy layer of the society in terms of knowledge, have all the more responsibility towards public governance. Given their training, professional aptitude and excellent conduct, CAs can set very good examples of good public governance, worth emulating by all."*

(Address, ICAI International Conference, 23rd-25th January 2013)

Union Petroleum & Natural Gas Minister Dr. M. Veerappa Moily: *In the present scenario of globalisation, the importance of accounting professionals has largely increased. ICAI has been continuously providing platform to the accounting professionals, academicians and other stakeholders to upgrade their knowledge and skills. ICAI has truly been a partner in the socio- economic development of the country by espousing the concerns of various stakeholders. I am confident that the members of the Institute would continues to strive further, as they have always done in the past, to uphold the virtues of excellence, independence and integrity which have become the hall mark of CA profession.*

(Message, The Chartered Accountant, July 2013)

Rajya Sabha MP (former Union Minister for Minority Affairs) CA. K. Rahman Khan: *"Today Indian Chartered Accountants are all capable to take up global roles while India is well set to become a global accounting leader by 2020. I have been a member of the ICAI for 51 years and has closely observed the*

Institute and Indian accountancy profession evolve and grow ever since the ICAI had just 6000 members compared to 240000 now and the ICAI has done exceptionally well in all the capacities of educator, certifier of accounts and regulator...Although the Institute has effectively taken in its stride all the challenges of changing times, still some formidable challenges persist. One major challenge for us CAs is the need to develop an 'Early Warning System' for Indian society, corporate and overall economy...We are the trustees of society. We have been given a very important position in Indian society, which has high expectations of vigilant monitoring of financial affairs of the country from us... CAs are well placed in a position where they can know about any deviation or wrongdoing in financial affairs of the country as well as corporates."

(Address, ICAI International Conference, Indore on 8th August 2015)

Union Minister of Minority Affairs Dr. Najma Heptulla: *I am glad to know that the Institute of Chartered Accountants of India (ICAI) will be celebrating its Foundation Day as CA Day on 1 July...It is heartening to note that the Institution has completed 66 years of its existence and during this period, the Institute has groomed professionals who are dynamic thinkers and solution providers. Further, it has guided business and industry as a partner in nation building... On the occasion of CA Day, I extend my best wishes to the Institute of Chartered Accountants of India for success in its endeavours.*

(Message, The Chartered Accountant in July 2015)

ITAT President Justice (Retd.) D. D. Sud: *It is to be acknowledged that the ICAI has undergone paradigm shift and transformation ever since its inception and has seen India grow from backward economy, to developing economy to an advanced stage of being a developed economy... Today when India is on way to become a developed economy, Indian CAs have a vital role to play as an enabling force of development... I suggest that standards and processes recommended by the ICAI to the Government should be India-oriented and made after taking into considerations the problems and ground realities of the country... All such suggestions and standards should be able to withstand national as well as international scrutiny... India should effectively adopt and implement International accounting standards as part of its growth phenomenon... Indian accountancy profession should always be rooted in ethics so as to remain a force to reckon with... there is a need to simplify the complex Indian taxation system and granting functional autonomy to CBDT & CBEC... It is high time for India to make the much awaited shift from cash to accrual system of accounting, and the CA fraternity must ensure that in addition to ensure certainty, precision and accountability in the profession for a robust growth in India economy.*

(Address, ICAI International Conference in Indore, 7th-8th August 2015)

Chief Minister of Andhra Pradesh Shri N. Chandrababu Naidu: *I appreciate the efforts of the Institute of Chartered Accountants of India (ICAI) for its overall contribution to the development of accountancy profession and towards the growth and economic development of the country. ICAI is an institution which takes on the role of an educator, standard setter and a regulator. The ICAI in its 67 years of glorious existence has discharged all these roles in an exemplary manner. The Chartered Accountancy profession has a proud history of innovation and reforms, an unwavering commitment to ethics and integrity. Today the role of Chartered Accountants has undergone a dynamic change. The CAs have become business solution providers and form the pivot of faith for all stakeholders in the economy. They are the conscience keepers of the society at large.*

(Message, The Chartered Accountant, July 2016)

Chief Minister of Delhi Shri Arvind Kejriwal: *It is really a matter of pride that the Institute has come so far and has achieved many milestones in its existence of 67 years. ICAI has made a name for itself in the development of accountancy requirement by generating qualified accountants to meet the present as well as the future needs of the economy. Chartered Accountants are considered to be the guardians of financial decorum. They have also been recognized for playing a dynamic role in ensuring stability and sustainability of the nation. The Indian Chartered Accountants today have succeeded in meeting the rapidly changing demands of the Indian economy. I am sure that in the years to come, ICAI will scale newer heights in its' service to the profession and our Nation.*

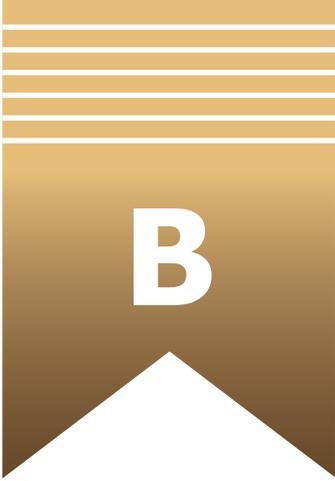
(Message, The Chartered Accountant, July 2016)

Chief Minister of Mizoram Shri Lal Thanhawla: *Chartered Accountancy is one of the most important professions in today's world as it is requisite in all fields of business and finance, including audit, taxation, financial and general management. In India, the ICAI has been the guardian of this profession for the last 67 years and has lived up very well to its mandate as the regulatory body of the profession...*

(Message, The Chartered Accountant, July 2016)

Secretary, Ministry of Corporate Affairs, Shri Tapan Ray: *The country's economy is going through significant changes where Chartered Accountants have to play a proactive role in corporate governance, responsible financial management and fiscal discipline. I am glad that ICAI is making all-out efforts to meet the emerging challenges, as well as the opportunities, with greater confidence and expertise so as to add value and to contribute to nation building.*

(Message, The Chartered Accountant, July 2016)



B

Annexure B

International-Benchmarked Education Improving Quality of Attestation Function— Accounting Standards/ Indian Accounting Standards/Guidance Notes and Their Importance

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- (i) Accounting Standards play a critical role in the overall regulatory mechanism of corporate and non corporate sector, whether for commercial entities or not-for-profit entities. Preparation and dissemination of general purpose financial statements by the entities, especially the public interest entities, is an essential tool for implementing sound corporate governance standards. Accounting Standards are concerned with the scheme of recognition, measurement and disclosure principles for the provision and demonstration of financial statements. . Accounting is a common business language of an enterprise to communicate its financial position and results to general public. AS serves the purpose as grammar to this business language. A set of important statements of how particular types of proceedings, events and other costs should be known and reported in the financial statements. Accounting Standards are devised to supply useful information to different users of the financial statements, such as shareholders, creditors, lenders, management, investors, suppliers, competitors, researchers, regulatory bodies and social club at large and so on. In fact, such assertions are planned and prescribed so as to improve & benchmark the quality of financial coverage. Hence, Accounting Standards are the policy documents (authoritative statements of best accounting practice) formulated by ICAI relating to diverse aspects of measurement, and disclosure of accounting transactions and issues. These are expressed to be norms of accounting policies and patterns by means of codes or guidelines to direct as to how the items, which go to establish up the financial statements should be dispensed within the accounts and presented in the annual reports. The purpose of setting standards is to bring about uniformity in financial reporting and to ensure consistency and comparability in the information published by entities.
 - (ii) Research Committee or the Accounting Standards Board of the ICAI primarily issues Guidance Notes on the accounting aspects which are not explicitly covered by the accounting standards. It also issues guidance notes on certain areas of accounting standards where considered necessary. These guidance notes though recommendatory in nature provide useful guidance to the members while discharging their duties.
 - (iii) The ICAI through its Accounting Standards Board (ASB) is working towards the achievement of its vision to become a World's leading accounting body by playing an active role in setting world class standards for accounting and financial reporting. ASB formulates high-quality Accounting Standards through a process that is robust, comprehensive, and inclusive to ensure high quality,

transparent and comparable information in financial statements and other financial reporting to help investors and other users of financial information make economic decisions. For Companies, as prescribed under section 133 of the Companies Act, ICAI recommends the Accounting Standards, which Central Government prescribes in consultation with and after examination of the recommendations made by the National Financial Reporting Authority. ASB's objective is also to enable the nation with accounting framework that is globally acceptable and brings efficiency, transparency, accountability to financial markets.

Engagement and Quality Control Standards/Guidance Notes/Code of Ethics and their Importance

- (i) The Engagement and Quality Control Standards issued by the Institute of Chartered Accountants of India (ICAI) are performance benchmarks for members as these standards represent the best practices in auditing and assurance services performed by members. These standards are harmonized with the globally recognized International Standards issued by the International Auditing and Assurance Standards Board and are issued after a due process that includes public consultation. While discharging their attest function, it is the duty of the members of the Institute to ensure that the SAs are followed in the audit of financial information covered by their audit reports. If for any reason a member has not been able to perform an audit in accordance with the SAs, his report should draw attention to the material departures there from. Auditors are expected to follow SAs in the audits commencing on or after the date specified in the Standard. Further, compliance of SAs are mandatory requirement as per the Companies Act, 2013.
- (ii) While discharging his attest function, a member should examine whether the recommendations in a guidance note relating to an accounting matter have been followed or not. If the same have not been followed, the member should consider whether keeping in view the circumstances of the case, a disclosure in his report is necessary. There are, however a few guidance notes in case of which the Council has specifically stated that they should be considered as mandatory on members while discharging their attest function.
- (iii) Chartered Accountants as professionals are engaged in building trust to vast variety of users, whether shareholders, government, banks, investors, employees or others, which imposes a public interest responsibility on their profession. Like other professionals, Chartered Accountants also have some set of code of ethics. This Code of Ethics establishes ethical requirements for Professional Accountants. A Chartered Accountant, either in practice or in service, has to abide by these ethical behaviour. They are expected to follow the fundamental principles of professional ethics while performing their jobs. Service users of professionals should be able to feel secure that there exists a framework of professional ethics which governs the provision of those services. Any deviation from the ethical responsibilities brings the disciplinary mechanism into action against the Chartered Accountants.

Inclusion of Accounting Standards/Indian Accounting Standards/Guidance Notes in the course curriculum

Board of Studies has designed the course curriculum in such a manner that it can impart all Accounting standards and Indian Accounting Standards formulated by the ICAI and strengthen the students' knowledge of accounting. Being accounting as one of the core area of chartered accountant course, in-depth understanding of the subject is must and therefore had been kept at utmost priority for the students.

The syllabus of Accounting papers at all the three levels cover the accounting standards and Indian accounting standards. At Foundation level, accounting standards are introduced so that they get familiar with basics of the standards. At Intermediate level, students are expected to acquire to application and analytical skill on almost all the standards and basic guidance notes. At Final level, the syllabus of Financial reporting is largely based on Indian Accounting Standards under new course. Besides these Ind AS, it also covers certain Accounting standards and advanced Guidance notes. Standards are dealt in detail in the study material and is explained lucidly with the help of necessary examples, illustrations and flowcharts.

Also, preparation of financial statements in line with accounting standards/Indian Accounting Standards (Ind AS) are taught to the students so that they may understand the practical application of these standards. Imparting knowledge of standards will help the students in developing the confidence in the understanding of financial statements.

Inclusion of Auditing Standards /Guidance Notes/Code of Ethics in the course curriculum

The syllabus of Auditing papers at two levels cover the auditing standards and guidance notes. At Intermediate level, students are expected to acquire to application and analytical skill on most of Standards on Auditing. At Final level, the syllabus of Advanced Auditing and Professional Ethics is largely based on Engagement and Quality Control Standards. These standards are dealt in detail in the study material and is explained lucidly with the help of necessary examples, illustrations and flowcharts. Also, detailed audit procedures for verification of financial statements in line with Engagement and Quality Control Standards and Guidance Notes are taught to the students so that they may understand the practical application of these standards. Code of Ethics has also been covered in the syllabus at Final Level since it is a base to the audit function. The code of ethics is essentially developed on the foundation of ethical norms, which has so far brought name and fame to the profession.

Attestation of financial statements: Significance of accounting standards

- a. Accounting as a 'language of business' communicates the financial results of an enterprise to various stakeholders by means of financial statements. If the financial accounting process is not properly regulated, there is possibility of financial statements being misleading, tendentious and providing a distorted picture of the business, rather than the true state of affairs. In order to ensure transparency, consistency, comparability, adequacy and reliability of financial reporting, it is essential to standardize the accounting principles and policies. Accounting Standards provide framework and standard accounting policies so that the financial statements of different entities become comparable. Financial reporting is the operation of producing statements that reveal an organization's financial status to management, investors and the regime.
- b. The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements. This is achieved by the attestation of financial statements or by the expression of an opinion by the auditor on whether the financial statements prepared, in all material respects, are in accordance with an applicable financial reporting framework. In the case of most general purpose frameworks, that opinion is on whether the financial statements are presented fairly, in all material respects, or give a true and fair view in accordance with the framework.
- c. The reading of numbers and the wherewithal to put them in the proper context are at the essence of accountability. Measures exist to assure that accounting decisions are reached in a unified and reasonable manner. The financial statements prepared by complying with the notified accounting standards forms the mode of communication between the entity and the stakeholders. Therefore, an auditor has to cautiously attest the financial statements or form an opinion on the financial statements so that the stakeholders may take their decision based on it in a better manner.

Educating Members and Providing Technical Guidance

Audit & Assurance Standards Board is mindful of the fact, that creating awareness about the auditing Standards and providing technical guidance to auditors is equally important. For this purpose, the AASB has adopted multi step strategy as follows:

- It regularly organises seminars/conferences/training programs/workshops on auditing standards.
- It has issued number of implementation guides on auditing standards to help the members to better understand and implement the Standards as well as resolve the practical difficulties faced by members in implementing auditing standards.
- It has been running an e-learning course on auditing standards.

- It also develops other technical literature on auditing like Guidance Notes, Technical Guides, Studies, Other Guides to guide the members on the auditing issues, generally as well as in specific industry sectors.
- Organizes webcast on various emerging issues on audit



Annexure C

Evolution and Stringent Setting of Standards on Accounting in India

The Accounting Standards Board (ASB), during the last 40 years of its existence, has played key role in formulating high quality accounting standards and developing robust standard-setting process in line with international best practices to harmonise the diverse accounting policies and practices in use in India.

ICAI made significant efforts in ensuring acceptance of Accounting Standards by key stakeholders, such as, trade and industry bodies, banks and financial institutions, and Regulators. In this context, it may be noted that till 1999, there was no law requiring the companies to follow accounting standards. The Accounting Standards issued by the ICAI were mandatory only for its members, who, while discharging their attest function, were required to examine whether the Accounting Standards were complied with in the presentation of financial statements covered by their audit. The legal recognition to the Accounting Standards was accorded for the companies in the Companies Act, 1956, by introduction of section 211(3C) through the Companies (Amendment) Act, 1999, Till 1999, ICAI had issued 15 Accounting Standards which were required to be followed by companies by virtue of the proviso to Section 211(3C) of the Companies Act, 1956.

Later, SEBI, IRDAI and RBI, mandated all listed companies, insurance companies and banks, respectively, to ensure strict compliance to these standards. In the absence of these standards, financial performance and results would have been incomparable and unreliable.

ICAI has always been cognisant of the need for reforms in financial reporting in line with the global best practices. During the period 2000-2006, ICAI undertook major reform initiatives and issued 14 more Accounting Standards, i.e., AS 16 to AS 29, which were made mandatory under the above Section of the Act.

In 2006, ASB and ICAI Council recognised the global momentum adoption/convergence with IFRSs and need for high quality globally acceptable accounting standards in a large emerging economy of India. It may be noted that IFRS are considered as gateway to global capital markets and, therefore, ICAI, believes that implementation of such standards will provide the Indian corporates a level playing field at international level. Accordingly, a Task Force was constituted to prepare a Concept Paper on Convergence with IFRSs, to be discussed with various interest-groups including the government, NACAS, regulators, and industry associations. ASB accepted the Task Force recommendation to implement IFRS converged accounting standards in India. The Ministry of Corporate Affairs, Govt. of India, also supported the initiative of ICAI to converge with IFRS in order to bring the accounting practices followed in India at par with the best international practices.

Subsequently, following the then Prime Minister's commitment made in G20 (Pittsburgh) in 2008, to implement IFRS in India, the ICAI rose to the occasion and worked with the Ministry of Corporate Affairs, Government of India, to formulate IFRS- converged Indian Accounting Standards (Ind AS).

In 2015, Ind AS formulated by ICAI considered by NACAS got notified by Ministry of Corporate Affairs (MCA) vide notification dated February 16, 2015, under the Companies (Indian Accounting Standards) Rules, 2015 covering the roadmap for implementation of Ind AS for companies.

Ind AS are applicable to a specified class of companies as per the road map issued by the MCA. Other entities are required to follow the existing notified Accounting Standards. In order to bring these Accounting Standards nearer to Ind AS, ICAI has taken up the project of upgrading these Accounting Standards. These Accounting Standards are being upgraded so that there are same principles under both the sets of Accounting Standards with suitable simplifications in the second set, such as, minimal use of fair value, minimal use of time value of money and with minimal disclosures.

In the year 2011, ICAI constituted Ind AS Implementation Committee which was entrusted with the task of providing guidance to the members on Indian Accounting Standards (Ind AS).

In the year 2018, it was reconstituted as Ind AS Implementation Group and is making relentless efforts to make the transition to Ind AS smooth and effective through its various initiatives such as:

- o Issuance of Educational Materials on Ind AS
- o Ind AS Technical Facilitation Group (ITFG) Clarification Bulletins
- o Support-Desk on Implementation of Ind AS
- o Certificate Course on Ind AS
- o In-house training programmes on Ind AS
- o Organises seminars, awareness programmes on Ind AS and
- o Webcasts on Ind AS

Ind AS Technical Facilitation Group (ITFG)

- o As the implementation of Ind AS began in the country, a number of issues were being raised by the members, preparers and other stakeholders with regard to applicability/implementation of Ind AS. In order to provide timely clarification on the issues raised, Ind AS Technical Facilitation Group (ITFG) was constituted.
- o The group comprises of experts from accountancy firms, industry representatives and other eminent professionals. The group meets and deliberates on the issues received from time to time.
- o For ease of reference, a publication titled 'Compendium of ITFG Clarification Bulletins' has been brought out which contains a topic-wise compilation of all the issues clarified in the ITFG Clarifications Bulletins at one place.
- o Pursuant to the beginning of the era of Ind AS Implementation in the country, a number of issues have been raised by the members, preparers and other stakeholders with regard to applicability/implementation of Ind AS. Considering the need to address various issues raised on an urgent basis an Ind AS Transition Facilitation Group (ITFG) was constituted under the aegis of this Committee.
- o So far, the Group has issued 19 bulletins covering 143 issues. A Compendium of ITFG Clarification bulletins has also been issued which contains a compilation of the 132 issues covered in 17 bulletins along with indexation topic wise and standard wise.

Interaction with Government/ Regulators on implementation related Issues

The Group also interacts with various regulatory bodies such as RBI, Confederation of Indian Industry (CII), MCA etc. for effective redressal of implementation issues. Various issues received from these organisations have been resolved appropriately.

Implementation Issues taken up at International forums

Issues being faced while implementing the standards which are relevant in Indian context, are also taken up with the International Accounting Standards Board (IASB) from time to time for suitable amendment in the standard or other appropriate action. Issues are also taken up at other international forums such as IFASS, EEG etc.

Support desk on implementation of Ind AS

Queries raised by members are also being resolved through the '**Support desk on implementation of Ind AS**' created to provide guidance to members as early as possible. So far, 135 queries have been resolved through the support desk.

Formulation of Educational Materials on Ind AS

In order to provide guidance to members on Ind AS and to ensure implementation of these Standards in the same spirit in which these have been formulated, the Committee is engaged in the formulation of Educational Materials on Ind AS, which contains FAQs on issues which are expected to be encountered while implementing these Standards. So far, Educational Materials on 15 Ind AS has been issued.

In addition to the above a publication titled, "Indian Accounting Standards (Ind AS): An Overview (Revised 2018)" has also been issued which contains an overview of various aspects related to IFRS-converged Indian Accounting Standards (Ind AS) such as Roadmap for the applicability of Ind AS, carve-outs from IFRS/IAS, Changes in financial reporting under Ind AS compared to financial reporting under existing Accounting Standards, Summary of all the Ind AS etc.

Certificate Course on Ind AS

The Group also organises an extensive Certificate course on Ind AS at various locations across the country. So far, around 253 batches of Certificate course have been organised wherein around 9700 members have been successfully trained through the course.

Webcast

In order to widen our reach in spreading awareness amongst the members for smooth implementation of Ind AS, webcasts on Ind AS are being organised from time to time. Recently, two webcasts on the new leases standard Ind AS 116, Leases was organised. The recorded webcasts are readily available at icaitv.com.

In-house Training Programmes on Ind AS for regulatory bodies, ministries and other organizations

The Group also organises customised In-house training programmes on Ind AS for officials/employees of corporate, regulatory bodies and other organisations. Session plan of the programme is designed keeping in view topics relevant to them and customised as per their needs and requirements. Such programmes for various regulators/ministries such as C&AG, CBDT, IRDA, Department of Telecommunications (DoT), Department of Public Enterprises, Ministry of Heavy Industry and Public Enterprises etc. and other corporate bodies.

Workshops and Awareness Programmes on Ind AS

One Day / Two Days awareness programmes, workshops, seminars etc. on Ind AS are being organised at various locations across the country. In these awareness programmes, training on the basic Standards which form the premise for preparation and presentation of financial statements under Ind AS, differences between Ind AS and existing AS are also specifically covered in order to educate the members and stakeholders about how accounting under Ind AS would be different from existing AS. These awareness programmes are very helpful for the participants in getting ready for implementing Ind AS.



Annexure D

Evolution and Stringent Setting of Standards on Auditing (SAs) in India

- (i) Long back in 1982, the ICAI constituted the Auditing Practices Committee (APC) with, inter alia, the objectives of developing the Statements on Standard Auditing Practices (SAPs), Guidance Notes on matters related to auditing, etc. so that these may be issued under the authority of Council of ICAI. Till 2002, the auditing standards developed and issued by the APC were known as SAPs. At its 226th meeting held in July 2002, the Council of ICAI approved the recommendations of the APC to strengthen the role being played by it in the growth and development of the profession of chartered accountancy in India. The Council also approved renaming of the Committee as, "Auditing and Assurance Standards Board" (AASB) with immediate effect to better reflect the activities being undertaken by the Committee. The Council also approved the renaming of the Statements on Standard Auditing Practices (SAPs) as "**Auditing and Assurance Standards**" (AASs). Till the year 2007, the AASB issued 35 AAS under the authority of the Council of ICAI.
- (ii) In the year 2007, the ICAI issued the 'Revised Preface to the Standards on Quality Control, Auditing, Review, Other Assurance and Related Services'. Pursuant to issue of Revised Preface, the "Auditing and Assurance Standards (AAS)" have been renamed as '**Engagement and Quality Control Standards**'. Engagement and Quality Control Standards comprise two categories of standards.
- (1) 'Engagement Standards' which are applicable at the engagement level and
 - (2) 'Quality Control Standards' which are applicable at the firm level.
- (iii) The 'Engagement Standards' comprise the 4 types of Standards for different types of engagements being performed by practitioners namely **Standards on Auditing (SAs)** (to be applied in the audit of historical financial information) / **Standards on Review Engagements (SREs)** (to be applied in the review of historical financial information) / **Standards on Assurance Engagements (SAEs)** (to be applied in assurance engagements, other than audits and reviews of historical financial information) / **Standards on Related Services (SRSs)** (to be applied to engagements involving application of agreed- upon procedures to information, compilation engagements, and other related services engagements, as may be specified by the ICAI)
- (iii) a. **Stringent Standard Setting Process for Auditing Standards**
- AASB has a detailed and stringent due process for formulation and issue of auditing standards which is approved by the Council of ICAI. The Due Process of AASB ensures public participation and public interest in the standard setting process. The important points of Due Process in this regard are as under:*

- Composition of AASB is fairly broad based. In addition to elected council members of ICAI, Its composition includes special invitees from regulators (RBI, SEBI, IRDAI), special invitees from IIMs/ prominent research organization, special invitees from prominent industry association, special invitees representing public interest.
- All the auditing standards formulated by AASB are exposed for public comments for a period of at least 45 days. During exposure period, copies of exposure drafts of standards are sent to the regulators, professional bodies, government bodies/ ministries and various other bodies/ organisations for their suggestions. The general public can also give its suggestions on the exposure drafts.
- All the suggestions received on exposure drafts are duly considered by AASB at its meetings and appropriately dealt with by AASB while finalizing the Standard. Whenever, a suggestion is found not suitable, the rationale for not accepting the suggestion is recorded in the minutes of the relevant AASB meeting.
- Such part of AASB meetings whereat the exposure draft of proposed standard and comments thereon are to be discussed, is open for public.



Annexure E

Ethical Standards for Accountancy Profession

The formulation of ethical standards for the profession is naturally entrusted to Ethical Standards Board.

Care is taken that both the domestic rules governing various entities, as well as International standards on ethics are adopted in a synchronised manner.

It may further be relevant to mention here that certain norms of ICAI are stricter than those of IESBA, e.g. ICAI has prohibited the members in practice to write the books of accounts of their auditee clients whereas IESBA Code of Ethics contains some situations where a member may provide book-keeping services Also, Contingent fees is not allowed by ICAI whereas the provisions for contingent fees on non-audit services as contained under the IESBA Code of Ethics are elaborative.

Some of the domestic standards are mentioned hereunder:—

- Advertisement Guidelines were framed in terms of Clause (7) of Part I of the First Schedule of the CA Act, 1949 through write up setting out the services rendered by a CA. Advertisement Guidelines issued on 14th May, 2008.
- Council General Guidelines, 2008 (issued on 8th August, 2008) were framed on various issues e.g. Maintenance of Books of Account, Tax Audit Assignments under I.T. Act, 1961, Specified Number of Audit Assignments etc.
- Self-Regulatory measures for members – namely, Branch Audit not to be conducted by Statutory Auditors consisting of ten or more members; Joint Audit to be encouraged in large Companies; Ideal ratio between qualified and unqualified staff ; disclosure of interest by auditors in other Firms and ceiling on the fees.
- Website Guidelines for members in practice and Firms of chartered accountants
- Guidelines for publication of details in directories
- Internationally, “know your client” (KYC) norms are seen mainly in terms of Anti-Money Laundering (AML). Both of these, i.e. ‘KYC’ and ‘AML’ are helpful in mitigating risks to the financial services sector. Most of the countries have AML / KYC requirements in place; however the norms are especially applicable to banks. India is one of the very few jurisdictions where KYC Norms for chartered accountants are in place. The ICAI KYC Norms were issued in 2011. w.e.f 1.1.2017, the KYC Norms have been made mandatory, and more elaborate. These are applicable for all attest functions.

Promoting Ethical Awareness

This is rather concerned with public perception. Conducting various programmes on ethics for members across the country is a part of it. The Ethical Standards Board is also required to coordinate with other committees in achieving this goal for the best interest of the members and the profession.

This website of the Board i.e. esb.icaai.org is a forum where members may access for update of their ethical know-how. The important decisions of the Board are also posted on the webpage of ESB on the website of ICAI, i.e. www.icaai.org, for guidance of the members.

The Board has brought out a special ethical awareness column 'Know your Ethics' being published regularly in the CA Journal since 2009.

The Board conducts seminars, workshops and other programmes for members on topics of ethics around the country for benefit of members.

The public awareness goes long way in implementation of the provisions of Code of ethics among members, including in far flung areas of the Country.

Independence

In the back drop of heavy business volume of the Country today, going simultaneously with development in all quarters, the issue of independence of auditors is no doubt one of the most significant issues. The Code of Ethics mentions the meaning of 'independence' as under:-

290.8 *Independence requires: Independence of Mind*

The state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, allowing an individual to act with integrity, and exercise objectivity and professional scepticism.

Independence in Appearance

The avoidance of facts and circumstances that are so significant that a reasonable and informed third party, having knowledge of all relevant information, including safeguards applied, would reasonably conclude a firm's, or a member of the assurance team's, integrity, objectivity or professional skepticism had been compromised.

The concept of Independence, being paramount in the profession, has been comprehensively discussed in both parts of the Code of Ethics. Besides, the various decisions of Ethical Standards Board have, from time to time, applied this principle in day to day professional situations faced by the members. Some of these are discussed below:-

1. The Members in practice while working as internal auditor of one Subsidiary Company can't be permitted to be appointed as Statutory Auditor of its holding Company since as a Statutory Auditor he will be reviewing his own work, which he has done as an internal auditor of the Subsidiary Company either by himself or through his firm (this was decided in 2010, and has only subsequently come as statutory restriction also vide Section 144 of Companies Act, 2013).
2. The Members in practice are not permitted to accept appointment as Statutory Auditor of the branches of a bank when he is working as revenue auditor of few branches of the same bank.
3. The auditor of a Subsidiary Company can't be a Director of its Holding Company, as it will affect the independence of an auditor.
4. On the question as to whether a Chartered Accountant firm can accept Branch Audit of a Bank when a partner has taken loan from any other Branch of the same bank, it was decided that Independence of Auditors can neither be diluted nor any scope be left for dilution in perception of stakeholders. The term 'indebtedness' must continue to be qua an entity and not qua branch.
5. It is prohibitive to undertake the assignments of Internal Audit and Tally entry of the Accounts of the same client simultaneously, being violative of the provisions of the 'Guidance Note on Independence of Auditors'.
6. The concurrent audit and the assignment of Quarterly review of the same entity cannot be taken simultaneously as the concurrent audit being a kind of internal audit and the quarterly review

being a kind of Statutory audit undertaken simultaneously are prohibited under the provisions of 'Guidance Note on Independence of Auditors'.

7. It is not permissible to accept concurrent audit of one of the branches of a nationalized bank who has conducted statutory audit of 3 different branches of the same bank.
8. A CA Firm cannot accept branch audit of the bank if one of the partners had taken the loan from any branch of that bank. The members should not place themselves in positions, which would either compromise or jeopardize their independence.

Cases of Unjustified Removal as Auditors

The role of ESB in protecting the independence of members is one which is too crucial. The jurisdiction of unjustified removal of auditors is an instance where independence of members is protected. The following para in Code of Ethics under commentary to clause (8) of Part-I of First Schedule to The Chartered Accountants Act, 1949 may be noted in this regard:-

"For nothing will bring the profession to disrepute so much as the knowledge amongst the public that if an auditor is found to be "inconvenient" by the client, he could readily be replaced by another who would not displease the client and this point cannot be too over- emphasised."

The Ethical Standards Board intervenes in the cases where it is necessary to do so. It issues directions to the Incoming Auditor not to accept Audit in such cases till further directions of the Board, and also writes to the entity as to how the removal was unjustified.

Advice on Ethical Issues

The Board examines and renders advice on ethical issues referred to it by the Council, other committees/ departments of the ICAI and received from the members at large. The queries which have an available provision/precedent are replied directly by the Secretariat, while the new issues are placed before the Ethical Standards Board for consideration and issuance of relevant directions to the members. If the matter is of larger importance, then a general Announcement is issued. The timely advice goes hand in hand with improved compliance of the provisions of ethics.

Transparency

In the present day scenario, it is imperative for a chartered Accountant not only to maintain righteous conduct but also to let the public in general believe that righteous conduct is being maintained by him. One can defend himself against accusations of any malpractice when he can show that he has behaved strictly in an ethical manner in compliance with the professional standards. One of the ways of ensuring this is maintaining proper documentation, which helps in defending one's actions and makes a person's professional actions "transparent" or easily assessable. Our Code of Ethics provides to imbibe the concept of transparency.

Communications to Government/Public Authorities Made by Ethical Standards Board

1. Communications have been sent to Government/public authorities by Ethical Standards Board ONLY IN CAPACITY OF CLIENT, in the following instances:-
2. (a) In situations where conflict of interest or threat to independence has been noticed, communication has been sent to Government entities to modify their terms of Appointment (e.g. to modify a term requiring Book Keeping and Accounting services to be done by the Auditor, which are not permitted to be done simultaneously as per ICAI rules).
- (b) The cases of unjustified removal of auditors are dealt by Ethical Standards Board. In instances where the client is Government entity, the views of the Board on the issue of unjustified removal are communicated to them also.
3. Communication to Government/public authorities (like Banks) HAVE NOT BEEN SENT DIRECTLY, BUT THROUGH OTHER COMMITTEES.

For example, in following instances, Ethical Standards Board in 2012 considered the matter referred by PDC regarding contents of Circular received from RBI mentioning that in case of firms associated with internal assignment in the bank, they should relinquish the internal assignment before accepting the statutory audit assignment during the year. The Ethical standards Board considered the matter and decided to write to PDC that RBI may be requested to amend its circular in the light of provisions contained in the 'Guidance Note on Independence of Auditors'. ESB views were sent to PDC.



Annexure F

Initiatives of Peer Review Board

Continuous efforts are made by the Peer Review Board to respond to the changing circumstances and to modify the process of review so as to make the process more effective. Towards this end the following initiatives have been taken by the Board:

1. **Enlargement of the ambit of peer review by incorporating new criteria for selection of firms for review:** Peer Review Board as a regulator for review of assurance services of CA firm in India, PRB has increased its scope of assurance services coverage of more firms for peer review on the basis of the following criteria:
 - a. Services provided on basis of tendering by CA firms,
 - b. Statutory Auditors of Banks & PSU,
 - c. NBFC in which Public Deposits are accepted,
 - d. Insurance Companies
 - e. Internal & Concurrent Auditors of Banks
 - f. Tax Audit.
 - g. Newly-established firms have also now been included in the ambit of Peer Review on receipt of suo moto application from the practice unit.
 - h. Further, cases/ matters , referred by QRB, FRRB have also been taken into consideration, before Peer Review Certificates are being issued and proper instruction as per the case, are being informed to Reviewer, for cases referred by Government authorities.
 - i. Issues raised by members are also considered by the Board for improving the quality of review. Accordingly instructions are given to the reviewers and practice units.

Accordingly, 3581 firms have been identified under new categories and peer review has been initiated since November, 2016. During the Council year 2017- 18, 418 reviews have been initiated on suo moto applications received and 959 reviews have been initiated by the Board for subsequent cycle of peer review of firms whose certificates have expired. During the same year 1228 peer reviews have been completed and certificates issued by the Board. Follow up is being done with the remaining firms to expedite the process and submit report.

2. **On regular basis training programmes are being conducted by PRB.** CA Members having 10 years of experience in continuous practice as member, are given requisite training before empanelling as a Reviewer. The training programs are also continuously updated to incorporate changes in regulations and changing business environment and experienced faculties on the subject are invited to impart the training. The trainees are also made aware of the recent decisions of the

Board and the requirements from the reviewers, so as to make the review process efficient and effective. Further, before giving assignment to empanelled reviewers, it is verified whether there is any Disciplinary proceedings against the reviewer. In such a case, the reviewer is not assigned any review till clearance of the case from Disciplinary Directorate.

During the Council year 2017-18, 8 training programs had been conducted all over the country and 130 new reviewers had been enlisted.

3. **Risk Management:** Increased scope of in depth analysis through increasing Sample size for review of Big Firms/Level 1 /Level 2 firms have reduced the risk and improved the quality of assurance services. The minimum number of samples to be reviewed has been decided by the Board, based on the level of the firm. The reviewer is free to select any number of samples over the minimum sample size as directed. The reviewer has also to submit to the board the list of samples selected for review, the basis of selection of samples and percentage of samples selected of the total population, and the evidence of Sample test techniques applied for obtaining effective audit evidence is to be properly documented in working papers. From the year 2018-19, he is also required to give an undertaking that he is satisfied that the sample selected by him is representative of the population. He is also directed to select
 - (i) samples from branches of the firm if the turnover of the concerned branch exceeds Rs. 25 lakhs.
 - (ii) he has to inform the board whether the practice unit has provided services on tender, and in such case to review at least one such sample
 - (iii) whether the practice unit has charged fees lower than the recommended fees of the ICAI and in such circumstances, the reasons for charging lower fees.
 - (iv) whether the number of tax audit assignments provided by the audit firm is within the prescribed limit
 - (v) select the assurance service for review which is having the highest turnover
 - (vi) Sample should also have at least one sample from each of the following categories of assurance services provided, if there is any such assignment : Company whose shares / debt securities are listed in India or abroad, NBFCs, Banks, PSU, Insurance Company, Asset Management Company / Mutual Fund, Entities which have raised funds from public or banks or financial institutions of over Rs.50 crores, Entities which have raised donations or contributions over Rs.50 crores, Entities which have been funded by Central and / or State Government schemes of over Rs.50 crores.
 - (vii) Further, evidences of Sample test techniques applied for obtaining effective audit evidence is to be properly documented
4. **Independence of reviewer:** Every effort is made by the Board to make the review independent. Towards this aim the practice unit is provided a panel of 3 reviewers selected at random and the practice unit is to select one from the list and intimate the board. The Board takes a Declaration of Confidentiality from the Reviewer where the reviewer has to confirm that there is no disciplinary proceedings against the reviewer and also that he is not related with the audit firm to be reviewed. Only on receipt of the above Declaration, consent is given for taking up the review.
5. **Review of reports by the Board and issue of Peer Review Certificates:** On receipt of the report from the Reviewers the same is scrutinized by the Board. After scrutiny, additional information as may be required is called for from the Practice Unit and / or the Reviewer. Only on complete satisfaction of the Board, the Peer Review certificate is issued. If after scrutiny, the Board is not satisfied with the existence of adequate controls in the Practice Unit, the Board orders for a follow on review after a specified period during which period the practice unit is required to rectify the deficiencies reported. Accordingly after the specified period, fresh reviewer is appointed and review is conducted. If thereafter the Board is satisfied with the report, peer review certificate is

issued. In exceptional circumstances, the Board may refer the same to Disciplinary Directorate. **However, the Board has been empowered to refer cases to Disciplinary Directorate with effect from 2014. Thereafter, 3 cases have been referred to Disciplinary Directorate for advice on whether to issue certificate in circumstances where disciplinary proceedings had already been initiated against the practice unit.**

Further, till 2016, certificates were not issued to PU for which any Disciplinary case have been initiated against partner/firm for professional misconduct, until clearance from Disciplinary Directorate was received. Since 2017, disclaimer clause has been inserted in the certificate of peer review, as per the advice of Disciplinary Section and Legal Section, to make the Peer Review process independent of disciplinary proceedings already in progress against the firm.

Further, after scrutiny of the reports submitted by the reviewers, if the Board is of the view that the reviewer should have given qualified report, but has submitted clean report, the reviewer is required to inform why qualified report has not been issued or to issue qualified report accordingly.

6. Peer Review Board has **incorporated Disciplinary Mechanism** through insertion of Clause 8.4 in the Revised Statement on Peer Review, which is applicable to Peer Reviews initiated or ordered after April 1, 2014 and Chinese wall has been therefore withdrawn.
7. **Reporting formats have been revised** from time to time to strengthen the review procedure: (i) While initiating the Peer Review Process, even in the Revised Questionnaire (to be filled by Practice unit) point has been inserted for 'Disciplinary proceedings': If unresolved disciplinary proceedings of the Institute have been initiated against any partner/employee of the PU, furnish details'.(ii) The revised Schedule of Work Procured/ Executed through Tendering Process was also approved for incorporation in the revised Questionnaire and **Annexure I** to the Final Report(summary of the review), (iii) **Annexure II** (detailed report submitted by reviewer on Standards on Quality Controls), has been made applicable to both Level 1 firms from 2015 and also for Level 2 firms since 2017 onwards.(iv) Revised Empanelment Form of Reviewer in light of experience in XBRL reporting and Tax audit etc. has been incorporated during current year (in line with requirements of Companies Act), so that suitable reviewer can be allotted to the practice unit.
8. **Revision of publications:** With a view to educate the members, the Peer Review Board has brought out various publications which includes Peer Review Manual and FAQs on Peer Review. The same has been revised from time to time as required. During the year 2017-18 Advisories to Practice Unit and Advisories to Peer Reviewers have also been brought out with the aim to guide the practice unit firms and reviewers on the benefits of peer review, process of peer review and requirements of the Board for efficient review.
9. Expand Awareness and understanding issues related to Audit Quality: Information on Peer Review Certificates is regularly updated to the Professional Development Committee, which in turn regularly updates on the CAG site. Further, for enhancing audit quality in Peer Review, Questionnaire submitted by Practice Unit Firm, who has to be reviewed by the Reviewer- Member, includes:

GENERAL CONTROLS (Based on SQC 1):

- A. Leadership Responsibilities for Quality Within A Firm
- B. Ethical Requirements (Including Independence)
- C. Acceptance and Continuance of Client Relationships and Specific Engagements
- D. Human Resources
- E. Engagement Performance
- F. Monitoring

Further, **Annexure II** [(Based on SQC 1),submitted by Peer Reviewer for L1 and L2 firms] includes reporting on:

- a. Quality Control, Ethical Requirement & Independence
- b. Engagement Documentation
- c. Audit Planning and Risk Assessment
- d. Audit Sampling and Other Selective Testing Procedures
- e. Materiality
- f. Audit Documentation
- g. Audit Evidence

WHAT WILL BE THE EFFECT IF THERE IS NO PEER REVIEW

Peer review is a scientific process of critically analyzing the work of one by his peer. The process provides the following benefits:

1. **Time to reflect:** The process provides a reviewer with the opportunity to reflect on someone else's work and to provide thoughtful comment using his/her own knowledge and expertise of the subject. Being asked to review a working process assumes that the reviewer has some expertise relevant to the same, and that this knowledge will be helpful in evaluating whether the procedure followed by the Practice Unit is as per the guidelines prescribed by the Institute. Equally, on receiving feedback from peer review, the Practice Units have time to reflect on how their procedures and services rendered is assessed by experts in the field. Therefore, the Practice Units get scope to improve their working and maintenance of documents.
2. **Assurance of quality services:** Once a firm is peer reviewed, it provides an assurance of quality services being provided by the Practice Unit.
3. **Scrutiny of the decision making procedure:** Auditors certify the financial health of organisations. The manner in which the audit is conducted and the assurance services are provided and the basis of arriving at decisions, should, therefore, be subject to scrutiny. Practice Units and reviewers share this ethical responsibility.
4. **Training:** Engaging in the process of peer review, either as a reviewer or as a practice unit, receiving feedback contributes greatly to the training and development as a professional. Peer reviewing the work of others helps the reviewer to think more critically about his own work also.
5. **Helping each other:** Peer review makes the practice units as well as the reviewers feel part of the professional community. The practice unit feels encouraged that he can have timely inputs for improving the quality of services. Where a practice unit is not following Technical Standards in certain situations, suggestions and recommendations for improvement may be made and possibly followed by further review, in keeping with the primary thrust of peer review..

Annexure G.1

Section 132 of Companies Act, 2013

132. Constitution of National Financial Reporting Authority.

- (1) The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.
- (2) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
 - (a) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
 - (b) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
 - (c) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and
 - (d) perform such other functions relating to clauses (a), (b) and (c) as may be prescribed.
- (3) The National Financial Reporting Authority shall consist of a chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed:

Provided that the terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed:

Provided further that the chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment:

Provided also that the chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment.

- (4) Notwithstanding anything contained in any other law for the time being in force, the National Financial Reporting Authority shall—
 - (a) have the power to investigate, either suo motu or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be

prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act, 1949:

Provided that no other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section;

- (b) have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—
 - (i) discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;
 - (iii) inspection of any books, registers and other documents of any person referred to in clause (b) at any place;
 - (iv) issuing commissions for examination of witnesses or documents;
- (c) where professional or other misconduct is proved, have the power to make order for—
 - (A) imposing penalty of—
 - (I) not less than one lakh rupees, but which may extend to five times of the fees received, in case of individuals; and
 - (II) not less than ~~ten~~ five lakh rupees, but which may extend to ten times of the fees received, in case of firms;
 - (B) debarring the member or the firm from engaging himself or itself from practice as member of the Institute of Chartered Accountant of India referred to in clause (e) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 for a minimum period of six months or for such higher period not exceeding ten years as may be decided by the National Financial Reporting Authority.

Explanation—For the purposes of his sub-section, the expression “professional or other misconduct” shall have the same meaning assigned to it under section 22 of the Chartered Accountants Act, 1949.

- (5) Any person aggrieved by any order of the National Financial Reporting Authority issued under clause (c) of sub-section (4), may prefer an appeal before the Appellate Authority in such manner as may be prescribed.
- ~~²(6) The Central Government may, by notification, constitute, with effect from such date as may be specified therein, an Appellate Authority consisting of a chairperson and not more than two other members, to be appointed by the Central Government, for hearing appeals arising out of the orders of the National Financial Reporting Authority.~~
- ~~(7) The qualifications for appointment of the chairperson and members of the Appellate Authority, the manner of selection, the terms and conditions of their service and the requirement of the supporting staff and procedure (including places of hearing the appeals, form and manner in which the appeals shall be filed) to be followed by the Appellate Authority shall be such as may be prescribed.~~
- ~~(8) The fee for filing the appeal shall be such as may be prescribed.~~
- ~~(9) The officer authorised by the Appellate Authority shall prepare in such form and at such time as may be prescribed its annual report giving a full account of its activities and forward a copy thereof to the Central Government and the Central Government shall cause the annual report to be laid before each House of Parliament.~~

¹ Substituted by the Companies (Amendment) Act 2017

² Omitted by the Companies (Amendment) Act 2017

- (10) The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed.
- (11) The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.
- (12) The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit.
- (13) The National Financial Reporting Authority shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor-General of India prescribe.
- (14) The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor-General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority.
- (15) The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

133. Central Government to prescribe accounting standards.

The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority.

Draft Rules for NFRA, as Issued by MCA in October 2013 for Public Comments

Draft National Financial Reporting Authority Rules, 2013

In exercise of the powers conferred by clause (b) to (d) of sub section (2) of section 132, clause, sub section (3) of section 132, clause (a) of sub section (4) of section 132 and sub section (5) of section 132, of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:

1. **Short title and commencement—**

- (1) These rules may be called the National Financial Reporting Authority Rules, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions**

- (1) In these rules, unless the context otherwise requires:
 - (a) 'Act' means the Companies Act 2013 (18 of 2013);
 - (b) 'Authority' means the National Financial Reporting Authority constituted under sub section (1) of section 132 of the Act;
 - (c) 'Chairperson' means the Chairperson of the Authority;
 - (d) "Full-time Members" means the Chairperson, "Member – Accounting", "Member – Auditing" and "Member-Enforcement";
 - (e) "Firm" means a firm or a limited liability partnership registered with the Institute of Chartered Accountants of India (ICAI) under Chartered Accountants Act or Regulations made thereunder, and shall include such entities which were registered with the Institute of Chartered Accountants of India at the time of the misconduct;
 - (f) "Member – Accounting" means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;
 - (g) "Member – Auditing" means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;
 - (h) "Member -Enforcement" means the whole-time Member appointed as such by the Central Government under sub-section (3) of section 132 in accordance with NFRA (Composition and manner of selection of Members) Rules, 2013;

- (i) “Part-time Members” means members of the Authority other than Full-time members and includes Members representing Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Institute of Chartered Accountants of India (ICAI) and others who are appointed as Members of the Authority;
- (j) “Professional” means a Chartered Accountant registered under Chartered Accountant Act, 1949 or regulations made thereunder;
- (k) “Professional Address” means-
 - i. the last registered address where a chartered accountant is carrying on his profession (or when he is carrying on his profession at more than one place, the principal place); or
 - ii. the last registered place of employment or at his option, the place of his residence (if the chartered accountant is employed); or
 - iii. the last registered place of residence (if the chartered accountant neither carried on the profession nor is employed);
 - iv. the last registered overseas address or at his option, the place of residence in India which shall be deemed to be the professional address for the purposes of these rules.

(2) Words and expressions used but not defined in these rules and defined in the Companies Act, 2013 (18 of 2013) or Chartered Accountant Act, 1949, shall have the same meaning assigned to them in that Act.

3. **Composition of the Authority:** (1) For the purposes of sub-section (1) and subsection (3) of section 132, the Central Government may, by notification, constitute the Authority consisting of following, namely:—

- i. Chairperson being a Chartered Accountant who is a person of eminence having expertise in accountancy, auditing, finance or law;
- ii. Member – Accounting;
- iii. Member – Auditing;
- iv. Member - Enforcement;
- v. One representative of the MCA not below the rank of Joint Secretary or equivalent (ex-officio);
- vi. One representative of RBI, being a Member of the RBI Board, to be nominated by RBI;
- vii. One representative of SEBI, being the Chairman of SEBI or whole-time Member of SEBI, to be nominated by SEBI;
- viii. A retired Chief Justice of a High Court or a person who has been the Judge of a High Court for 5 years or more, to be nominated by the Central Government;
- ix. President of the Institute of Chartered Accountants of India (ex-officio)

(2) The Chairperson may invite any other person to the meeting of the Authority as and when required to give expert opinion.

Structure of the Authority

4. **The Authority shall have the Committees namely:-**

- i. Committee on Accounting Standards,
- ii. Committee on Auditing Standards,
- iii. Committee on Enforcement,

5. Functions of the Authority

- (1) Standard Setting: The Authority shall–
 - (a) receive recommendations from the Committee on Accounting Standards and Committee on Auditing Standards;
 - (b) consider and review the recommendations;
 - (c) give an opportunity of being heard to the Committee on any clarification that may be sought;
 - (d) make amendments as may be required;
 - (e) recommend the standards to the Central Government for being considered and notified.
- (2) Monitoring, compliance review and overseeing quality of service: The Authority shall
 - (a) receive reports from the Committee on Accounting Standards and Committee on Auditing Standards;
 - (b) approve the report to be issued on the investigated companies or their branches;
 - (c) forward reports to the Committee on Enforcement for further action, if required, along with its recommendations.
- (3) Enforcement: The Authority may –
 - (a) receive any reference from the Central Government for investigation;
 - (b) receive, consider and decide upon any recommendation from the Member – Accounting and Member – Auditing for any investigation to be carried out based on the monitoring and compliance review or investigation of auditor or audit firm undertaken by them;
 - (c) *suo motu* determine any investigation to be undertaken by the Authority;
 - (d) forward such requirements to the Committee on Enforcement;
 - (e) receive the final investigation report from the Committee on Enforcement on matters referred to them whether arising out of the Quality Review process or based on investigation requests made to the Committee on Enforcement;
 - (f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken;
 - (g) provide the opportunity of being heard to the company or its branch investigated or the professional concerned;
 - (h) accept or overrule, in writing, clarifications received and objections raised;
 - (i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.
- (4) The Authority shall undertake investigation or conduct quality review of audit of following class of companies-
 - (a) Listed Companies;
 - (b) Unlisted companies with net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31st March of immediately preceding financial year; or
 - (c) Companies having securities listed outside India

- (5) The Authority shall undertake investigation in accordance with the provisions of subsection(4) of section 132 of the Act and rules made thereunder against the auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network or brand to which it belongs), whether “directly or indirectly”, as defined in Explanation to Section 144 of the Act -
- (a) audit of 200 companies or more in a year;
 - (b) audit of 20 or more listed companies;
 - (c) company or companies (including listed company or companies), having net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31st March of immediately preceding financial year ; or
 - (d) company or companies having securities listed outside India
- Provided further that the provisions in respect of class or classes of companies provided under sub-rule (4) and sub-rule (5) shall not be applicable where a reference is made by the Central Government or any Regulator or where the Authority, in public interest, suo motu decides to exercise powers under sub-rule (4) or (5), as the case may be.
- (6) In cases where the Authority comes to the conclusion that any company has not complied with the requirements under this Act or rules, it shall refer the matter to the Central Government.
- (7) Where any officer of the Central Government or the Regional Director or the Registrar of Companies has any information in respect of any auditor or audit firm who or which is not complying with the provisions of section 132 or rules made thereunder, he shall refer the matter to the Authority.

6. **Committee on Accounting Standards and its functions**

- (1) The Committee on Accounting Standards shall comprise of 8 members, namely:
1. Chairperson – Being the “Member – Accounting”;
 2. One representative of MCA not below the rank of Director (I&I) or Regional Director;
 3. One Member representing RBI not below the rank of Chief General Manager to be nominated by RBI;
 4. One Member representing SEBI not below the rank of Executive Director to be nominated by SEBI;
 5. Chairman of Accounting Standard Board of ICAI (Ex Officio);
 6. An eminent academician with specialization in the field of accountancy to be nominated by Central Government on the recommendation of Authority;
 7. One Chartered Accountant, being a Chief Financial Officer of a listed company to be nominated by Central Government on the recommendation of Authority;
 8. One eminent Chartered Accountant with at least 20 years’ experience in accounting to be nominated by Central Government on the recommendation of Authority;
- (2) The Committee on Accounting Standards shall examine the matters relating to formulation and laying down accounting standards or any amendments thereto and shall submit the same for consideration by the Authority.

- (3) For the purpose of formulation of accounting standards under the Act, the Committee on Accounting Standards shall follow the process as under:
- (a) Make recommendations for any new standard or amendments which the Committee on Accounting Standards may want to be examined, to the Institute of Chartered Accountants of India;
 - (b) Receive New Standards or amendments to standards to be recommended by the Institute of Chartered Accountants of India within a reasonable time;
 - (c) Examine the recommendations made by the ICAI;
 - (d) Where, the Committee on Accounting Standards is not in agreement with the recommendation, send the recommendations of the ICAI back to them for a final view from the ICAI on the matters on which the Committee is not in agreement, within a reasonable period;
 - (e) Consider the final view from the ICAI, if any, received within a reasonable time;
 - (f) Make recommendations to the Authority on the new standards or amendment to standards for approval by the Authority to be forwarded to the Central Government for their consideration for being notified as part of the prescribed standards.
- (4) For the purpose of monitoring compliance of accounting standards under the Act, the Committee on Accounting Standards shall follow the process as under:
- (a) conduct scrutiny of financial statements of such class of companies and in such manner as may be decided by the Committee or the Authority:
 Provided that for a period of two years from the commencement of these rules, the Committee may conduct scrutiny under this rule through the Registrars of Companies or in cooperation with Financial Reporting Review Board set up by the ICAI;
 - (b) seek clarifications on observations arising from such scrutiny from the Company as well as its auditors as may be required;
 - (c) discuss the draft findings with the company concerned and obtain its response before the reports are finalized by the Committee;
 - (d) issue such reports (having a public and non public portion separately) arising from such scrutiny to the Authority for it to consider for further necessary action
 - (e) Refer matters to the Authority for the Authority to decide on further course of action, through the Committee on Enforcement.

7. Committee on Auditing Standards and its functions

- (1) The Committee on Auditing Standards shall comprise of 7 members, namely:
1. Chairperson – Being the “Member – Auditing”;
 2. One representative of MCA not below the rank of Director (I&I) or Regional Director;
 3. One Member representing RBI not below the rank of Chief General Manager to be nominated by RBI;
 4. One Member representing SEBI not below the rank of Executive Director to be nominated by SEBI;
 5. One Member representing Comptroller and Auditor General of India (CAG) to be nominated by CAG;
 6. Chairman of Auditing and Assurance Standard Board of ICAI (Ex Officio); and

7. One eminent Chartered Accountant with at least 20 years' experience in audit of companies to be nominated by Central Government on the recommendation of the Authority.
- (2) The Committee on Auditing Standards shall examine the matters relating to formulation and laying down auditing standards and shall submit the same for consideration by the Authority.
- (3) For the purpose of formulation of auditing standards under the Act, the Committee on Auditing Standards shall follow the process as under:
 - (a) make recommendations for any new standard or amendments which the Committee on Auditing Standards may want to be examined to the Institute of Chartered Accountants of India;
 - (b) receive new standards or amendments to standards as recommended by the Institute of Chartered Accountants of India within a reasonable period;
 - (c) examine the recommendations made by the ICAI;
 - (d) where the Committee is not in agreement with the recommendation, send the recommendations of the ICAI back to them for a final view from the ICAI, with the suggestions or views of the Committee;
 - (e) consider the final view from the ICAI, if any, received within a reasonable period;
 - (f) make recommendations to the Authority on the new standards or amendment to standards for approval by the Authority to be forwarded to the Central Government for their consideration for being notified as part of the prescribed standards.
- (4) For the purpose of monitoring compliance, Committee on Auditing Standards shall monitor the compliance of auditors including individual auditors, audit firms and audit LLPs, with the notified accounting standards and auditing standards and submit such periodical report(s) to the Authority as the Authority may specify.

Provided that for the above purpose it shall-

- (a) investigate or review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;
- (b) evaluate the sufficiency of the quality control system of the auditor, and the manner of the documentation and communication of that system by the auditor;
- (c) perform such other testing of the audit, supervisory, and quality control procedures of the auditor as are considered necessary or appropriate;
- (d) carry out investigations through dedicated, qualified and whole time investigation teams. Minimum qualification for such inspectors shall be at least 10 years auditing experience and exposure to audit of the relevant industry. The Board may also seek assistance of ICAI in conducting such investigation or in any other manner as may be approved by the Authority. The Board may, subject to prior approval of the Authority, also outsource, upto a period of two years from the commencement of these rules, such resource as may be required for this purpose;
- (e) subject to the approval of the Authority, issue a non-public portion of the report of the company or the professional, whose books and other records have been investigated in accordance with these rules;
- (f) refer matters to the Authority to decide on further course of action, through Committee on Enforcement, where violations of laws, rules or professional standards

have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies. There will be no direct referrals to Committee on Enforcement before referring to Authority.

- (5) The Committee on Auditing Standards may take the help of resources available with Quality Review Board established under Chartered Accountants Act, 1949 until it is provided with its own resources.

8. **Committee on Enforcement and its functions**

- (1) The Committee on Enforcement shall comprise of 7 members, namely:
 1. Chairman being the Member – Enforcement
 2. Member- Accounting
 3. Member – Auditing
 4. One representative of MCA, not below the rank of Director (I&I) or Regional Director
 5. Director, Serious Fraud Investigation Office;
 6. Chairman of Disciplinary Committee of ICAI (Ex Officio)
 7. One eminent Chartered Accountant having at least 20 years' experience in audit or accounting to be nominated by Central Government on the recommendation of Authority.
- (2) Subject to the provisions of subsection (4) of section 132, the Committee on Enforcement shall examine the matters referred to it for investigation and shall submit its recommendations for consideration by the Authority.
- (3) The functions of the Committee on Enforcement shall be:-
 - i. to examine the matters referred to it by the Authority (whether emanating from the Committee on Accounting, Committee on Auditing, or otherwise) requiring further enquiry or investigation
 - ii. to investigate, on a reference made by the Authority, matters relating to professional and other misconduct committed by the professional or auditor(individual or firm or LLP) and recommend to the Authority appropriate action under sub-section (4) of section 132

Provided that all the actions of the Committee on Enforcement shall be effective only on the recommendation of the Authority.
- (4) Committee on Enforcement shall complete the examination or investigation on any matter referred to it within a period of 6 months and in case there is any delay incompletion of the examination or investigation, specific time extension must be sought from the Authority, after placing justifications and reasons for the extension of time being sought. Examinations or investigations for which time extension is not sought or approved by the Authority shall be concluded based on the available information within a period of 30 days from the expiry of the 6 months or such extended time frame as approved by the Authority.

9. **Meetings for transaction of business and their procedure.–**

- (1) The Authority and its Committees may hold as many meetings and at such places as may be required for the purpose of discharging its functions under the Act.
- (2) The meetings of the Authority and of each of its committee shall ordinarily be held at its head office situated in New Delhi:

Provided that the Authority or each of its Committees may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Authority or the Committee, it is expedient to do so.

- (3) The Chairperson shall decide in advance, the date, time and place and the agenda for each meeting of the Authority:

Provided that an item not included in the agenda of an ordinary meeting may be taken up for consideration, on grounds of urgency shown by an applicant in writing, with the approval of the Chairperson.

- (4) Procedure for meetings, –
- (a) The Secretary, Members and such other officers and persons as invited by the Chairperson in relation to discussion regarding a specific item shall attend meeting;
 - (b) the Authority or Chairperson may, for reasons to be recorded in writing, adjourn the meeting;
 - (c) any Member unable to be present in a meeting for any reason, may if feasible, choose to participate in the said meeting, through video conferencing and this shall be considered as attendance by the Member for the purpose of casting vote during the meeting;
 - (d) the proceedings of each meeting of the Commission shall be recorded under the superintendence and guidance of the Secretary or by any other officer authorized by the Chairperson. The minutes of each matter taken up during meeting shall be given continuous serial number for a particular financial year.
 - (e) the quorum for the meeting of the Board of the Authority shall be 5 members. In respect of the committees the quorum shall be 3 members being present.
- (5) In a situation not provided for in these rules, the Authority may, for reasons to be recorded in writing, determine the procedure in a particular case.
- (6) No act or proceedings of the Authority or its Committees shall be invalid merely by reason of any irregularity in the procedure of the Authority or its Committees not affecting the merits of the case.

Procedures of Investigation related to Complaints and Information

10. Procedure for filing complaint.-

- (1) A complaint under section 132(4) of the Act against a professional or an auditor (including audit firm or LLP) shall be filed in Form I, in triplicate before the Member-Enforcement in person or by post or courier :
Provided that the complaint sent by post or courier under this sub-rule shall be deemed to have been presented to the Member-Enforcement on the day on which it is received in the Office of Committee on Enforcement.
- (2) A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.
- (3) A complaint filed by or on behalf of any statutory authority, such as Reserve Bank of India or Securities and Exchange Board of India or any other Regulator, shall be authorised by an officer holding a post equivalent to the post of Joint Secretary in the Government of India and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.

- (4) A complaint filed by or on behalf of a company or bank or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or bank or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the bank or the firm.

Explanation - In the case of a bank or financial institution, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institution, shall be deemed to be the specific resolution passed by the bank or financial institution concerned, for the purposes of these rules.

- (5) In case of complaints filed by any Government, statutory authority, bank or financial institution, a change in the name of complainant at any later stage, shall be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant.
- (6) Every complaint received by the Office of Committee on Enforcement shall be acknowledged by ordinary post together with an acknowledgement number.

11. Fee for filing complaint.-

- (1) Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee as prescribed by the Authority through regulations.
- (2) The fee shall be paid in the form of a demand draft drawn on any bank in India in favour of the National Financial Reporting Authority payable at the place where the Office of Committee on Enforcement is situated.
- (3) The fee once paid shall not be refunded:

Provided that no additional fee shall be payable if the complaint is resubmitted after rectification of defect under sub-rule (5) of rule 12.

12. Registration of complaint.-

- (1) The Member-Enforcement or an officer or officers authorized by the Member-Enforcement, shall endorse on every complaint the date on which it is received or presented and the Member-Enforcement or the officer or officers so authorized, shall sign on each such endorsement.
- (2) The Member-Enforcement or an officer or officers authorized by him shall scrutinize the complaints so received.
- (3) If, on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in these rules, after obtaining approval of the Authority to proceed with the matter.
- (4) If the subject matter of a complaint is, in the opinion of the Member-Enforcement, substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take any of the following actions, as the case may be,-
- (a) if such a previous complaint is still under the examination of the Member-Enforcement, then the new complaint may be clubbed with the previous complaint, after obtaining approval of the Authority and in such case the fact may be conveyed to the first complainant, new complainant and respondent respectively.
- (b) if prima facie opinion has been formed by the Member-Enforcement in such a previous complaint and the case is pending before the Committee on Enforcement,

then the Member-Enforcement shall bring the new complaint before the Committee on Enforcement, and the latter shall either club the complaint with the previous complaint or close it or ask the Member Enforcement to deal with it as a separate complaint, as it deems fit, after obtaining the approval of the Authority.

- (c) if orders have already been passed by the Committee on Enforcement on such a previous complaint, then the Member-Enforcement shall present the new complaint before the Committee on Enforcement for its closure :

Provided that even in case where the new complaint is clubbed with a previous complaint under this sub-rule, only the first complainant would be the complainant for the purposes of investigation under these rules.

- (5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Member-Enforcement may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within such time as he may determine.
- (6) If, the complainant fails to rectify the defect or defects within the time allowed under sub-rule (5), the Member-Enforcement shall form the opinion that there is no *prima facie* case and present the complaint before the Committee on Enforcement for its closure.
- (7) The Committee on Enforcement may, after the presentation of the complaint by the Member-Enforcement under sub-rule (6), either—
- (a) agree with the opinion of the Member-Enforcement and pass an order for the closure; or
- (b) disagree with the opinion of the Member-Enforcement and advise him to further investigate the matter, after obtaining approval from the Authority.

13. **Withdrawal of a complaint-**

The Member-Enforcement, on receipt of a letter of withdrawal of a complaint by the complainant, shall place the same before the Committee on Enforcement and the Committee on Enforcement, if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint:

Provided that in case the Member-Enforcement has formed his *prima facie* opinion on such a complaint, he shall place the same before the Committee on Enforcement, and the Committee on Enforcement may, if it is of the view that the circumstances so warrant, permit the withdrawal, after obtaining approval of the Authority.

14. **Information-**

- (1) Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Office of Committee on Enforcement, which is not in Form I under sub-rule (1) of rule 10, shall be treated as information and shall be dealt with in accordance with the provisions of these rules.
- (2) On receipt of such an information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him or it of, the following information,-
- (a) that relatively longer time is taken for disposal of any information than the complaint;
- (b) that the person giving information will not have the right to be represented during the investigation or hearing of the case;

- (c) that the Authority or Committee on Enforcement will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders :

Provided that where the sender of the information is the Central Government, any State Government or any statutory authority, a copy of final order shall be sent to such sender.

- (3) An anonymous information received by the Office of Committee on Enforcement will not be entertained by the Office of Committee on Enforcement.

15. **Procedure of Investigation:-**

- (1) The Member Enforcement or an officer or officers authorized by the Member Enforcement, within sixty days of the receipt of a complaint under rule 10, shall,-

- (a) if the complaint is against an individual Professional, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that Professional at his professional address;
- (b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the ICAI, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members :

Provided that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Member Enforcement had been duly received by him, her or them.

Explanation - A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.

- (2) A member whose name is disclosed by the firm shall be responsible for answering the complaint, provided such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct:

Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation or allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

- (3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Member-Enforcement, forward to the Member-Enforcement, a written statement in his defence.
- (4) On receipt of the written statement, if any, the Member-Enforcement may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as

may be allowed by the Member-Enforcement, forward to the Member- Enforcement, his rejoinder on the written statement.

- (5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Member-Enforcement may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate :

Provided that if no reply is sent by the respondent, within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Member-Enforcement shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under these rules.

16. Examination of the Complaint-

- (1) The Member-Enforcement shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his prima facie opinion as to whether the member or the firm is guilty or not of any professional or other misconduct.
- (2) (a) Where the Member-Enforcement is of the *prima facie* opinion that the member or the firm is guilty of professional or other misconduct he shall place his opinion along with the complaint and all other relevant papers before the Committee on Enforcement within 60 days of conclusion of investigation;
- (b) If the Committee on Enforcement agrees with the *prima facie* opinion of the Member-Enforcement then the Committee on Enforcement may proceed further under these rules, after obtaining approval from the Authority.
- (c) If the Committee on Enforcement disagrees with the prima facie opinion of the Member-Enforcement, it shall either close the matter or advise the Member-Enforcement to further investigate the matter.
- (3) Where the Member Enforcement is of the *prima facie* opinion that the member or the firm is not guilty of any professional or other misconduct, he shall place the matter before the Committee on Enforcement within 60 days of conclusion of the investigation, and the Committee, -
- (a) if it agrees with such opinion of the Member-Enforcement, shall pass order, for closure.
- (b) if it disagrees with such opinion of the Member Enforcement, then it may either proceed under these rules, after obtaining approval from the Authority or may advise him to further investigate the matter.
- (4) The Member-Enforcement shall, after making further investigation as advised by the Committee on Enforcement under sub-rule (2) or (3) of this rule shall further proceed under this rule.

17. Mode of Sending Notice-

- (1) Every notice or letter issued by the Member- Enforcement or Committee on Enforcement, under these rules shall be sent to the member or the firm or any other person, by registered post with acknowledgment due or speed post, except where specified otherwise in any rule.
- (2) If any notice or letter is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice or letter, the notice or letter shall be deemed to have been served.

- (3) If the notice or letter is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Member-Enforcement shall ask the complainant or any other person who may be in a position to provide another address of the member or firm or person whose address is found to be not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.
- (4) Where the notice or letter is returned under sub-rule (3), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with the ICAI or in such other manner as the Committee on Enforcement may think fit and such service shall be deemed to be sufficient service for the purposes of these rules.
18. **Certain provisions relating to complaint also to be applicable for information relating to misconduct of members-**The procedure laid down for dealing with complaints in sub-rule (6) of rule 10, sub-rules (1), (2), (3) and (4) of rule 12, sub-rules (1), (2), (3) and (5) of rule 15, rule 16 and rule 17 shall also apply to information received by the Member Enforcement relating to misconduct of members.
19. **Time limit on entertaining complaint or information-**Where the Member-Enforcement is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Committee on Enforcement for taking decision on it under sub-section (4) of section 132 of the Act.
20. **Functioning of Committee on Enforcement-**
- (1) All questions which come up before the Committee on Enforcement shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Member-Enforcement or in his absence, the person presiding, shall have a second or casting vote.
- (2) In the event of the Member Enforcement not being able to attend a meeting of the Committee on Enforcement, the Member of the Committee on Enforcement who is Chairman of the Disciplinary Committee of ICAI shall preside in such meeting.
21. **Procedure to be followed by the Committee on Enforcement-**
- (1) The Committee on Enforcement shall follow summary disposal procedure in dealing with all cases before it, as laid down in these rules.
- (2) If the Committee on Enforcement decides to proceed further under clause (b) of sub-rule (2) of rule 16 or under clause (b) of sub-rule (3) of rule 16, it shall expeditiously cause to deliver to the respondent and the complaint, a copy each of the following:
- (a) *prima facie* opinion formed by the Member Enforcement; and
- (b) particulars or documents relied upon by the Member Enforcement, if any, during the course of formulation of *prima facie* opinion.
- (3) The Committee on Enforcement shall inform the respondent to file a written statement, within such time as may be specified:
- Provided that the Committee on Enforcement may give him additional time for submitting his written statement on application by the respondent on his adducing sufficient reasons to the satisfaction of the Committee on Enforcement for seeking additional time:

Provided further that such additional time shall not be given more than once and if the respondent still does not submit a written statement, the Committee on Enforcement shall presume that he has no further submissions to make and shall proceed to decide the case on merits.

- (4) The respondent shall send a copy of his written statement, along with supporting documents, to the Committee of Enforcement and the complainant within the stipulated time.
- (5) The complainant or the Member Enforcement may, after receipt of the written statement, submit a rejoinder to the Committee on Enforcement, with a copy to the respondent, along with supporting documents, if any.
- (6) The Committee of Enforcement shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of *prima facie* opinion and the Committee on Enforcement shall cause a notice to be sent of such date, hour and place to the Member Enforcement, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

Explanation— For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who shall be a Chartered Accountant.

- (7) On the date of hearing, if the respondent, in spite of the service of notice, under sub-rule (6), does not appear either in person or through his authorized representative, the Committee on Enforcement may proceed *ex parte* and pass such orders as it may think fit or direct fresh notice to be served.
- (8) The Committee on Enforcement may, on such terms as it thinks fit, and at any stage of the proceedings, adjourn the hearing:

Provided that such adjournment shall not be given more than once at any stage of the proceedings.

- (9) The Committee on Enforcement shall consider the written representations, including the written statements, rejoinder and supporting documents, and the oral submission, if any made by the Member-Enforcement, the complainant and the respondent, and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.

22. Orders of the Committee on Enforcement-

- (1) On arriving at a finding under sub- rule (9) of rule 21 that the respondent is guilty of professional or other misconduct, the Committee on Enforcement shall give the respondent an opportunity to be heard before recommending to the Authority any under sub-section (4) of section 132 of the Act. Such order may include reprimands or severe reprimands being made, order for practice to be continued with restrictions for a period of time, order waiver or refund of fees, impose penalty or debar the member or member firm from practice:

Provided that if the respondent does not appear before the Committee on Enforcement at the time directed to do so when given such an opportunity to be heard, the Committee on Enforcement shall presume that he has nothing more to represent before it and shall make recommendations to the Authority and the Authority shall pass orders under sub-section (4) of section 132 of the Act.

Provided also, that where the order includes any action to debar the professional, such order shall be communicated to the ICAI for necessary action within 45 days, failing which at the end of 45 days, such order for debarring the professional shall become effective automatically.

- (2) On arriving at a finding under sub-rule (9) of rule 21 that the respondent is not guilty of professional or other misconduct, the Committee on Enforcement shall make recommendations to the Authority and the Authority shall pass orders closing the case.
- (3) The Committee on Enforcement shall send, free of charge, to the Member- Enforcement, respondent and the complainant, a certified copy of the final order.
- (4) Notwithstanding anything contained in this rule, the Authority shall have the powers to pass such interim orders as it may deem fit during the process of the investigation, based on recommendations made by the Committee on Enforcement.
Provided, however, such interim orders shall be passed only after having given reasonable opportunity to the parties to be heard.
- (5) On arriving at a finding under sub-rule (9) of rule 21 that the complainant has made a vexatious claim against the respondent with an intent to harass, the Authority shall have the powers to award costs not exceeding Rs.10,000 to the respondent.

23. Attendance of hearings by the complainant, respondent and witness-

- (1) The complainant and the respondent shall have the right to attend the hearings of the Committee on Enforcement unless ordered otherwise by the Committee on Enforcement, for reasons to be recorded in writing.
- (2) The complainant and the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing.

Appellate Authority

24. (1) Any person aggrieved by any order of the Authority may within ninety days from the date on which the order is communicated to it or him, prefer an appeal to the Appellate Authority:
Provided that the Central Government may also appeal against the decision of the Authority within ninety days:
Provided further that the Appellate 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 Appellate Authority may, after calling for the records of any case, revise any order made by the Authority and may-
- (a) confirm, modify or set aside the order;
 - (b) impose any penalty, order for restricting practice for a period, order for waiver or refund of fees or set aside, reduce, or enhance the penalty, restriction of practice for a period, waiver or refund of fees imposed by the order;
 - (c) debar the member or the firm or set aside, reduce, or enhance the period of debarment imposed by the order,
 - (d) remit the case to the Authority for such further enquiry as the Appellate Authority considers proper in the circumstances of the case; or
 - (e) pass such other order as the Appellate Authority thinks fit:
Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

25. Preparation and furnishing of the Annual Report of the Authority:-

- (1) The Authority shall prepare once in every year an Annual Report in the form specified in the schedule, giving a true and full account of its activities performed in the year.

- (2) The Authority may also include in the Annual Report any other item, not included in the form specified in the schedule, with the prior permission of the Central Government.
- (3) The Authority, shall forward the annual report to the Central Government within a period of one hundred eighty days immediately following the close of the year for which it has been prepared.
- (4) The matters relating to form and time of preparation of Annual Report, with respect to which no express provision has been made in these rules, shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be final.

26. **Preparation and furnishing of the Annual Report of the Appellate Authority:-**

- (1) The Appellate Authority shall prepare once in every year an Annual Report in the form specified in the schedule, giving a true and full account of its activities performed in the year.
- (2) The Appellate Authority may also include in the Annual Report any other item, not included in the form specified in the schedule, with the prior permission of the Central Government.
- (3) The Appellate Authority, shall forward the annual report to the Central Government within a period of one hundred eighty days immediately following the close of the year for which it has been prepared.
- (4) The matters relating to form and time of preparation of Annual Report, with respect to which no express provision has been made in these rules, shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be final.

27. **Residuary provision-**

Matters relating to the procedure of investigation, conduct of cases and allowances to nominated members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding.

28. **Removal of difficulty-**

In the matter of implementation of these rules, if any doubt or difficulty arises, the same shall be placed before the Central Government and the decision of the Central Government thereon shall be final.

DRAFT RULES UNDER THE COMPANIES ACT, 2013

Draft National Financial Reporting Authority (Constitution of Selection Committee) Rules, 2013.

In exercise of the powers conferred by sub section (3) of section 132 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely:

1. **Short title and commencement–**

- (1) These rules may be called the National Financial Reporting Authority (Constitution of Selection Committee) Rules, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definitions–**

- (1) In these rules, unless the context otherwise requires:
 - (a) ‘Act’ means the Companies Act 2013 (18 of 2013);
 - (b) ‘Authority’ means the National Financial Reporting Authority established under sub section (1) of section 132 of the Act;
 - (c) ‘Part-time Members’ means members of the Authority other than Full-time Members;
 - (d) ‘Selection Committee’ means the Committee constituted under sub rule (1) of rule 3 for the purposes of recommending panel of names of Chairperson and Fulltime Members of the Authority to the Central Government;
 - (e) ‘Full-time Members’ shall mean the ‘Member-Accounting’, ‘Member-Auditing’ and ‘Member-Enforcement’ provided under National Financial Reporting Authority Rules, 2013.
- (2) Words and expressions used but not defined in these rules and defined in the Companies Act, 2013 (18 of 2013) shall have the same meaning assigned to them in that Act.

3. **Constitution of Selection Committee.**

- (1) The Central Government shall constitute a Selection Committee consisting of:
 - (a) Chief Justice of India or his nominee.....Chairperson;
 - (b) the Secretary in the Ministry of Corporate Affairs,....Member
 - (c) the Secretary in the Ministry of Law and Justice.....Member;
 - (d) one expert of repute who is a Chartered Accountant and has special knowledge and professional experience of twenty five years or more in accountancy, auditing, management, finance, public affairs or administration; ... Member
- (2) An officer not below the rank of Joint Secretary nominated by the Ministry of Corporate Affairs shall be the Convener of the Committee.

4. The composition and manner of selection of panel of members of the Authority shall be such as prescribed under the National Financial Reporting Authority (Composition and manner of selection of members) Rules, 2013.

5. The term of the Committee constituted under and pursuant to Rule 3 shall be for a period of one year from the date of its constitution.

6. **Other matters:** Matters relating to constitution of the Selection Committee with respect to which no express provision has been made in these rules, shall be referred by the Authority to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

DRAFT RULES UNDER THE COMPANIES ACT, 2013

Draft National Financial Reporting Authority (Composition and the manner of selection of Chairperson and Members) Rules, 2013.

In exercise of the powers conferred by sub-section (3) of section 132 of the Companies Act, 2013 (18 of 2013) the Central Government hereby makes the following rules, namely:-

1. Short title and commencement–

- (1) These rules may be called the National Financial Reporting Authority (Composition and manner of selection of Chairperson and Members) Rules, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions–

- (1) In these rules, unless the context otherwise requires,—
 - (a) ‘Act’ means the Companies Act, 2013 (18 of 2013);
 - (b) ‘Authority’ means the National Financial Reporting Authority established under subsection (1) of section 132 of the Act;
 - (c) ‘Committee’ means the Selection Committee constituted under and pursuant to rule 3 of the National Financial Reporting Authority (Constitution of Selection Committee) Rules, 2013.
 - (d) “Full time member” has the same meaning as in sub-rule (1) of Rule 7 of the these Rules;
 - (e) “Part time member” has the same meaning as in sub-rule (2) of Rule 7 of these Rules;
- (2) Words and expressions used but not defined in these rules and defined in the Companies Act, 2013 (18 of 2013) shall have the same meaning assigned to them in that Act.

3. Composition of National Financial Reporting Authority

- (1) The Authority shall consist of a chairperson and a maximum of fifteen other members as specified under sub-section (3) of Section 132 of the Act.
- (2) All Members of the Authority, before being appointed, shall submit a declaration to the Central Government confirming that they have no conflict of interest or lack of independence in being appointed to such position, failing which their appointment shall not be considered.
- (3) The qualifying criteria for the Chairperson shall be that he or she is—
 - (i) a Citizen of India;
 - (ii) a Chartered Accountant;
 - (iii) having expertise and experience of not less than 25 years in the field of accountancy, auditing, finance or law; and
 - (iv) having experience in auditing large listed companies.
- (4) The qualifying criteria for Full-time Members shall be that they are –
 - (i) Citizen of India;
 - (ii) In the case of Member- Accounting or Member- Auditing, a Chartered Accountant
 - (iii) Having expertise and experience of not less than 20 years in the field of accountancy or auditing and

- (iv) Having experience
 - A. in the case of Member – Accounting, auditing large listed companies or having held a position not below the level of CFO in a large company;
 - B. in the case of Member – Auditing, auditing large listed companies;
 - (v) The Member – Enforcement shall be a person who has been the Judge of a High Court;
- (5) The following persons shall not be eligible to be appointed as Members of the Authority:
- (i) A person who is associated with any audit firm (including related consultancy firms) during the course of their appointment;
 - (ii) An employee or Executive Director of any Company;
 - (iii) A person who is aged 70 years and above;
 - (iv) A person holding any official position in the Institute of Chartered Accountants of India, except the ex-officio Members of the Authority and its various committees;
 - (v) A person if
 - A. he is of unsound mind and stands so declared by a competent court;
 - B. he is an undischarged insolvent;
 - C. he has applied to be adjudicated as an insolvent and his application is pending;
 - D. he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a Member
 - E. he being a professional, has been debarred for a period exceeding 3 years, for professional or other misconduct by any professional body to which he belongs
- (6) Any member who, after his appointment, fails to meet any of the criteria provided in this rule, shall be deemed to have vacated his office forthwith.

4. Manner of Selection of a panel of names–

- (1) The Chairperson and Full-time Members shall be nominated by the Central Government from the panel of names recommended by the Committee.
- (2) The first Chairperson and Full-time Members of Authority to be notified by the Central Government under provisions of sub section (1) of Section 132 of the Act and shall be comprised on the same basis as provided for under rule 3 and as recommended by the Committee.
- (3) Whenever any vacancy of Chairperson or Full-time Members of the Authority exists or as and when such vacancy arises or is likely to arise, the Central Government may make a reference to the Committee in respect of such vacancy or vacancies for recommendation of a panel of names.
- (4) The Committee shall suggest for inclusion in the panel of names to be recommended for appointment as the Chairperson or a Full-time Member of the Authority on a same basis as provided as in rule 3 above and such other persons as the Committee may deem appropriate

- (5) The Committee shall make its recommendations to the Central Government, within a period not exceeding one hundred and twenty days from the date of reference made to it under these rules.
5. **Functions of Committee:**
- (1) The Committee shall recommend a panel of not more than three persons, selected under rule 4, in respect of each vacancy that has been referred to the Committee.
- (2) If the members of the Committee differ in making its recommendation, the recommendations of selection of Chairperson or a Full-time Member of the Authority shall be decided by the majority of the Members of the Committee.
- (3) The Committee shall devise its own procedure for selecting the persons to be recommended for appointment as the Chairperson or a Member of the Authority.
6. **Vacancy etc., not to invalidate proceedings of Authority:-**
- No act or proceeding of the Authority shall be invalid merely by reason of -
- (a) any vacancy in, or any defect in the constitution of the Authority; or
- (b) any defect in the appointment of a person acting as a Chairperson or as a Member; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.
7. **Full time member and part time member**
- (1) The Chairperson, "Member – Accounting", "Member-Auditing" and "Member – Enforcement" shall be the "Full-time Members" of the Authority;
- (2) The Members of the Authority other than those mentioned in the sub rule (1) of this rule shall be the "Part-time Members" of the Authority.
8. **Removal of a Member from the Board of the Authority**
- (1) The Central Government, may remove the Chairperson or a Full-time Member before the expiry of the period of his appointment, where it is of the opinion that such Chairperson or Member has contracted any of the disqualification criteria or fails to continue to meet the qualification criteria specified in this rules, after giving such member a reasonable opportunity of being heard;
- (2) The Central Government shall also, where it is of the opinion that it is in public interest or where it is of the opinion that the continuance of the Chairperson or a Full-time Member would be construed as a conflict of interest or lack of independence, it may remove such Chairperson or the Member from the Authority at its absolute discretion.
9. **Lien of Central Government Officers in case of selection:-**
- The officers of the Central Government on their selection as Chairperson or Members may retain his lien with his parent cadre or Ministry or Department, as the case may be, while holding office as such for a period not exceeding one year.
10. **Interpretation-**
- If any question arises relating to the interpretation of these rules, the same shall be referred to the Central Government for its decision.
11. **Saving-**
- Nothing in these rules shall affect reservation, relaxation of age limit and other concession required to be provided for the Schedule Castes, Scheduled Tribes, Ex- Servicemen and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.

12. **Other conditions of service-**

The conditions of service of a Member in respect of matters for which no provision is made in these rules shall be the same as may for the time being be applicable to other employees of the Government of India of a corresponding status.

13. **Other matters:**

Matters relating to selection of Chairperson and other Members (Full time and Part time) with respect to which no express provision has been made in these rules shall be referred by the Authority to the Central Government for its decision and the decision of the Central Government thereon shall be final.

DRAFT RULES UNDER THE COMPANIES ACT, 2013

Draft National Financial Reporting Authority (Salary, Allowances and other Terms and Conditions of Service of Chairperson and other Members) Rules, 2013.

In exercise of the powers conferred by sub section (3) of section 132 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules, namely: -

1. Short title and commencement–

- (1) These rules may be called the National Financial Reporting Authority (Salary, Allowances and other Terms and Conditions of Service of Chairperson and other Members) Rules, 2013.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions–

- (1) In these rules, unless the context otherwise requires:
 - (a) “Act” means the Companies Act, 2013 (18 of 2013);
 - (b) “Chairperson” means the Chairperson of the Authority appointed under subsection (3) of Section 132 of the Companies Act, 2013;
 - (c) “Authority” means the National Financial Reporting Authority constituted under sub- section (1) of section 132 of the Act;
 - (d) “Full-time Member” means a Full time Member of the Authority as per National Financial Reporting Authority Rules, 2013.
 - (e) “Part-time Member” means a Part time Member of the Authority as per National Financial Reporting Authority, Rules, 2013.
- (2) All other words and expressions used in these rules but not defined, shall have the same meanings respectively assigned to them in the Act.

3. Salary–

The Chairperson shall be paid a consolidated monthly salary of rupees three lakh and every Full-time Member shall be paid a consolidated monthly salary of rupees two lakh fifty thousand rupees. They shall not be entitled to house and car.

4. Contributory Provident Fund–

- (1) The Chairperson and other Full-time Members shall be governed by the provisions of the Contributory Provident Fund Rules (India), 1962 and no option to subscribe under the General Provident Fund (Central Services) Rules, 1960 shall be available.
- (2) No additional pension and gratuity shall be admissible for service rendered.

5. Leave–

- (1) The Chairperson and every other Full-time Member shall be entitled to thirty days of Earned Leave for every year of service.
- (2) The payment of leave salary during leave shall be governed by rule 40 of the Central Civil Services (Leave) Rules, 1972.
- (3) The Chairperson and every other Full-time Member shall be entitled to encasement of fifty per cent of Earned Leave standing to their credit at any time.

6. Travelling and Daily Allowances–

The Chairperson and other Full-time Members of the Authority while on tour within India or on transfer (including the journey undertaken to join the Authority or on the completion of their

tenure with the Authority to proceed to their home town) shall be entitled to the travelling allowance, daily allowance, transportation of personal effects and other similar matters at the same rates [as are prescribed for the Secretary to the Government of India.

7. Official visits abroad–

Official visits abroad by the Chairperson or Members shall be undertaken only in accordance with orders issued by the Central Government and they shall be entitled to draw such allowances in respect of such visits as are prescribed for the Secretary to the Government of India.

8. Leave Travel Concession–

The Chairperson and other Full-time Members of the Authority shall be entitled to Leave Travel Concession (LTC) at the same rates as are prescribed for the Secretary to the Government of India.

9. Facility for Medical Treatment–

The Chairperson and other Full-time Members shall be entitled to medical treatment and hospital facilities as provided in the Central Government Health Scheme (CGHS) to a retired Government servant. At places where the said Scheme is not in operation, the Chairperson and other Full-time Members shall be entitled to the facilities as provided in the Central Service (Medical Attendance) Rules, 1944.

10. Declaration of independence and lack of conflict of interest:-

- (1) The Chairperson and other Members of the Authority shall, submit a declaration to the Central Government confirming specifically that their appointment, if made, would not create any lack of independence or conflict of interest.
- (2) The Chairperson or any Member shall not participate in any matter before the Authority or any of its Committee in case he has any interest or concern in such matter.

11. Term of office of Chairperson and Members of Authority–

The Chairperson or a Full-time Member of the Authority shall hold office as such for a term of three years from the date on which he enters upon his office, and shall be eligible for reappointment:

Provided that no Chairperson or Full-time Member shall hold office after such person has attained the age of seventy years.

12. Vacancy-

- (1) A vacancy caused by the resignation or removal of the Chairperson or any other Full Member under rule 13 or by death or otherwise shall be filled by fresh appointment in accordance with the provisions of sub-section (3) of section 132 read with National Financial Reporting Authority (Composition and the manner of selection of members) Rules, 2013.
- (2) In the event of the occurrence of a vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Full time Member shall act as the Chairperson, until the date on which a new Chairperson, appointed in accordance with the provisions of this Act or rules made thereunder to fill such vacancy, enters upon his office.
- (3) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Full time Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes the charge of his functions.

13. Resignation, removal and suspension of Chairperson and other Full time Members

- (1) The Chairperson or any other Full time Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Provided that the Chairperson or a Full time Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry

of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (2) Central Government may, by order, remove the Chairperson or any other Full time Member from his office if such Chairperson or Full time Member, as the case may be,—
- (i) is, or at any time has been, adjudged as an insolvent; or
 - (ii) has engaged at any time, during his term of office, in any paid employment; or
 - (iii) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
 - (iv) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Full time Member; or
 - (v) has so abused his position as to render his continuance in office prejudicial to the public interest; or
 - (vi) has become physically or mentally incapable of acting as a Full time Member.

14. Administrative powers of Chairperson

The Chairperson shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Authority:

Provided that the Chairperson may delegate such of his powers relating to administrative matters of the Authority, as he may think fit, to any other Full time Member or officer of the Authority.

15. Terms and Conditions of service of part time Members

- (1) Fees and allowances of Part-time Members—
- (a) A part-time Member shall be entitled to receive remuneration by way of a fee of rupees ten thousand only for each meeting attended by him.
 - (b) A part-time Member while on tour including the journey undertaken to attend a meeting shall also be entitled to travelling allowance and daily allowances at the same rates and scale as are applicable to the Secretary to the Government of India.
- (2) Removal of Part time Members:- A Part time Member may be removed by the Central Government in following cases:-
- (a) in case of resignation by the Part time Director or in case of withdrawal nomination by the relevant body/authority which had earlier nominated him
 - (b) has so abused his position as to render his continuance in office prejudicial to the public interest.
- (3) The part-time members of the Committee on Accounting Standards, Committee on Auditing Standards and Committee of Enforcement shall be entitled to such fees, travelling, conveyance and other allowances as are admissible to the Additional Secretary in the Central Government.

16. Other Conditions of Service—

Matters relating to the terms and conditions of service of the Chairperson or other Members, with respect to which no express provision has been made in these rules, shall be referred by the Authority to the Central Government for its decision, and the decision of the Central Government thereon shall be final.

17. **Power to Relax**

The Central Government shall have the powers to relax the provisions of any of these rules with respect to any class or category of persons.

Suggestions Submitted by ICAI on Draft Rules for NFRA, as issued by MCA in October 2013 for Public Comments

Chapter IX: National Financial Reporting Authority General Comments:

- Section 132 of the Act shall not be notified in the present form.
- The provisions for constitution of National Financial reporting Authority were introduced in Companies Bill 2011 without exposing it to public for comments.
- In the 57th Report of the Parliamentary Standing Committee on Finance on Companies Bill, 2011, with regard to Constitution of NFRA, the comments of the Ministry of Corporate Affairs (at serial no. 55 and Page 42) were that the NFRA shall follow procedure which shall be fair to all concerned stakeholders. The apprehensions expressed can be suitably addressed in rules/procedure of functioning of NFRA. In view of this, ICAI being the major stakeholder and before the notification for implementation of Section 132 of the Companies Act, 2013, a lot of deliberations and discussion are required.
- Formulation of Standard setting and monitoring shall not be under the same umbrella.
- Multiplicity of Regulators will not serve the purpose as it would lead to duplication of work on the same matter. It would ultimately result into wastage of time and wasteful expenditure. Steps suggested by Government are already been taken care of by ICAI. Also, it is to be noted that Government Nominees are also members of Accounting Standards Board and Auditing & Assurance Standards Board of ICAI. Therefore, Government should relook and review the issue.
- The Rules on NFRA are not in concurrence with the Act. In the Rules the power has been given to investigate, however, the Act talks about monitoring.
- The way the Rules pertaining to NFRA have been drafted are very much investigative in nature at the initial step itself which will affect the growth of the profession.
- The auditor gives the 'true and fair' view based on sample selection and there is a difference between audit and investigation.
- There has been no gap in services provided by the ICAI both in formulating accounting standards & auditing standards.
- The Rules should concentrate only on top 100 companies and its auditors.

Specific Comments:

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
1.	2.1 (e)	"Firm" means a firm or a limited liability partnership registered with the Institute of Chartered Accountants of India (ICAI) under Chartered Accountants Act or Regulations made thereunder, and shall include such entities which were registered with the Institute of Chartered Accountants of India at the time of the misconduct;	Others	1. In Sub Rule (e) of Rule 2.1, the term 'Firm' be defined as per the Chartered Accountants Act, 1949 and as amended from time to time	
2.	2.1 (j)	"Professional" means a Chartered Accountant registered under Chartered Accountant Act, 1949 or regulations made thereunder;	Others	2. Sub Rule (j) of Rule 2.1 can be reworded as, Professional means a 'member' as defined in the Chartered Accountants Act, 1949 and should be a member in full time practice	
3.	3	Composition of the Authority	Others	A sub-point (x) may be added stating that "in case of more members are appointed on the NFRA as possible under section 132 (3), they should be selected based on similar criteria mentioned for points (v) to (ix) under Rule 3(1). Further, the representative from C&AG should be included as member on the NFRA.	
4.	4	The Authority shall have thee Committees namely:-	Drafting suggestions	There is a typographical error that has crept in the sentence. The word "thee" should be changed to "three" in the opening sentence of the Rule.	
5.	5.2	(2) Monitoring, compliance review and overseeing quality of service: The Authority shall (a) receive reports from the Committee on Accounting Standards and Committee on Auditing Standards (b) approve the report to be issued on the investigated companies or their branches. (c) Forward reports to the Committee on enforcement for further action, if any required along with the recommendations.	Others	1. Sub Rule (2) of Rule 5 may be drafted as Monitoring, compliance review and overseeing quality of service: The Authority may (a) receive reports from the Committee on Accounting Standards and Committee on Auditing Standards (b) after considering the views of the parties and after giving opportunity of being heard forward the report to be issued on the investigated companies or their branches. (c) Forward reports to the Committee on enforcement for further action, if any required along with the recommendations.	
6.	All		Others	Rules 5(2), 5(3)(b), 5(3)(c), 5(3)(e), 5(4), 5(5), 6(4)(a), 7(4), 7(4)(a), 7(4)(d), 8(4) – In these Rules the words "monitoring & compliance review", "quality review", "investigation" and "scrutiny" have been used in generic sense and it should be specific. Also, the word 'investigation' is not appropriate and should be used only in rarest of the case cases after due preprocess done by the ICAI.	

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
7.	5.3	Enforcement: The Authority may - (a) receive any reference from the Central Government for investigation; (b) receive, consider and decide upon any recommendation from the Member – Accounting and Member – Auditing for any investigation to be carried out based on the monitoring and compliance review or investigation of auditor or audit firm undertaken by them; (c) suo motu determine any investigation to be undertaken by the Authority; (d) forward such requirements to the Committee on Enforcement; (e) receive the final investigation report from the Committee on Enforcement on matters referred to them whether arising out of the Quality Review process or based on investigation requests made to the Committee on Enforcement; (f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken; (g) provide the opportunity of being heard to the company or its branch investigated or the professional concerned; (h) accept or overrule, in writing, clarifications received and objections raised; (i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.	Others	2. Subrule (b) of Rule 5.3 can be dropped. 3. In Sub Rule (d) of Rule 5.3, the word ‘requirements’ need to be clarified. 4. Sub Rule (e) of Rule 5.3, talks about both quality review process and investigation process. Both are different situations and cannot be the ground for receiving the final report on investigation.	
8.	5.4	(4) The Authority shall undertake investigation or conduct quality review of audit of following class of companies- a) Listed Companies; b) Unlisted companies with net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31st March of immediately preceding financial year; or c) Companies having securities listed outside India	Others	1. In Subrule (4) of Rule 5, the word ‘investigation’ in opening sentence shall be removed. It may be reworded as follows: “The Authority may after receiving the report from the Committee on Accounting Standards, Committee on Auditing Standards and Committee on Enforcement may conduct quality review of firms conducting audit of following class of companies”. 2. Regarding Class of Companies, the Rules should concentrate only on top 100 companies and its auditors.	
9.	Proviso to Rule 5.5	Provided further that the provisions in respect of class or classes of companies provided under sub-rule (4) and sub-rule (5) shall not be applicable where a reference is made by the Central Government or any Regulator or where the Authority, in public interest, suo motu decides to exercise powers under sub-rule (4) or (5), as the case may be.	Drafting Suggestions	In the proviso to Sub Rule (d) of Rule 5.5, in the 3rd line the word ‘Regulator’ should be deleted.	

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
10.	5.5	The Authority shall undertake investigation in accordance with the provisions of sub-section (4) of section 132 of the Act and rules made thereunder against the auditors or audit firms which conduct the audit of the following category of companies or their branches (including through the network or brand to which it belongs), whether "directly or indirectly", as defined in Explanation to Section 144 of the Act - a) audit of 200 companies or more in a year; b) audit of 20 or more listed companies; c) company or companies (including listed company or companies), having net worth not less than Rs.500 crores or paid up capital not less than Rs.500 crores or annual turnover not less than Rs.1,000 crores as on 31st March of immediately preceding financial year; or d) company or companies having securities listed outside India	Others	In Sub-rule (5) of Rule 5, the rule shall be deleted.	
11.	5.6	In cases where the Authority comes to the conclusion that any company has not complied with the requirements under this Act or rules, it shall refer the matter to the Central Government.	Others	3. The Sub-rule 6 of Rule 5 is out of context and may be deleted.	
12.	5.7	Where any officer of the Central Government or the Regional Director or the Registrar of Companies has any information in respect of any auditor or audit firm who or which is not complying with the provisions of section 132 or rules made thereunder, he shall refer the matter to the Authority.	Others	3. The sub-rule 7 of Rule 5, as a whole shall be deleted. In the Act, the powers have been given to the Central Government and not to the officer of the Central Government.	
13.	6.1	The Committee on Accounting Standards shall comprise of 8 members, namely: 1. Chairperson – Being the "Member–Accounting"; 2. One representative of MCA not below the rank of Director (I&I) or Regional Director; 3. One Member representing RBI not below the rank of Chief General Manager to be nominated by RBI; 4. One Member representing SEBI not below the rank of Executive Director to be nominated by SEBI; 5. Chairman of Accounting Standard Board of ICAI (Ex Officio); 6. An eminent academician with specialization in the field of accountancy to be nominated by Central Government on the recommendation of Authority; 7. One Chartered Accountant, being a Chief Financial Officer of a listed company to be nominated by Central Government on the recommendation of Authority; 8. One eminent Chartered Accountant with at least 20 years' experience in accounting to be nominated by Central Government on the recommendation of Authority;	Others	1. In Sub-rule 8 of Rule 6.1, the criteria for an eminent chartered accountant with at least 20 years of experience should include auditing in addition to accounting. Also, a representative from CAG should be added as point 9 under rules 6 (1) (8) since Government owned companies form a significant constituent of the total market capitalization of listed companies.	If auditing is not included, then practically points 7 and points 8 will be similar which does not appear to be the intention
14.	6.4 (a)	Provided that for a period of two years from the commencement of these rules, the Committee may conduct scrutiny under this rule through the Registrars of Companies or in cooperation with Financial Reporting Review Board set up by the ICAI;	Others	2. In Proviso to Sub-rule (a) of Rule 6.4, FRRB does not undertake scrutiny of financial statements.	

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
15.	6.4 (a)	Conduct scrutiny of financial statements of such class of companies and in such manner as may be decided by the Committee or the Authority	Drafting suggestions	In Sub-rule (a) of Rule 6.4, the words 'and auditor's report' to be added after 'financial statements'. Further, the words such 'class of companies' should be linked to such class of companies as mentioned in rule 5.4	
16.	6.4 (d)	issue such reports (having a public and non public portion separately) arising from such scrutiny to the Authority for it to consider for further necessary action	Needs Clarity	In Sub-rule (d) of Rule 6.4, a clarification should be made as what constitutes public and non-public portion. Also, Sub Rule (f) of Rule 7.4 is in conflict with Rule 6.4 (e)	
17.	7.4	For the purpose of monitoring compliance, Committee on Auditing Standards shall monitor the compliance of auditors including individual auditors, audit firms and audit LLPs, with the notified accounting standards and auditing standards and submit such periodical report(s) to the Authority as the Authority may specify.	Drafting Suggestion	1. In Sub Rule (4) of Rule 7, instead of using 'audit LLPs, it can be reworded as audit firms including LLPs.	
18.	7.4 (a)	investigate or review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;	Drafting Suggestions	1. In Sub Rule (a) of Rule 7.4, the word "investigate" may be deleted and the sentence should start with the word 'Conduct quality review of selected....'	
19.	7.4 (d)	carry out investigations through dedicated, qualified and whole time investigation teams. Minimum qualification for such inspectors shall be at least 10 years auditing experience and exposure to audit of the relevant industry. The Board may also seek assistance of ICAI in conducting such investigation or in any other manner as may be approved by the Authority. The Board may, subject to prior approval of the Authority, also outsource, upto a period of two years from the commencement of these rules, such resource as may be required for this purpose;	Others	The Sub Rule (d) of Rule 7.4 shall be deleted.	
20.	7.4 (e)	subject to the approval of the Authority, issue a non-public portion of the report of the company or the professional, whose books and other records have been investigated in accordance with these rules;	Others	The Sub Rule (e) of Rule 7.4 shall be deleted.	
21.	7.4 (f)	refer matters to the Authority to decide on further course of action, through Committee on Enforcement, where violations of laws, rules or professional standards have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies. There will be no direct referrals to Committee on Enforcement before referring to Authority.	May require harmonization with other Laws	Sub Rule (f) of Rule 7.4 is in conflict with Rule 6.4 (e)	
22.	9.4 (d)	the proceedings of each meeting of the Commission shall be recorded under the superintendence and guidance of the Secretary or by any other officer authorized by the Chairperson. The minutes of each matter taken up during meeting shall be given continuous serial number for a particular financial year.	Drafting suggestions	In Sub Rule (d) of Rule 9.4, the eighth word should be changed from "commission" to "committee".	

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
23.	10	Procedure for filing complaint	Others	The concept of complaint is not there in National Financial Reporting Authority under Section 132 of the Companies Act, 2013. However, the rules 10 to 14, are entirely on complaint process which is not there in NFRA. In that case, the process for filing complaint, fee for filing complaint, Registration of complaint, withdrawal of complaint and information of complaint do not arise. These Rules might have been taken from disciplinary proceedings rules of CA Institute which will not match with the provisions of Companies Act, 2013.	
24.	11	Fee for filing complaint	Others	The concept of complaint is not there in National Financial Reporting Authority under Section 132 of the Companies Act, 2013. However, the rules 10 to 14, are entirely on complaint process which is not there in NFRA. In that case, the process for filing complaint, fee for filing complaint, Registration of complaint, withdrawal of complaint and information of complaint do not arise. These Rules might have been taken from disciplinary proceedings rules of CA Institute which will not match with the provisions of Companies Act, 2013.	
25.	12	Registration of complaint	Others	The concept of complaint is not there in National Financial Reporting Authority under Section 132 of the Companies Act, 2013. However, the rules 10 to 14, are entirely on complaint process which is not there in NFRA. In that case, the process for filing complaint, fee for filing complaint, Registration of complaint, withdrawal of complaint and information of complaint do not arise. These Rules might have been taken from disciplinary proceedings rules of CA Institute which will not match with the provisions of Companies Act, 2013.	
26.	13	Withdrawal of a complaint	Others	The concept of complaint is not there in National Financial Reporting Authority under Section 132 of the Companies Act, 2013. However, the rules 10 to 14, are entirely on complaint process which is not there in NFRA. In that case, the process for filing complaint, fee for filing complaint, Registration of complaint, withdrawal of complaint and information of complaint do not arise. These Rules might have been taken from disciplinary proceedings rules of CA Institute which will not match with the provisions of Companies Act, 2013.	

S. No	Rule No	Rule	Select Suggestion type	ICAI Suggestions	Justifications, if any
27.	14	Information	Others	The concept of complaint is not there in National Financial Reporting Authority under Section 132 of the Companies Act, 2013. However, the rules 10 to 14, are entirely on complaint process which is not there in NFRA. In that case, the process for filing complaint, fee for filing complaint, Registration of complaint, withdrawal of complaint and information of complaint do not arise. These Rules might have been taken from disciplinary proceedings rules of CA Institute which will not match with the provisions of Companies Act, 2013. Therefore, there is a need to review the entire above mentioned Rules so that they are in sync with the provisions of Companies Act 2013.	
28.	22 (1)	Provided also, that where the order includes any action to debar the professional, such order shall be communicated to the ICAI for necessary action within 45 days, failing which at the end of 45 days, such order for debarring the professional shall become effective automatically.	Others	In Second proviso to Sub Rule (1) of Rule 22, there cannot be any such automatic effect of the provision, hence the word 'automatically' should be removed in the last sentence.	
29.	23	Appellate Authority	Others	The term 'Appellate Authority' has not been defined in the Act.	

Annexure G.4

Inputs on Procedures to be Followed while Dealing with Complaints/Information Cases under NFRA Rules, as Provided by ICAI on Draft Rules regarding Enforcement as Provided by MCA in December 2016

1. **Short title and commencement -**

***** ***** *****

PART-I DEFINITIONS, FORMS, ETC

2. **Definitions**

(1) In these rules, unless the context otherwise requires:

(a) 'Act' means the Companies Act 2013 (18 of 2013);

(ab) "advocate" means a person who is entitled to practice as such under the Advocates Act, 1961 (25 of 1961);

(ac) 'Authorised Officer' means an officer authorized by the Enforcement Committee to be the head of the Enforcement Directorate;

(ad) 'Authorised Representative' means a person authorized in writing by a party to present his case before the Enforcement Committee / Authority/ Appellate Authority.

(b) 'Authority' means the National Financial Reporting Authority constituted under sub section (1) of section 132 of the Act;

(ba) "certified" means in relation to a copy of a document as hereunder;-

(i) certified as provided in section 76 of the Indian Evidence Act, 1872; or

(ii) certified as provided in section 6 of Information Technology Act, 2000; or

(iii) copy of document as may be a downloaded from any online portal or a photo copy of the original document duly certified by a legal practitioner or a chartered accountant or a cost accountant or a company secretary as the case may be;

(c) 'Chairperson' means the Chairperson of the Authority;

- (ca) 'Committee' means a Committee constituted by the Authority;
- (cb) Enforcement Directorate means the Directorate established by the Authority for carrying out activities as laid down under Rule 10-19.
- (d) "Full-time Members" means the Chairperson and Member who are in full time employment with the Authority;
- (e) "Firm" means a firm or a limited liability partnership (LLP) registered with the Institute of Chartered Accountants of India (ICAI) under Chartered Accountants Act or Regulations made thereunder, and shall include such Firms/ LLP's which were registered with the Institute of Chartered Accountants of India at the time of the misconduct;
- (i) "Part-time Members" means members of the Authority other than Full- time members and includes Members representing Comptroller and Auditor General of India (C&AG), Central Board of Direct Taxes (CBDT), Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Institute of Chartered Accountants of India (ICAI) and others who are appointed as Members of the Authority;
- (j) "Professional" means a Chartered Accountant registered under Chartered Accountant Act, 1949 or regulations made thereunder;
- (k) "Professional Address" means-
- (i) the last registered address where a chartered accountant is carrying on his profession (or when he is carrying on his profession at more than one place, the principal place); or
 - (ii) the last registered place of employment or at his option, the place of his residence (if the chartered accountant is employed); or
 - (iii) the last registered place of residence (if the chartered accountant neither carried on the profession nor is employed); or
 - (iv) the last registered overseas address or at his option, the place of residence in India which shall be deemed to be the professional address for the purposes of these rules.
- (3) Words and expressions used but not defined in these rules and defined in the Companies Act, 2013 (18 of 2013) or Chartered Accountant Act, 1949, shall have the same meaning assigned to them in that Act.
- 2A. **Computation of time period**-Where a period is prescribed by the Act and these rules or under any other law or is fixed by the Authority for doing any act, in computing the time, the day from which the said period is to be reckoned shall be excluded, and if the last day expires on a day when the office of the Authority is closed, that day and any succeeding day(s) on which the Authority remains closed shall also be excluded.
- 2B. **Forms**-The forms annexed as Annexure 'A' to these rules with such modifications or variations as the circumstances of each case may require shall be used for the purpose mentioned therein and where no form is prescribed to cover a contingency, a form as may be approved by the Authority, shall be used.
- 2C. **Official seal of the Authority**-The official seal and emblem of the Authority /its Committees shall be such, as the Central Government may from time to time specify and shall be in the custody of the _____.
- 2D. **Custody of the records**-The _____ shall have the custody of the records of the Authority and no record or document filed in any cause or matter shall be allowed to be taken out of the custody of the _____ without the leave of the _____ :

Provided that the _____ may allow any other officer of the Authority to remove any official paper or record for administrative purposes from the Authority

- 2E. **Power to exempt**-The Authority may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

PART-II COMPOSITION AND FUNCTIONS OF AUTHORITY AND ITS COMMITTEES

3. Composition of the Authority:-

- (1) For the purposes of sub-section (1) and sub-section (3) of section 132, the Central Government may, by notification, constitute the Authority consisting of following, namely:-

**** **** ***** *****

- (2) The Chairperson may invite any other person to the meeting of the Authority as and when required to give expert opinion.
- (3) Structure of the Authority

The Authority shall constitute the following committees:

- (i) Committee on Accounting Standards.
- (ii) Committee on Auditing standards.
- (iii) Committee on Enforcement.

Provided that the Authority may constitute more than 1 Committee on Enforcement as and when it considers necessary.

4. Functions of the Authority

- (1) Standard Setting: The Authority shall-
- (a) receive suggestions and recommendations including from ICAI on prescription of new accounting/auditing standards or for amendments in the existing accounting/auditing standards;

Provided that the Authority may direct the ICAI to prepare and submit for the consideration of the Authority an accounting/auditing standard on a new area or subject within a reasonable period specified for such purpose by the Authority;

- (b) seek additional inputs or consult ICAI on recommendations received under clause (a), if required;
- (c) examine the recommendations before making recommendations to the Central Government;

For the purposes of this sub-rule, accounting standards shall include Indian accounting standards.

- (2) Monitoring, compliance review and overseeing quality of service:

- (A) For the purpose of monitoring compliance of accounting standards under the Act, the Authority shall follow the process as under:
 - (a) it may review the financial statements of a company covered under rule 5- in such manner as it may decide:
 - (b) it may seek information or explanations on its observations arising from such review from the Company or its auditors as may be required;

- (c) it shall give an opportunity of being heard to the company or its auditors before finalizing its observations;
 - (d) it shall, on the finalization of its observations regarding non-compliance of accounting standards by the company or the auditor concerned:-
 - (A) forward its observations, in respect of non-compliance with accounting standards by the company concerned, to the Central Government for further action under Companies Act, 2013 or any other relevant Act as that Government considers necessary;
 - (B) forward its observations, in respect of non-compliance with accounting standards by the auditor concerned, to the Enforcement Committee for action under these rules;
- (B) For the purpose of monitoring compliance of auditing standards, the Authority shall monitor the compliance of auditors including individual auditors, audit firms and audit LLPs, with the notified accounting standards and auditing standards.
- Provided that for the above purpose it shall-
- a. review selected audit and review engagements, including specifically the working papers, of any auditor including an individual, a firm or an LLP;
 - b. evaluate the sufficiency of the quality control system of the auditor, and the manner of the documentation and communication of that system by the auditor;
 - c. perform such other testing of the audit, supervisory, and quality control procedures of the auditor as are considered necessary or appropriate;
 - d. carry out review through dedicated, qualified and whole time investigation teams. Minimum qualification for such inspectors shall be at least 10 years auditing experience and exposure to audit of the relevant industry. The Authority may also outsource, upto a period of two years from the commencement of these rules, such resource as may be required for this purpose;
 - e. the Authority may issue a non-public portion of the report of the company or the professional, whose books and other records have been reviewed, to the Central Government;
 - f. to decide on further course of action, through Enforcement Committee, where violations of laws, rules or professional standards have been observed triggering investigations, disciplinary action, or reference to other regulators or law enforcement agencies.
- (3) Enforcement: The Authority may/shall have the power to-
- (a) receive any reference from the Central Government for investigation into professional or other misconduct;
 - (b) consider and act upon any recommendation, based on the monitoring and compliance review or investigation audit work of an auditor or audit firm
 - (c) *suo motu* determine any investigation into professional or other misconduct incidental to the affairs of the Company to be undertaken by the Authority, after recording reasons in writing for this purpose;
 - (d) forward the reference to the Enforcement Committee for investigation;
 - (e) receive the final investigation report from the Enforcement Committee on matters referred to them whether arising out of the compliance or quality review process or based on investigation requests made to the Enforcement Committee;

- (f) issue a notice in writing to the company or its branch investigated or the Professional on whom action is proposed to be taken;
- (g) provide the opportunity of being heard to the company or its branch investigated or the professional concerned;
- (h) accept or overrule, in writing, clarifications received and objections raised;
- (i) take suitable action or pass orders imposing penalty or debarring the Professional or firm concerned.

The Authority shall have the power to conduct quality review of audit or undertake investigations in respect of classes of companies specified in rule 5:

Provided that investigation shall be undertaken through the Enforcement Committee provided under rules 10-23.

Explanation-the 'professional or other misconduct' in respect of matters specified in the First Schedule to the Chartered Accountants Act, 1949 for all companies (including the companies specified under rule 5) shall be regulated as per provisions of the said Act and 'professional or other misconduct' in respect of matters specified in the Second Schedule shall be regulated as per provisions of section 132(4) and these rules.

For the purposes of action under rule 4, the Authority shall have the power provided under clause (b) of sub-section (1) of section 132 of the Act.

5. **Classes of companies covered for quality review of audit or investigation into professional or other misconduct**

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6. **Enforcement Committee and its functions**

- (1) The Enforcement Committee shall comprise of following members, namely:
 - 1. Chairman being a full-time Member of the Authority who shall be an eminent Chartered Accountant having at least 20 years' experience in accounting and audit, entrusted with the powers with regard to enforcement functions
 - 2. Member of the Authority who represents SEBI
 - 3. Member-Accounting
 - 4. member-auditing
 - 5. One representative of MCA not below the rank of Director (I & I) or Regional Director.
 - 6. Director, SFIO
 - 7. Chairman of Disciplinary Committee, ICAI (Ex- officio)
- 3. A Part-time Member of the Authority as may be decided by the Authority
- (2) Subject to the provisions of subsection (4) of section 132, the Enforcement Committee shall examine the matters referred to it for investigation and shall submit its recommendations for consideration by the Authority.
- (3) The functions of the Enforcement Committee shall be:-
 - (i) to examine the matters referred to it by the Authority (whether emanating from the Committee on Accounting, Committee on Auditing, or otherwise) requiring further enquiry or investigation
 - (ii) to investigate, on a reference made by the Authority, matters relating to professional and/or other misconduct incidental to the affairs of the Company

committed by the professional or auditor (individual or firm or LLP) and recommend to the Authority appropriate action under sub-section (4) of section 132

Provided that all the actions of the Enforcement Committee shall be effective only on the approval of the Authority.

- (4) Enforcement Committee shall complete the examination or investigation on any matter referred to it within a period of 18 months and in case there is any delay in completion of the examination or investigation, specific time extension must be sought from the Authority, after placing justifications and reasons for the extension of time being sought. Examinations or investigations for which time extension is not sought or approved by the Authority shall be concluded based on the available information within a period of 30 days from the expiry of the 18 months or such extended time frame as approved by the Authority.
7. **Reference to Central Government**-In cases, during the review specified under rule _____, where the Authority comes to the conclusion that any company has not complied with the requirements under this Act or rules, it shall refer the matter to the Central Government.
8. **Reference to Authority**-Where any officer of the Central Government, not below the rank of Joint Secretary or equivalent including the Regional Director or the Registrar of Companies has received/acquired any information in respect of any auditor or audit firm who has not discharged the audit functions in accordance with the provisions of the Act or rules made thereunder or relevant standards, a reference to this effect shall be made by the Central Government to the Authority.
9. **Meetings for transaction of business and their procedure**—
- (1) The Authority and its Committees may hold as many meetings and at such places as may be required for the purpose of discharging its functions under the Act.
- (2) The meetings of the Authority and of each of its committee shall ordinarily be held at its head office situated in New Delhi:
- Provided that the Authority or each of its Committees may also hold meetings at its other offices or at any other place in India, whenever, in the opinion of the Authority or the Committee, it is expedient to do so.
- (3) The Chairperson shall decide in advance, the date, time and place and the agenda for each meeting of the Authority:
- Provided that an item not included in the agenda of an ordinary meeting may be taken up for consideration, on grounds of urgency shown by an applicant in writing, with the approval of the Chairperson.
- (4) Procedure for meetings, –
- (a) The Secretary, Members and such other officers and persons as invited by the Chairperson in relation to discussion regarding a specific item shall attend meeting;
- (b) the Authority or Chairperson may, for reasons to be recorded in writing, adjourn the meeting;
- (c) any Member unable to be present in a meeting for any reason, may if feasible, choose to participate in the said meeting, through video conferencing and this shall be considered as attendance by the Member for the purpose of casting vote during the meeting;
- (d) the proceedings of each meeting of the Commission shall be "minutized by the Secretary or by any other officer authorized by the Chairperson. The minutes of

each matter taken up during meeting shall be given continuous serial number for a particular financial year.

- (e) the quorum for the meeting of the Authority shall be 1/3rd or 5 members whichever is less. In respect of the committees the quorum shall be 1/3rd or 3 members whichever is less being present.
- (5) In a situation not provided for in these rules, in accordance with the principles of natural justice and subject to the provisions of Section 132 of the Companies Act, 2013, the Authority may, for reasons to be recorded in writing, determine the procedure in a particular case.
- (6) No act or proceedings of the Authority or its Committees shall be invalid merely by reason of any irregularity in the procedure of the Authority or its Committees not affecting the merits of the case.

PART-III COMPLAINTS AND INFORMATION

Procedures of Investigation related to Complaints and Information

10. Procedure for filing complaint-

- (1) A complaint under section 132(4) of the Act against a professional or an auditor (including audit firm or LLP) shall be filed in Form I, in triplicate, in English and in case in some other regional language, shall be accompanied by a copy translated in English, before the Authorised officer in person or by post or courier:

Provided that the complaint sent by post or courier under this sub-rule shall be deemed to have been presented to the Authorised Officer on the day on which it is received in the Office of Enforcement Committee.

1A. Every correction or deletion in the Complaint or application or document shall be initialed by the party or his authorized representative or Advocate filing the complaint. 1B Every Complaint shall be accompanied by duly certified documents accompanied by an index in triplicate containing their details.

1C Sufficient number of copies of the complaint shall also be filed for service on the opposite party as prescribed under these rules.

1D At the foot of every complaint there shall appear the name and signature of the authorised representative.

1E. Every complaint shall be signed and verified by the party concerned in the manner provided by these rules.

1F. A document other than English language intended to be used in any proceeding before the Authority/ its Committees shall be accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorized representative engaged on behalf of parties in the case or by any other advocate or authorized representative whether engaged in the case or not or if the advocate or authorized representative engaged in the case authenticates such certificate.

1G. When a document produced along with the complaint appears to be defaced, torn, or in any way damaged or otherwise its condition or appearance requires special notice, a mention regarding its condition and appearance shall be made by the party producing the same in the Index of such complaint and the same shall be verified and initialed by the authorized officer.

The above rules pertaining to the complaint shall also apply mutatis mutandis to any other pleading, application or Appeal filed under these Rules.

- (1) In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorized representative.
- (2) A complaint filed by or on behalf of the Central Government or any State Government, shall be authorized by an officer holding a post not below the rank of a Joint Secretary or equivalent and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.
- (3) A complaint filed by or on behalf of any statutory authority, such as Reserve Bank of India or Securities and Exchange Board of India or any other Regulator, shall be authorised by an officer holding a post equivalent to the post of Joint Secretary in the Government of India and shall be signed by an officer holding a post not below the rank of an Under Secretary or equivalent in the Central or State Government, as the case may be.
- (4) A complaint filed by or on behalf of a company or bank or a firm, shall be accompanied by a resolution, duly passed by the Board of Directors of the company or bank or the partners of the firm, as the case may be, specifically authorizing an officer or a person to make the complaint on behalf of the company or the bank or the firm.

Explanation-In the case of a bank or financial institution, the general resolution or power of attorney authorizing an officer holding a particular position to file complaints on behalf of the bank or financial institution, shall be deemed to be the specific resolution passed by the bank or financial institution concerned, for the purposes of these rules.

- (5) In case of complaints filed by any Government, statutory authority, bank or financial institution, a change in the name of complainant at any later stage, shall be duly supported by a specific authorization made by an officer holding a post equivalent to that of the original complainant.
- (6) Every complaint received by the Office of Enforcement Committee shall be acknowledged by ordinary post together with an acknowledgment number.

11. Fee for filing complaint-

- (1) Every complaint, other than a complaint filed by or on behalf of the Central Government or any State Government or any statutory authority, shall be accompanied by a fee as prescribed by the Authority through regulations.
- (2) The fee shall be paid in the form of a demand draft drawn on any bank in India in favour of the National Financial Reporting Authority payable at the place where the Office of Enforcement Committee is situated.
- (3) The fee once paid shall not be refunded:

Provided that no additional fee shall be payable if the complaint is resubmitted after rectification of defect under sub-rule (5) of rule 12.

12. Registration of complaint-

- (1) The Authorised Officer shall endorse on every complaint and also on additional copies, the date on which it is received or presented and shall sign on each such endorsement and affix the official stamp of the Authority/ Enforcement Committee. The Authorised officer shall also enter on the first page the no. of copies received and the total no of pages received by him.
- (2) The Authorised Officer shall scrutinize the complaints so received as regards:
 - a) no. of copies received.

- b) whether the Form-I is complete in all aspects.
 - c) whether the index is in triplicate.
 - d) whether all documents listed in the index of documents attached are in order.
 - e) total no. of pages received.
 - f) date of alleged misconduct/limitation
 - g) whether addresses, email and telephone no. of parties are given
 - h) whether the complaint is duly verified.
 - i) whether the complaint is accompanied by an affidavit.
 - j) whether all alteration and deletions in the complaint are endorsed by the complainant/ Authorised representative/ Advocate.
 - k) whether the authorization letter is filed along with the complaint.
 - l) whether the complaint is accompanied by the prescribed fee.
 - m) whether English translation of the complaint/ documents in regional language is provided.
- (3) If, on scrutiny, the complaint is found to be in order, it shall be duly registered and a unique reference number allotted to it, which shall be quoted in all future correspondence, and shall be dealt with in the manner as prescribed in these rules, after obtaining approval of the Authority to proceed with the matter.
- (4) If the subject matter of a complaint is, in the opinion of the Authorised Officer, substantially the same as or has been covered by any previous complaint or information received and is under process or has already been dealt with, he shall take any of the following actions, as the case may be,-
- (a) if such a previous complaint is still under the examination of the Authorised Officer, then the new complaint may be clubbed with the previous complaint, after obtaining approval of the Enforcement Committee and in such case the fact may be conveyed to the first complainant, new complainant and respondent respectively.
 - (b) if *prima facie* opinion has been formed by the Authorised Officer in such a previous complaint and the case is pending before the Enforcement Committee, then the Authorised Officer shall bring the new complaint before the Enforcement Committee, and the latter shall either club the complaint with the previous complaint or close it or ask the Authorised Officer to deal with it as a separate complaint, as it deems fit, after obtaining the approval of the Authority.
 - (c) if orders have already been passed by the Enforcement Committee or Authority on such a previous complaint, then the Authorised Officer shall present the new complaint before the Enforcement Committee for its closure :
- Provided that even in case where the new complaint is clubbed with a previous complaint under this sub-rule, only the first complainant would be the complainant for the purposes of investigation under these rules. However, the new complainant shall also be heard by the Enforcement Committee.
- (5) If, the complaint, on scrutiny, is found to be defective, including the defects of technical nature, the Authorised Officer may allow the complainant to rectify the same in his presence or may return the complaint for rectification and resubmission within seven/ fourteen days and or within such additional time as he may determine.

- (6) If, the complainant fails to rectify the defect or defects within the time allowed under sub-rule (5), the Authorised Officer shall form the opinion about the future course of action required to be taken in the complaint under question and place before the Committee for orders thereon.
- (7) The Enforcement Committee may, after the presentation of the opinion on the complaint by the Authorised Officer under sub-rule (6), either -
- (a) pass an order for the closure of the case; or
 - (b) advise the Authorised Officer to further investigate the matter as "Information", after obtaining approval from the Authority.
 - (c) grant another opportunity of not more than seven days to the complainant to rectify the defects.
 - (d) condone the defects and advise the Authorised Officer to proceed investigation of the matter.
 - (e) pass any other order as it may deem fit.
13. **Withdrawal of a complaint-**The Authorised Officer , on receipt of a letter of withdrawal of a complaint by the complainant, shall place the same before the Enforcement Committee and the Enforcement Committee , if it is of the view that the circumstances so warrant, permit the withdrawal, at any stage, including before or after registration of the complaint:
- Provided that in case the Authorised Officer has formed his *prima facie* opinion on such a complaint, he shall place the same before the Enforcement Committee , and the Committee may, if it is of the view that the circumstances so warrant, permit the withdrawal, after obtaining approval of the Authority.
14. **Information-**
- (1) Any written information containing allegation or allegations against a member or a firm, received in person or by post or courier, by the Office of Enforcement Committee, which is not in Form I under sub-rule (1) of rule 10, shall be treated as information and shall be dealt with in accordance with the provisions of these rules.
 - (2) On receipt of such an information, the sender of the information, including the Central Government, any State Government or any statutory authority, shall be, in the first instance, asked whether he or it would like to file a complaint in Form I apprising him or it of, the following information,-
 - (a) that relatively longer time is taken for disposal of any information than the complaint;
 - (b) that the person giving information will not have the right to be represented during the investigation or hearing of the case;
 - (c) that the Authority or Enforcement Committee will be under no obligation to inform the sender the information of the progress made in respect of the information received under sub-rule (1) including the final orders :

Provided that where the sender of the information is the Central Government, any State Government or any statutory authority, a copy of final order shall be sent to such sender.
 - (3) An anonymous information received by the Office of Enforcement Committee will not be entertained by the Office of Enforcement Committee.

15. **Procedure of Investigation:-**

(1) The Authorised Officer , within sixty days of the registration of a complaint under rule 12, shall,-

- (a) if the complaint is against an individual Professional, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to that Professional at his professional address;
- (b) if the complaint is against a firm, send particulars of the acts of commission or omission alleged or a copy of the complaint, as the case may be, to the firm at the address of its head office, as entered last in the Register of Offices and Firms maintained by the ICAI, with a notice calling upon the firm to disclose the name or names of the member or members concerned and to send particulars of acts of commission or omission or a copy of the complaint, as the case may be, to such members:

Provided that while disclosing the name or names of the member or members, the firm shall also send a declaration signed or, as the case may be, jointly signed by the member or members concerned to the effect that he or she or they shall be responsible for answering the complaint and that the particulars of acts of commission or omission or the copy of the complaint sent to the firm by the Authorised Officer had been duly received by him, her or them.

Explanation - A notice to the firm shall be deemed to be a notice to all the members who are partners or employees of that firm as on the date of registration of the complaint.

(2) A member whose name is disclosed by the firm shall be responsible for answering the complaint, provided such a member was associated, either as partner or employee, with the firm, against which the complaint has been filed, at the time of occurrence of the alleged misconduct:

Provided that if no member, whether erstwhile or present, of the firm, own responsibility for the allegation or allegations made against the firm, then the firm as a whole shall be responsible for answering the allegation or allegations and, as such, all the members who were partners of that firm, as on the date of occurrence of the alleged misconduct, shall be responsible for answering the allegation or allegations as contained in the complaint.

(3) A member who has been informed of the complaint filed against him (hereinafter referred to as the respondent) shall, within 21 days of the service of a copy of the complaint, or within such additional time, not exceeding thirty days, as may be allowed by the Authorised Officer or Enforcement Committee, forward to the Authorised Officer, a written statement in his defence.

(4) On receipt of the written statement, if any, the Authorised Officer may send a copy thereof to the complainant and the complainant shall, within 21 days of the service of a copy of the written statement, or within such additional time, not exceeding thirty days, as may be allowed by the Authorised Officer or Enforcement Committee, forward to the Authorised Officer, his rejoinder on the written statement.

(5) On perusal of the complaint, the respondent's written statement, if any, and rejoinder of the complainant, if any, the Authorised Officer may call for such additional particulars or documents connected therewith either from the complainant or the respondent or any third party or parties, as he may consider appropriate :

Provided that if no reply is sent by the respondent, within the time allowed under sub-rule (3) or by the complainant within the time allowed under sub-rule (4), the Authorised Officer shall presume that the respondent or the complainant, as the case may be, have nothing further to state and take further action as provided under these rules.

16. **Examination of the Complaint-**

- (1) The Authorised Officer shall examine the complaint, written statement, if any, rejoinder, if any, and other additional particulars or documents, if any, and form his *prima facie* opinion as to whether the member or the firm is guilty or not of any professional or other misconduct.
- (2)
 - (a) Where the Authorised Officer is of the *prima facie* opinion that the member or the firm is guilty of professional or other misconduct he shall place his opinion along with the complaint and all other relevant papers before the Enforcement Committee within 60 days of conclusion of investigation;
 - (b) If the Enforcement Committee agrees with the *prima facie* opinion of the Authorised Officer then the Enforcement Committee may proceed further under these rules, after obtaining approval from the Authority.
 - (c) If the Enforcement Committee disagrees with the *prima facie* opinion of the Authorised Officer, it shall either close the matter or advise the Authorised Officer to further investigate the matter on specific issues.
- (3) Where the Authorised Officer is of the *prima facie* opinion that the member or the firm is not guilty of any professional or other misconduct, he shall place the matter before the Enforcement Committee within 60 days of conclusion of the investigation, and the Committee,-
 - (a) if it agrees with such opinion of the Authorised Officer, shall pass order, for closure.
 - (b) if it disagrees with such opinion of the Authorised Officer, then it may either proceed under these rules, after obtaining approval from the Authority or may advise him to further investigate the matter on specific issues.
- (4) The Authorised Officer shall, after making further investigation as advised by the Enforcement Committee under sub-rule (2) or (3) of this rule shall further proceed under this rule.

17. **Mode of Sending Notice-**

- (1) Every notice or letter issued by the Authorised Officer or Enforcement Committee, under these rules shall be sent to the member or the firm or any other person, by registered post with acknowledgment due or speed post, or at the email address provided in the Complaint / Other pleading except where specified otherwise in any rule.
- (2) If any notice or letter is returned unserved with an endorsement to the effect that the addressee had refused to accept the notice or letter, the notice or letter shall be deemed to have been served.
- (3) If the notice or letter is returned with an endorsement to the effect that the addressee cannot be found at the address given, the Authorised Officer shall ask the complainant or any other person who may be in a position to provide another address of the member or firm or person whose address is found to be not correct, and on production of the correct address, a fresh notice or letter shall be issued at such address.
- (4) Where the notice or letter is returned under sub-rule (3), it may be served by fixing a copy thereof in some conspicuous place at the professional address or residence of the respondent which was last registered with the ICAI or in such other manner as the Enforcement Committee may think fit and such service shall be deemed to be sufficient service for the purposes of these rules.

18. **Certain provisions relating to complaint also to be applicable for information relating to misconduct of members-**The procedure laid down for dealing with complaints in sub-rule (6) of

rule 10, sub-rules (1), (2), (3) and (4) of rule 12, sub-rules (1), (2), (3) and (5) of rule 15, rule 16 and rule 17 shall also apply to information received by the Authorised Officer relating to misconduct of members.

19. **Time limit on entertaining complaint or information**-Where the Authorised Officer is satisfied that there would be difficulty in securing proper evidence of the alleged misconduct, or that the member or firm against whom the information has been received or the complaint has been filed, would find it difficult to lead evidence to defend himself or itself, as the case may be, on account of the time lag, or that changes have taken place rendering the inquiry procedurally inconvenient or difficult, he may refuse to entertain a complaint or information in respect of any misconduct made more than seven years after the same was alleged to have been committed and submit the same to the Enforcement Committee for taking decision on it under sub-section (4) of section 132 of the Act.

PART-IV ENFORCEMENT COMMITTEE

20. **Functioning of Enforcement Committee**—

- (1) All questions which come up before the Enforcement Committee shall be decided by a majority of the members present and voting, and in the event of an equality of votes, the Chairperson of the Committee or in his absence, the person presiding, shall have a second or casting vote.
- (2) In the event of the Chairperson of the Enforcement Committee not being able to attend a meeting of the Enforcement Committee, the senior most Member of the Committee shall preside in such meeting.

21. **Procedure to be followed by the Enforcement Committee**-

- (1) The Committee shall be guided by the principles of natural justice and shall follow the procedure in dealing with all cases before it, as laid down in this Chapter.
- (2) If the Enforcement Committee decides to proceed further under clause (b) of sub- rule (2) of rule 16 or under clause (b) of sub-rule (3) of rule 16, it shall expeditiously cause to deliver to the respondent and the complainant, a copy each of the following:
 - (a) *prima facie* opinion formed by the Authorised Officer ; and
 - (b) particulars or documents relied upon by the Authorised Officer , if any, during the course of formulation of *prima facie* opinion.
- (3) The Committee shall inform the respondent, as the case may be to file a further written statement, within such time as may be specified:

Provided that the Committee may give him additional time for submitting his written statement, on application by the respondent on his adducing sufficient reasons to the satisfaction of the Committee for seeking additional time:

Provided further that such additional time shall not be given more than once without the approval of the authority and if the respondent still does not submit a written statement, the Committee shall presume that he has no further submissions to make and shall proceed to decide the case on merits.
- (4) The respondent shall send a copy of his written statement, along with supporting documents and a list of witnesses, to the Authorised officer and the complainant within the stipulated time.

The respondent shall specifically admit, deny or rebut the facts stated by the complainant in his complaint and state such additional facts as may be found necessary in his reply.
- (5) The complainant may, after receipt of the written statement, submit a rejoinder to the Committee, with a copy to the respondent, along with supporting documents, if any within stipulated time.

The complainant shall specifically admit, deny or rebut the facts stated by the respondent in his Written Statement and state such additional facts as may be found necessary in his Rejoinder related to the allegations as in the complaint. The Complainant shall not enlarge the scope of the Complaint.

- (6) The Presiding Officer of the Committee shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of *prima facie* opinion and the committee shall cause a notice to be sent of such date, hour and place to the Authorised Officer, respondent and complainant and require them to appear before it in person to make oral submissions, if any.

Explanation– For the purpose of this rule, the appearance includes, unless and otherwise directed, appearance by an advocate or through any authorized representative, who is a Chartered Accountant, but in addition may be a Cost accountant or a Company Secretary.

- (7) During the first hearing, the Committee shall read out the charge or charges to the respondent along with the summary of prima facie opinion arrived at by the Authorised Officer, and ask the respondent whether he pleads guilty to the charge or charges made against him:

Provided that on the date of hearing, if the respondent, in spite of the service of notice, under sub-rule (6), does not appear either in person or through his authorized representative, the Enforcement Committee may proceed *ex parte* and pass such orders as it may think fit or direct fresh notice to be served.

- (8) If the respondent pleads guilty, the Committee shall record the plea and take action as per provisions under rule 22.
- (9) If the respondent does not plead guilty, then the Committee shall fix a date for examination of witnesses and production of documents.
- (10) The Committee may, on application of the Authorised Officer/Complainant, issue notice for appearance to any of his witnesses directing him to attend or to produce any other document or material evidence.
- (11) On the date so fixed, the Committee shall proceed to take all such evidence as may be produced by the Authorized Officer, including oral examination of witnesses and production of documents:

Provided that the Committee may permit the cross- examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

- (12) After the presenting of evidence by the Authorised Officer is over, the complainant shall be given an opportunity, if present during the hearing, to present any additional evidence after satisfying the Committee that such evidence is relevant and has not been brought forward during the presentation by the Authorised Officer.
- (13) The respondent shall be then called upon to enter upon his defense and produce his evidence.
- (14) If the respondent applies to the Committee to issue any notice for compelling attendance of any witness for the purpose of examination or cross-examination, or the production of any document or any material object, the Committee shall issue such notice unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by it in writing.
- (15) The witnesses summoned at the instance of the complainant under sub-rule (10) or the respondent under sub-rule (14) shall not be eligible for reimbursement of expenses incurred for attending the hearing.

- (16) After evidences have been presented, the Authorised Officer and the respondent shall present their arguments before the Committee:
- Provided that after the Authorised Officer has presented his argument, if the complainant, provided he is present during the hearing, feels that any vital argument has been left out by the Director, may present the argument, after convincing the Committee of the same.
- (17) The Committee shall consider the evidences and arguments produced before it and arrive at a finding on whether the respondent is guilty or not of any professional or other misconduct.
- (18) The Committee may, at the request of any of the parties before it or due to other reasons, and on such terms as it thinks fit, and if so feels on imposition of costs and at any stage of the proceedings, adjourn the hearing:
- Provided that such adjournment shall not be given more than once at any stage of the proceedings without the approval of the authority.
- Explanation-For the purpose of this rule, inability of the complainant, advocate, authorized representative or witness, to appear shall not be treated as a valid reason for adjournment of a hearing.
- 21A. General Procedure-**
- (1) In a situation not provided for in these rules, the Enforcement Committee may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice after obtaining approval of the authority.
- (2) Every complaint /other pleading shall be verified by an affidavit in Form No. _____ and every notice to be issued by the Enforcement committee shall be in Form No. _____
- 2B. Production of Evidence by Affidavit-**
- (1) The Enforcement Committee may direct the parties to give evidence, if any, by affidavit.
- (2) Notwithstanding anything contained in sub-rule (1), where the Committee considers it necessary in the interest of natural justice, it may order cross-examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by the Committee, on an application moved by any party.
- (3) Every affidavit to be filed before the Committeel shall be in Form No. _____ .
- 2C. Production of additional evidence before the Committee/Authority-**
- (1) Notwithstanding anything contained in rule 2B, the parties to the proceedings shall not be entitled to produce before the Committee/Authority additional evidence, either oral or documentary, which was in the possession or knowledge but was not produced before the Authorised Officer, but if the Committee/ Authority requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Authorised Officer so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Committee/ Authority, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be produced.
- (2) Additional evidence or document shall be made available by the Committee/ Authority to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.
- 2D. Power of the Enforcement Committee/ Authority to call for further information or evidence–**
- (1) The Enforcement Committee/ Authority may, before passing orders on the complaint

or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:-

- (a) for the purpose of satisfying itself as to the truth of the allegations made in the complaint or application; or
 - (b) for ascertaining any information which, in the opinion of the Committee/Authority, is necessary for the purpose of enabling it to pass orders in the Complaint.
- (2) Without prejudice to sub-rule (1), the Enforcement Committee/ Authority may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.
 - (3) Where any party is alleging forgery or fabrication of any statutory records, then on its application, the Enforcement Committee/ Authority shall be at liberty to send the disputed documents for forensic examination for reasons to be recorded, at the cost of the party alleging fabrication of records, or dismiss such application.

PART- V ORDERS OF THE ENFORCEMENT COMMITTEE

22. Orders of the Enforcement Committee-

- (1) On arriving at a finding under sub-rule (17) of rule 21 that the respondent is guilty of professional or other misconduct, the Enforcement Committee shall give the respondent an opportunity to be heard before recommending to the Authority any under sub-section (4) of section 132 of the Act. Such order may include reprimands or severe reprimands being made, order for practice to be continued with restrictions for a period of time, order waiver or refund of fees, impose penalty or debar the member or member firm from practice:

Provided that if the respondent does not appear before the Enforcement Committee at the time directed to do so when given such an opportunity to be heard, the Enforcement Committee shall presume that he has nothing more to represent before it and shall make recommendations to the Authority and the Authority shall pass orders under sub-section (4) of section 132 of the Act.

Provided also, that where the order includes any action to debar the professional, such order shall be communicated to the ICAI for necessary action within 45 days, after the time to Appeal against the said order has expired, failing which at the end of the said 45 days, such order for debarring the professional shall become effective automatically even without Gazette Notification

- (2) On arriving at a finding under sub-rule (17) of rule 21 that the respondent is not guilty of professional or other misconduct, the Enforcement Committee shall make recommendations to the Authority and the Authority shall pass orders closing the case.
- (3) The Enforcement Committee shall send, free of charge, to the Authorised Officer, respondent and the complainant, a certified copy of the final order.
- (4) Notwithstanding anything contained in this rule, the Authority shall have the powers to pass such interim orders as it may deem fit during the process of the investigation, based on recommendations made by the Enforcement Committee.

Provided, however, such interim orders shall be passed only after having given reasonable opportunity to the parties to be heard.

- (5) On arriving at a finding under sub-rule (17) of rule 21 that the complainant has made a vexatious claim against the respondent with an intent to harass, the Authority shall have the powers to award costs not exceeding Rs.10,000 to the respondent.

22A. Matters relating to the Orders of the Committee-

- (1) Once the final text of the order has been approved and adopted, the order shall be signed and dated by the Chairman or the concerned Member or Members and the Authorised Officer, and shall contain the names of the Members who have taken part in the decision.
- (2) Any Member differing as to the grounds upon which the order was based or some of its conclusions, or dissenting from the order, may append a separate or dissenting opinion in the main order itself. However, the majority member's view shall prevail.

22B. Amicus Curiae-

- (1) The Committee/Authority may, as its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views as amicus curiae on any point or points or legal issues as the case may be as assigned to such amicus curiae.
- (2) The Committee/Authority may permit amicus curiae to have access to the pleadings of the parties and shall enable the parties to submit timely observations on brief provided by the amicus curiae.
- (3) The Committee/Authority shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the amicus curiae has been sought, to bear such expenses or fee as may be ordered by the Committee/ Authority.
- (4) The order and the opinions shall be transmitted to the parties and to amicus curiae.

22C. Recusal—For the purpose of maintaining the high standards and integrity of the Enforcement Committee/ Authority, the Chairman or any Member shall recuse himself:-

- a) in any case(s) involving persons with whom he has or had a personal, familial or professional relationship;
- b) in any case(s) involving persons with whom he has or had a personal, familial or professional relationship;
- c) if there exists other circumstances such as to make his participation seem inappropriate.

Provided that the Chairman or the Member may record reasons for such recusal and no party to the proceedings or any other person shall have a right to know the reasons therefor.

22D. Order sheet—

- (1) The _____ of the Enforcement Committee/Authority shall maintain order sheet in every proceedings and shall contain all orders passed by the Enforcement Committee/ Authority from time to time .
- (2) All orders passed by the Enforcement Committee/Authority shall be in English and the same shall be signed by the Members of the Enforcement Committee/Authority hearing the matter:
- (3) The order sheet shall also contain the reference number of the complaint, information or application, date of order and all incidental details including short cause title thereof.

22E. Award of costs in the proceedings—

- (1) Whenever the Enforcement Committee/Authority deems fit, it may award cost for meeting the legal expenses of the respondent or defaulting party.

- (2) The Enforcement Committee/Authority may in suitable case(s) direct appellant or respondent to bear the cost of litigation of the other side, and in case of abuse of process of court, impose exemplary costs on defaulting party.
- 22F. **Operative portion of the order-** All orders or directions of the Enforcement committee / Authority shall be stated in clear and precise terms in the last paragraph of the order.
- 22G. **Corrections-**Every Member of the Enforcement committee / Authority who has prepared the order shall initial all corrections and affix his initials at the bottom of each page.
- 22H. **Pronouncement of Order-**
- (1) The Enforcement committee / Authority, after hearing the complainant and respondent, shall make and pronounce an order either at once or, as soon as thereafter as may be practicable but not later than thirty days from the final hearing.
 - (2) Every order of the Enforcement committee / Authority shall be in writing and shall be signed and dated by the Chairman or Member or Members who have heard the case and pronounced the order.
 - (3) A certified copy of every order passed by the Enforcement committee / Authority shall be given to the parties.
 - (4) The Enforcement committee / Authority, may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu.
 - (5) Every order or judgment or notice shall bear the seal of the Enforcement committee / Authority.
- 22I. **Pronouncement of order by any one member of the Committee/Authority-**
- (1) Any Member of the Enforcement committee / Authority may pronounce the order for and on behalf of the Enforcement committee / Authority.
- 22J. **Authorising any member to pronounce order**
- (1) If the Members of the Enforcement committee / Authority who heard the case are not readily available or have ceased to be Members of the Enforcement committee / Authority, the Chairman may authorise any other Member to pronounce the order on his behalf after being satisfied that the order has been duly prepared and signed by all the Members who heard the case.
 - (2) The order pronounced by the Member so authorised shall be deemed to be duly pronounced.
 - (3) The Member so authorised for pronouncement of the order shall affix his signature in the order sheet of the case stating that he has pronounced the order as provided in this rule.
 - (4) If the order cannot be signed by reason of death, retirement or resignation or for any other reason by any one of the Members of the Enforcement committee / Authority who heard the case, it shall be deemed to have been released from part heard and listed afresh for hearing.
- 22K. **Enlargement of time-** Where any period is fixed by or under these rules, or granted by Enforcement committee for the doing of any act, or filing of any document or representation, the Enforcement committee may, in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by the Enforcement committee may have expired after obtaining approval from the Authority.
- 22L. **Rectification of Order-**
- (1) Any clerical or arithmetical mistakes in any order of the Enforcement committee / Authority or error therein arising from any accidental slip or omission may, at any time, be

corrected by the Enforcement committee / Authority on its own motion or on application of any party by way of rectification.

- (2) An application under sub-Rule (1) may be made in Form No. _____ within two years from the date of the final order for rectification of the final order not being an interim order.

22M. **General power to amend**-The Enforcement committee / Authority may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

PART-VI MISCELLANEOUS PROVISIONS

23. **Attendance of hearings by the complainant, respondent and witness-**

- (1) The complainant and the respondent shall have the right to attend the hearings of the Enforcement Committee unless ordered otherwise by the Committee, for reasons to be recorded in writing.
- (2) The complainant and the respondent shall not be eligible for reimbursement of expenses incurred for attending the hearing.

23A **Professional dress for the authorized representatives**-While appearing before the Committee/ Authority, the authorized representatives/Advocates shall wear the same professional dress as prescribed in their Code of Conduct.

23B. **Rights of a party to appear before the Enforcement Committee/Authority-**

- (1) Every party may appear before a Enforcement Committee/Authority in person or through an authorised representative, duly authorised in writing in this behalf.
- (2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. _____ representing the respective parties to the proceedings.
- (3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Enforcement Committee/Authority.
- (4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of _____.
- (5) During any proceedings before the Enforcement Committee/Authority, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA portal. Reasons for such directions shall be recorded in writing.
- (6) There shall be no audio or video recording of the Enforcement Committee/Authority proceedings by the parties or their authorised representatives.

23C. **Oath to the witness**- The _____, shall administer the following oath to a witness:-

“I do swear in the name of God / solemnly affirm that what I shall state shall be the truth and nothing but the truth.”

23D. **Consequence of non-appearance of complainant/applicant-**

- (1) Where on the date fixed for hearing of the complaint or any application or on any other date to which such hearing may be adjourned, the complainant /applicant does not appear when the complaint or the application is called for hearing, the Enforcement Committee/

Authority may, in its discretion, either dismiss the application for default or hear and decide it on merit.

- (2) Where the complaint or application has been dismissed for default and the complainant/ applicant files an application within thirty days from the date of dismissal and satisfies the Committee/ Authority that there was sufficient cause for his non- appearance when the complaint or the application was called for hearing, the Committee/ Authority shall make an order restoring the same:

Provided that where the case was disposed of on merits the decision shall not be re-opened.

- 23E. **Ex-parte Hearing and disposal-**(1) Where on the date fixed for hearing the complaint or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the complaint or the application is called for hearing, the Enforcement Committee/Authority may adjourn the hearing or hear and decide the complaint or the application ex-parte.

- (2) Where a complaint or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Enforcement Committee/ Authority for an order to set it aside and if such respondent or respondents satisfies the Enforcement Committee/Authority that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the complaint or the application was called) for hearing, the Enforcement Committee/Authority may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit which may include imposition of costs also.

Provided that where the ex-parte hearing of the complaint or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

- 23F. **Summoning of witnesses and recording Evidence-**

- (1) If an application is presented by any party to the proceedings for summoning of witnesses, the Enforcement Committee/Authority shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.
- (2) Where summons are issued by the Enforcement Committee/Authority under sub-rule
- (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Enforcement Committee/Authority which shall be deposited by the party as decided by the Enforcement Committee/Authority.

- 2G. **Restriction on party's right to be heard-**The party who has engaged a legal practitioner or authorised representative to appear for him before the Enforcement Committee/Authority may be restricted by the Enforcement Committee/Authority in making presentation before it.

- 2HI. **Empanelment of special authorised representatives by the Enforcement Committee-**

- (1) The Enforcement Committee may draw up a panel of authorized representatives or valuers or such other experts as may be required by the Enforcement Committee to assist in proceedings before the Enforcement Committee with prior approval of the Authority.
- (2) The Chairman may call upon any of the persons from panel under sub-rule (1) for assistance in the proceedings before the Enforcement Committee, if so required.
- (3) The remuneration payable and other allowances and compensation admissible to such persons shall be specified with prior approval of the Authority.

- 2I. **Title of affidavits**-Every affidavit shall be titled as 'Before the Enforcement Committee/Authority.' followed by the cause title of the complaint or application or other proceeding in which the affidavit is sought to be used.
- 23J. **Form and contents of the affidavit**-The affidavit shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).
- 23K. **Persons authorised to attest**-Affidavits shall be sworn or affirmed before an advocate or notary, who shall affix his official seal.
- 23L. **Affidavits of illiterate, visually challenged persons**-Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written, the attester shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attester in Form _____.
- 23M. **Identification of deponent**-If the deponent is not known to the attester, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.
- 23N. **Annexures to the affidavit-**
- (1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attester shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.
 - (2) The attester shall sign therein and shall mention the name and his designation.
- 23O. **Application for production of documents, form of summons-**
- (1) Except otherwise provided hereunder, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
 - (2) An application for summons to produce documents shall be on plain paper setting out the document the production of which is sought, the relevancy of the document and in case where the production of a certified copy would serve the purpose, whether application was made to the proper officer and the result thereof.
 - (3) A summon for production of documents in the custody of a public officer other than a court shall be in Form _____ and shall be addressed to the concerned Head of the Department or such other authority as may be specified by the Enforcement Committee/Authority.
- 23P. **Suo motu summoning of documents**-Notwithstanding anything contained in these rules, the Enforcement Committee/Authority may, suo motu, issue summons for production of public document or other documents in the custody of a public officer.
- 23Q. **Marking of documents-**
- (1) The documents when produced shall be marked as follows:
 - (a) If relied upon by the complainants side, they shall be numbered as 'A' series.
 - (b) If relied upon by the respondent's side, they shall be marked as 'B' series.
 - (c) The Enforcement Committee/Authority exhibits shall be marked as 'C' series.
 - (d) The Authorised officer Exhibits shall be marked as 'D' series.
 - (2) The Committee/authority may direct the applicant to deposit with the Committee/ authority by way of Demand Draft or Indian Postal Order drawn in favour of the Pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

- 23R. **Procedure for examination of witnesses, issue of Commissions**-The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908 (5 of 1908), shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.
- 23S. **Examination in camera**-The Enforcement Committee/Authority may in its discretion examine any witness in camera.
- 23T. **Form of oath or affirmation to interpreter**-Oath or solemn affirmation shall be administered to the interpreter in the following form before the _____ as taken for examining a witness:
 "I do swear in the name of God/solemnly affirm that I will faithfully and truly interpret and explain all questions put to and evidence given by witness and translate correctly and accurately all documents given to me for translation."
- 23U. **Officer to administer oath**- The oath or affirmation shall be administered by the _____.
- 23V. **Form recording of deposition-**
- (1) The Deposition of a witness shall be recorded in Form _____ .
 - (2) Each page of the deposition shall be initialed by the Members constituting the Bench.
 - (3) Corrections, if any, pointed out by the witness may, if the Committee is satisfied, be carried out and duly initialed. If not satisfied, a note to the effect be appended at the bottom of the deposition.
- 23W. **Numbering of witnesses**-The witnesses called by the complainant/ Authorised Officer/ Respondent/ Enforcement Committee shall be numbered consecutively as CWs/PWs/RWs/ ECWs respectively.
- 23X. **Grant of discharge certificate**- Witness discharged by the Committee/authority may be granted a certificate in Form _____ by the Enforcement Committee.
- 23Z. **Taking of specimen handwriting, signature etc**-The Enforcement Committee may, if necessary, take specimen of the handwriting, signature or fingerprint of any witness or party examined before him.

APPELLATE AUTHORITY

24 (1) Any person aggrieved by any order of the Authority may within ninety days from the date on which the order is communicated to it or him, prefer an appeal to the Appellate Authority:

Provided that the Central Government may also appeal against the decision of the Authority within ninety days:

Provided further that the Appellate 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.

- (1A) The appeal shall be made in Form and shall be accompanied with fees of rupees _____.
- (2) The Appellate Authority may, after calling for the records of the case under Appeal, revise any order made by the Authority and may-
 - (a) confirm, modify or set aside the order;
 - (b) impose any penalty, order for restricting practice for a period, order for waiver or refund of fees or set aside, reduce, or enhance the penalty, restriction of practice for a period, waiver or refund of fees imposed by the order;
 - (c) debar the member or the firm or set aside, reduce, or enhance the period of debarment imposed by the order,
 - (d) remit the case to the Authority for such further enquiry as the Appellate Authority considers proper in the circumstances of the case; or

(e) pass such other order as the Appellate Authority thinks fit:

Provided that the Authority shall give an opportunity of being heard to the parties concerned before passing any order.

25. **Residuary provision-** Matters relating to the procedure of investigation, conduct of cases and allowances to nominated members with respect to which no express provision has been made in these rules shall be referred in each case to the Central Government for its decision and the decision of the Central Government thereon shall be binding.

26. **Removal of difficulty-**

In the matter of implementation of these rules, if any doubt or difficulty arises, the same shall be placed before the Central Government and the decision of the Central Government thereon shall be final.



Annexure H

Suggestions Submitted to Parliamentary Standing Committee on Finance on 31st May 2016

CL&CGC / 06 / 45/2016-2017 / Rep-12

31st May, 2016

Shri Ramkumar Suryanarayanan

Additional Director Lok Sabha Secretariat

Parliamentary Standing Committee on Finance New Delhi

Respected Sir,

Sub: ICAI suggestions on the Issues and Concerns in the Companies Act, 2013 and Rules thereon.

This is with regard to your letter No. 18/1/6/2016/FC dated 26th May, 2016, we thank you for giving us an opportunity to present before the Hon'ble Parliamentary Standing Committee on Finance at 11.00 am on 3rd June, 2016.

We would like to submit here that the Institute has gone through the Companies (Amendment) Bill 2016. We welcome the amendments proposed in the Companies (Amendment) Bill 2016, however, there are certain concerns that may be addressed.

We are enclosing the Issues in the Act and detailed Concerns and Suggestions which in the opinion of Institute merits further consideration as Annexures (12 Annexures and Appendix to Annexure 4).

We hope that the Hon'ble Committee will certainly find the suggestions of the Institute useful and consider the same.

With Regards,

CA. M. Devaraja Reddy President ICAI

Encl: 50 copies in English version

Issues in the Companies Act 2013 and Detailed Concerns and Suggestions

We welcome the amendments proposed in the Companies (Amendment) Bill 2016, which were introduced in the Lok Sabha on 16th March, 2016. However, there are certain additional issues in the Companies Act as well as Rules that in the opinion of The Institute of Chartered Accountants of India merits further consideration and consequential changes to the legislation, that need to be enabled at the earliest.

The proposed changes are driven by three fundamental objectives that the Companies Act must seek to accomplish viz, ease of doing business, capital formation and with minimal cost of compliances.

These issues are placed for the consideration of the Hon'ble Parliamentary Standing Committee on Finance as under. These include aspects relating to the provisions of the Act as well as the Rules which are summarised as under:

I. Aspects for Consideration on the provisions of the Act

1. Request for Chartered Accountants to be designated as CFO's for Companies where KMP's are required to be appointed under the Act. (Section 2 (51)).
2. Enhance Exemptions to private companies – All Private Companies must be allowed to obtain loans from shareholders without any restrictions (currently restricted to 100% of net worth presently under Section 73(2) of the Act). This is particularly relevant for loss making companies which may have eroded their networth completely rendering them ineligible for any form of loans from shareholders.
3. Chartered Accountants may also be allowed to Certify Annual Return (Section 92)
4. Exemption from applicability for preparation of Consolidated Financial Statements to Private and Unlisted companies (Section 129 (3)).
5. Constitution of National Financial Reporting Authority (Section 132).
6. Exemption to unlisted and private companies from Reporting on Internal Financial Control by the auditors (Section 143 (3) (i)).
7. Disqualification of auditors to become Independent Directors to be aligned with that of other professional (Section 149 (6) (e)).
8. Participation of directors in a meeting through video conferencing should be counted for quorum (Section 173).
9. Regarding applying Indian interest rates bench marks prescribed under Section 186(7) to loans given by companies to foreign entities.

II. Aspects for Consideration on the provisions of the Rules framed under the Act

10. Credit Balance in the account above 365 days shall not be treated as deposits. (Section 73 read with Rule (2) (1) (c) (xii)).
11. Issues relating to Operationalisation of Rotation of Auditors in private companies (Section 139 (2) read with Rule 5 (b)).
12. Time limit for reporting on fraud to the Audit Committee/ Board shall be increased from 2 days to 21 days. (Section 143 (12) read with Rule 13 (3)).

Detailed Concerns and Suggestions are enclosed as Annexures (1 to 12)

Annexure 1 to CL&CGC/ 06/45/2016-2017/ Rep-12 dated 31st May, 2016

Request for Chartered Accountants to be designated as CFO's for Companies where KMP's are required to be appointed under the Act

Provision:

Sec 2(51) of the Act defines Key Managerial Personnel (KMP) , in relation to a Company to mean the Chief Executive Officer or the managing director or the manager, the company secretary, the whole-time director, the Chief Financial Officer (CFO) and such other officer as may be prescribed;

The Rules under the Act specify that Every listed company and every other public company having a paid-up share capital of Rs 10 crore rupees or more shall have whole-time key managerial personnel. (Rule 8 of Appointment and remuneration of managerial personnel rules).

Concern:

The Act does not, presently, specify the qualifications of a Chief Financial Officer. In view of the significantly enhanced compliance requirements and the overarching role of the finance function in the present day context, it may be relevant to consider appointing Chartered Accountants in such CFO positions which are to be mandatorily filled up under the above mentioned KMP requirement.

Chartered Accountants on account of the unique academic curriculum and practical training will enhance the quality of the accounting and oversight function within the enterprise and significantly protect stakeholder and public interest.

It is pertinent to mention that all public companies with a paid up share capital of more than Rs 5 crores are required to appoint a Company Secretary compulsorily.

Suggestion:

In case of companies required to appoint KMP's, persons who are designated as CFO's should be Chartered Accountants.

Annexure 2 to CL&CGC/ 06/45/2016-2017/ Rep-12 dated 31st May, 2016

Enhance Exemptions to private companies–

1. All Private Companies must be allowed to obtain loans from members without any restrictions (currently restricted to 100% of net worth presently under Section 73(2) of the Act) and criteria to be amended for loss making private companies.

Provision:

The provision relating to acceptance of loans from shareholders shall not apply to private companies having 50 or less number of members, if they accept monies from their members not exceeding one hundred per cent of the paid up capital and free reserves, whichever is more and which inform the details of such monies to the Registrar in the prescribed manner. (Section 73(2) read with notification dated 5th Jun 2015).

In case the above threshold is exceeded, the same shall be named as a “deposit” and the relevant stipulations shall apply. These stipulations include compliance with additional and difficult conditions such as credit rating, maintenance of redemption reserves.

Concerns:

The above provision restricts shareholders funding an enterprise by their own loans which does not appear to be logical in the context of private limited companies which are closely held and mostly owner driven. The above aspects restrict access to capital for small and medium enterprises and increases the cost of borrowing (due to reserve maintenance) thereby reducing business growth. It is also to be noted that, the law also restricts, in certain cases, inter corporate loans by private companies with common directors (Section 185 read with notification dated 5th Jun 2015).

The provisions under both these under Section 73 and Section 185 significantly restrict easy access to funds by Small and Medium private companies.

Suggestions

The Companies Act 1956 allowed Private Companies to accept deposits from Members without any restriction. This enabled ease of doing business for private companies. On the above lines, the government may consider allowing all private companies less than 50 members, in which there is no public interest, to accept loans from members without any restrictions.

2. **Specific Concern for loss making companies**

The limiting of the loan to networth criteria would also impact access to much needed funds by loss making private companies where the networth may be eroded or in the negative due to which no loans can be obtained from members (without complying additional conditions), who may otherwise be willing to advance funds to the company.

Suggestions for Loss making private companies

Provisions for Loss making companies may be amended and it is suggested that private companies should be allowed to accept loans from its members.

Annexure 3 to CL&CGC/06/45/2016-2017/ Rep-12 dated 31st May, 2016

Chartered Accountants to be allowed to Certify Annual Return (Section 92 of the Companies Act 2013)

Provision:

Presently Chartered Accountants are not allowed to certify the Annual Returns of Companies. As per Sub Section (2) of Section 92, the Annual Return, filed by a listed company or by a company having such paid up capital or turnover as may be prescribed, shall be certified by a Company Secretary in practice in the prescribed form, stating that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of this Act.

Concern:

It is pertinent to note that the Companies Act 1956 permitted the certification by Chartered Accountants and certain returns under the new Act, as under, are also certified by Chartered Accountants. Chartered Accountants should also be allowed to certify the Annual returns of Companies. Compliance Certifications should be allowed to be done by all competent professionals for ease and cost of compliance.

1. INC- 6 under Section 18 for Conversion of One Person Company.
2. PAS-3 under Section 39 (4) and 42 (9) for Return of allotment of securities by company.
3. AOC-4 under Section 137 for filing of financial statements with the Registrar.
4. CHG-1 under Section 77 for filing of charge with the Registrar.
5. DIR-12 under Section 168 & 170 for filing of Resignation by Director with the Registrar.

Suggestion:

In view of this, it is reiterated that the same practice which was followed earlier in Companies Act 1956 , be continued to allow Chartered Accountants to duly certify the new version of the Annual Return Form in MGT-7. Accordingly, Section 92 may be amended to allow Chartered Accountants to certify Annual Return.

Annexure 4 to CL&CGC/ 06/45/2016-2017/ Rep-12 dated 31st May, 2016

Exemption from applicability for preparation of Consolidated Financial Statements to private and unlisted companies (Section 129 (3) of the Companies Act 2013)

Provision:

A company having a subsidiary, a joint venture, or an associate company, to prepare a 'Consolidated Financial Statement' (CFS), in addition to its stand-alone financial statements.

Concerns:

Requirement of CFS: Section 129(3) of the Companies Act, 2013, requires a company having a subsidiary, a joint venture, or an associate company, to prepare a 'Consolidated Financial Statement' (CFS), in addition to its stand-alone financial statements. The requirement for a CFS was introduced for the first time in the Companies Act, 2013. Before 1st April 2014, such a requirement was applicable only for listed companies, which were required to prepare consolidated financial statements in terms of the listing agreements with stock exchanges.

Departure from Globally Accepted Practice: The current mandatory requirement for preparation of CFS makes a departure from globally accepted practices. The global practice permits that an entity which is publicly accountable is only required to present its consolidated financial statements. It is a globally accepted position that an entity that does not have public accountability is only required to prepare standalone financial statements. Further, in many countries, tax filing on CFS basis is only optional.

ICAI is already aligning the Accounting Standards that are to be applicable to those entities to whom Ind-AS do not apply, with globally accepted accounting principles. Further, banks, tax departments, credit rating agencies and shareholders, in India, consider the Stand alone Financial Statements and it appears that there is not much need for Consolidated Financial Statements.

Given the restrictions in transfer of shares applicable to shareholders of private companies are unlikely to have a compelling need for Consolidated Financial Statements.

Cost of preparing CFS and the resultant compliance requirements will increase tremendously and impair the Government's objective of enabling Ease of doing business.

Suggestion:

In view of above, it is suggested unlisted / private companies should be exempted from preparation of Consolidated Financial Statements under the Companies Act 2013.

Alternatively, the preparation of CFS may be made optional. Stakeholders, who may need such Consolidated Financial Information may source such data from entities concerned on a case to case basis.

Annexure 5 to CL&CGC/ 06/45/2016-2017/ Rep-12 dated 31st May, 2016

Regarding Constitution of National Financial Reporting Authority (Section 132 of the Companies Act 2013)

Provision:

Sec 132 of the Act provides for the creation of National Financial Reporting Authority for matters relating to accounting and auditing standards under the Act. However this section is yet to be notified

The key functions of NFRA as envisaged by the Act include:

- Recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or their auditors.
- Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed.
- Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed.
- Have the power to investigate, either suo motu or on a reference made to it by the Central Government, for specified class of bodies corporate or persons, into the matters of professional or other misconduct committed by any member or firm of Chartered accountants.

Concerns:

- a) **Multiple Regulatory Bodies:** Creating NFRA would result in two regulatory bodies (ICAI and NFRA) governing the same audit profession. This would result in duplication of efforts, added huge costs with no significant incremental benefits. This would also change the self-regulated profession to an externally regulated body.
- b) **The ICAI Context:** NFRA might seem necessary to ensure that standard setting and enforcement are not carried out by the same body (ICAI). However, it would be pertinent to mention that the ICAI, has been created by an Act of Parliament for this specific dual role (like SEBI).

The roles of each of the units of ICAI have been discussed in detail in **Appendix 1** to this Annexure. These functional units, discussed below, comprise elected members of the Central Council of the ICAI as well as the members nominated by the Government.

The constitution of NFRA needs to be re-examined in the mentioned contexts where relevant mechanisms and units have been enabled by and/or within the ICAI organisation to deliver the twin objectives of robust policy making and unbiased enforcement in a timely manner.

Unit of ICAI	Total Members	Function / Constitution
Quality Review Board	11	Oversight and review of the quality of services provided by the members of the Institute. Includes 6 members nominated by the Government of India. The Chairman to the Board is also nominated by the Central Government, thereby ensuring independence vis a vis ICAI in the regulatory activities of the Board
Accounting Standards Board	64	The Objective of the Board is the Formulation of Accounting Standards for consideration by the Government (NACAS). 41 members nominated by MCA, SEBI, RBI, Chambers, CBDT, ICSI, ICWAI, C&AG, CBEC, Academician, University Grants Commission, Indian Banks' Association, IIM, IRDA, CII, FICCI, ASSOCHAM, etc.
Auditing and Assurance Standards Board	29	The Objective of the Board is to formulate Auditing Standards to regulate the profession. Nominations are also sought from SEBI, RBI, , Academician, IIM, IRDA, CII, FICCI, ASSOCHAM, etc.

Unit of ICAI	Total Members	Function / Constitution
Peer Review Board	8	The objective is the Peer review of audit firms i.e., Practice Units evaluating process followed by the Practice Units (PUs) in performing attestation engagements. Includes one member nominated by the C&AG office.
Financial Reporting Review Board	12	The objective is to review the compliance with the reporting requirements of various applicable statutes, Accounting Standards and Auditing and Assurance Standards issued by the ICAI. In this regard, the FRRB can review the general purpose financial statements of the enterprise and the auditor's report thereon either suo moto or on a reference made to it by any regulatory body like, Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Ministry of Corporate Affairs, etc. Members include Central Government Nominee on the Council as well as representatives of the Insurance Regulatory and Development Authority and the Comptroller and Auditor General of India as special invitees.
Disciplinary mechanism - Board of Discipline	3	Adjudication of suo moto references and complaints of professional misconduct by members of the CA profession. Comprises the President of ICAI, 1 Central Council member and One Government Nominee.
Disciplinary mechanism - Disciplinary Committee	5 (Each Bench)	Adjudication of suo moto references and complaints of professional misconduct by members of the CA profession. Comprises the President of ICAI, 1 Central Council member and One Government Nominee. The Disciplinary Committee adjudicates complaints against members falling under both the First Schedule as well as the Second Schedule to the Chartered Accountants Act, 1949. There are 2 benches comprising 5 members each. It includes 2 Government Nominees.

- c) **Relevance of NFRA in the context of the Companies Act 2013:** The objective of NFRA is to regulate audit quality and protect public interest. These, in any case, are also the main objectives of ICAI which strives to be a world class regulator.

It is pertinent to note that the new Companies Act 2013 has significantly enhanced provisions, pertaining to Accounts, Audit and Corporate Governance which can deliver the above objectives very well.

Specific aspects to regulate audit quality include integration of financial statement reporting with Internal Financial Controls, restrictions on auditors rendering conflicting services, audit rotation, audit limits and penalties on the audit profession have been included in the new Act. Similarly entity level discipline is sought to be enhanced by significant controls over related party transactions, acceptance of deposits, code of independent directors, mandatory internal audits for large enterprises, enhanced board responsibility etc. These controls enshrined in the Act, in addition to the efforts of ICAI will enable higher audit quality especially for public interest entities. Incremental benefits by creating NFRA need to be reexamined before notification of Section 132.

- d) **Auditing Standards:** ICAI as a world class regulator would be more aligned to market needs, international practices and risks to be able to define and improve Auditing standards rather than NFRA.
- e) **Disciplinary Mechanism:** The Disciplinary Committee of ICAI normally completes the process in a reasonable period of about three to four years.
- f) **International benchmarks:** The Public Companies Accounting Oversight Board (PCAOB) of the US may be regarded as a possible closely comparable body to NFRA, if notified. It is relevant to note that PCAOB has evoked mixed responses in its ability to improve audit quality. The PCAOB budget for 2016 is estimated at \$250 million and is enabled by 750 audit staff. The Challenges of availability of trained and qualified audit staff and the cost thereof may need to be appreciated ahead of the decision to notify NFRA.
- g) **NFRA reporting and market perception:** As a regulatory oversight body, it would be incumbent on NFRA to share their findings, at least in part, on their audits to the public. A particular issue

would be on the ability and maturity of stakeholders and markets to distinguish between audit defects as identified by NFRA (highly likely) and a total audit failures (less likely).

- h) **Uniform administration:** Scale based differentiation of regulating authority may result in conflicting judgements on the same issue. Seamless coordination may always not be possible between NFRA and ICAI due to the multiplicity of disciplinary issues that may be handled by both agencies.
- i) **Challenges in adjudication:** The setting up and managing a standard setting, review and quasi-judicial authority requires sustained effort on timely availability of adequate competent personnel which may be a challenge for NFRA.

Suggestion

The years commencing 2015 are vastly different for the auditing profession in terms of the perception of the auditor's roles and responsibilities. Additionally, the CA fraternity is in the process of coping with new changes such as penalties, rotation, restricted services, Internal Financial Controls over Financial Reporting and other aspects imposed by the Companies Act. The profession would, rightly, need some more time to understand and assess the expectations of a NFRA regime which, in our view shall not be notified.

The ICAI has sufficient regulatory, supervisory, organisational and budgetary independence as regards the audit profession although we both a standard setter and a regulator. We would continue to discharge our obligations to ensure the highest standards of audit quality as well as to protect public interest.

ANNEXURE 6 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Exemption to unlisted and private companies from Reporting on Internal Financial Control by the auditors (Section 143 (3) (i) of the Companies Act 2013)

Provision:

The Auditors of all the companies are required to state in the auditors report the existence of Internal financial control system of the company and its operating effectiveness.

Concerns:

Management Responsibility: It is stated that it is the primary responsibility of the management to lay down adequate internal controls, continuously monitor and ensure their operating effectiveness. It is well settled position that the directors and management are primarily responsible for the internal controls and the auditors review them as a trustee of the shareholders.

Time Frame: Even in the United States when Sarbanes Oxley Act was introduced, there was a time period of about 3 years provided for its implementation. As on date, the internal financial control reporting, in the United States, is applicable only to listed entities and does not apply to private / unlisted companies.

Framework: Internal financial controls need to be implemented in accordance with a predetermined 'framework'. Internationally various frameworks have been prescribed by regulators such as 'COSO framework' (issued by the Committee of Sponsoring Organisations of the Treadway Commission 1992), Turnbull (issued by the Institute of Chartered Accountants in England and Wales) and CoCo (Criteria on Control issued by the Canadian Institute of Chartered Accountants). A relevant framework for Companies in India is yet to be developed and in absence of a common framework, every company would decide on its own framework which would not help in achieving the goals envisaged by the law.

Cost Vs Benefit: The introduction of adequate internal financial controls in a formal manner including documentation, training and dissemination of knowledge to all employees and putting together a framework for monitoring the same is a time consuming exercise, requiring significant resources in terms of time and money. Significant efforts and time is required for documenting the internal financial controls system of an enterprise and it can only be justified by nature and size of the business.

Organisation Structures: The compliance of IFC needs to be judged from the business and customary practices in the Country. In India, the majority of the Companies are managed by family promoters with very limited professionals assisting them. This compliance will increase the costs of doing business in India compared to the world especially in the context that in majority of the cases the entire business is managed by experienced family members, which in certain cases may be supported by professionals.

Setting the expected internal control systems which mainly involve documentation and formalisation of decision taken at every stage of operation will not supplement the concept of family owned & family run business.

Professional Support: Also, considering the size of private limited companies, it will be unreasonable expectation that all companies will have extensive professional staff capable of putting in place and operating an effective IFC environment. This will enhance costs to business.

True and Fair and Fraud reporting: Further exemption of Auditor Reporting on IFC would not cause any impact on the presentation of financial statements or the audit process as the auditor, even under the present law, in addition to his Audit Opinion on the Financial Statements is also required to comply with a separate fraud reporting requirement as per Section 143 (12) by the auditors of the companies.

Suggestion:

Considering all above facts based on the basic premise of private / unlimited companies, which are owned, operated and managed by same set of individuals, immediate implementation of IFC will not serve any benefit to any stakeholder.

In view of above, it is suggested that applicability of IFC be considered as under:

1. Presently, for all Listed Companies (other than SME listed entities).
2. Unlisted public company and Private limited companies to whom Internal audit requirements apply under the Act from financial year 2016-2017.

ANNEXURE 7 TO CL&CGC/ 06/45/2016-2017/ REP- DATED 31ST MAY, 2016

Criteria for appointment as Independent Directors to be administered uniformly across various categories of persons / professionals (Section 149 (6) (e) of the Companies Act 2013)

Concern:

It is observed that the criteria for eligibility to become Independent Director of a Company vary across two categories of professionals namely, Chartered Accountants and Lawyers. The relevant differential application is as under:

Further, the disqualification applies in the event of association with not only the Company but also the holding, subsidiary and associate companies.

Category	Chartered Accountants	For Lawyers and consulting firms	For Others
Association	An employee or proprietor or a partner in any of the three immediately preceding years	An employee or proprietor or a partner in any of the three immediately preceding years	Any Pecuniary relationship in two immediately preceding years
Value Criteria	Any amount	10% or more of gross turnover	Any pecuniary relationship Materiality criteria has been brought in for other professionals as per the Companies (Amendment), Bill 2016

The same yardstick is not being used for all professionals for being considered as an Independent Director.

Suggestion:

Uniform thresholds may be suggested for numbers of years of pecuniary relationship as well as for the value of transactions between the companies and the proposed independent directors or their entities

Further, this section may be made applicable for only holding company and subsidiaries and not associates. And, in case of subsidiaries, such restrictions may be imposed only for material subsidiaries.

ANNEXURE 8 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Participation of directors in a meeting through video conferencing should be counted for quorum (Section 173 of the Companies Act 2013)

Provision:

As per the 1st proviso to Section 173 (1), Central Government may specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means. As per Companies (Amendment) Bill 2016, directors have been allowed to participate but will not be counted for quorum purposes.

Concern:

The very purpose for allowing participation through video conferencing may not be met, if the presence is not counted for quorum.

Suggestion:

Where flexibility has been provided to allow, participation of directors through video conferencing, such participation should be counted for the purposes of quorum.

ANNEXURE 9 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Regarding applying Indian interest rates bench marks prescribed under Section 186(7) of the Companies Act 2013 to loans given by companies to foreign entities

Provision:

Section 186 (7) provides that whether effective yield against the loan is not less than the yield if the loan is provided at a rate of interest not lower than the prevailing yield of one year, three year, five year or ten year Government security closest to the tenor of the loan.

Concern:

It may not be appropriate to apply Indian interest rates bench marks prescribed under Section 186(7) to loans given by companies to foreign Entities. Also, it is against the principle of ease of doing business.

Suggestion:

It is suggested that effective yield may be impacted by the actual forex movement, whenever any loan is given, rate of interest to be linked with foreign currency.

ANNEXURE 10 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Credit Balance in the account above 365 days shall not be treated as deposits. (Section 73 read with Rule (2) (1) (c) (xii) of the Companies Act 2013)

Provision:

The Rules under the Companies Act stipulate certain moneys received not to be regarded as deposits under the Act.

As per Rule 2 (1) (c) (xii), it has been provided that deposit does not include any amount received in the course of, or for the purposes of, the business of the company as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within a period of three hundred and sixty five days from the date of acceptance of such advance.

Concern:

It is pertinent to mention that several categories of enterprises are likely to have residual accumulated credit balances occurring from routine transactions and these may be aged over a year.

These could vary from a few lakhs to crores in case of certain utility companies. A 365 day threshold would enhance the level of operating difficulty in the context of reconciliations and refunds and impacts ease of doing business.

Suggestion:

It is suggested that Credit balances in accounts above 3 years shall be treated as deposits.

ANNEXURE 11 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Issues in the Operationalisation of Rotation of Auditors in private companies (Section 139 (2) read with Rules 5 (b) of the Companies Act 2013)

Provision:

Sec 139 (2) of the Companies Act mandates rotation of auditors for listed and certain other categories of companies as prescribed.

As per Rule 5 (b) under Section 139(2) all private limited companies having paid up share capital of rupees twenty crore or more are also required to comply with the provision of Rotation of auditors.

Concern:

- The Rotation of auditor/audit firm is not a popular international practice and in fact not found successful in many countries across the globe. Even in certain jurisdictions where it is practised, the same is restricted to listed and public interest entities and not for private companies.
- In the U.S. as per the Sarbanes – Oxley Act the lead partner of the audit firm as well as the concurring partner have to be rotated every five years. Further, The J.J. Irani committee had also recommended rotation of partners within the firm and not the firm itself.
- While rotation may be considered as an option to enhance professional scepticism and independence, such practices also result in learning curve issues with additional costs and no added benefits especially to enterprises where there is no public interest involved.
- The Companies Act has significantly enhanced the responsibilities of the audit profession with increased reporting requirements and a first time introduction of penalties on the audit profession. This is likely to maintain and improve the present audit quality, regardless of Audit rotation.
- Additionally, the Disciplinary mechanism of the ICAI as well as other affirmative actions such as Peer reviews, FRRB, QRB processes of the ICAI continue to strengthen the audit profession in India.
- Churning of auditor is particularly difficult, time-consuming and a costly process for private companies which are majority in number.

Suggestion:

It is suggested that the Rotation of auditors shall not be applicable on private companies. Alternatively, Rotation of partners may be introduced.

ANNEXURE 12 TO CL&CGC/ 06/45/2016-2017/ REP-12 DATED 31ST MAY, 2016

Time limit for reporting on fraud to the Audit Committee/ Board shall be increased from 2 days to 15 days. (Section 143 (12) read with Rules 13 (3) of the Companies Act 2013)

Provision:

Section 143(12) of the Companies Act requires that if an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

Rule 13 (3) formed pursuant to this section states that the auditor shall report the matter to the Board/ Audit Committee, as the case may, immediately, but not later than two days of his knowledge of fraud.

Concern:

It is difficult for the auditor to report the Board/ Audit Committee within 2 days of his knowledge as the auditor has to establish the fraud. The time taken would depend on factors such the complexity of the issue, circumstances involved, the nature and scale of the fraud as well as the size of the entity.

The Auditor would also have to prepare and maintain comprehensive documentation and audit evidences, in order to determine and satisfy himself on the fact, nature and scale of such fraud before reporting the same to the Audit Committee/ Board.

Suggestion:

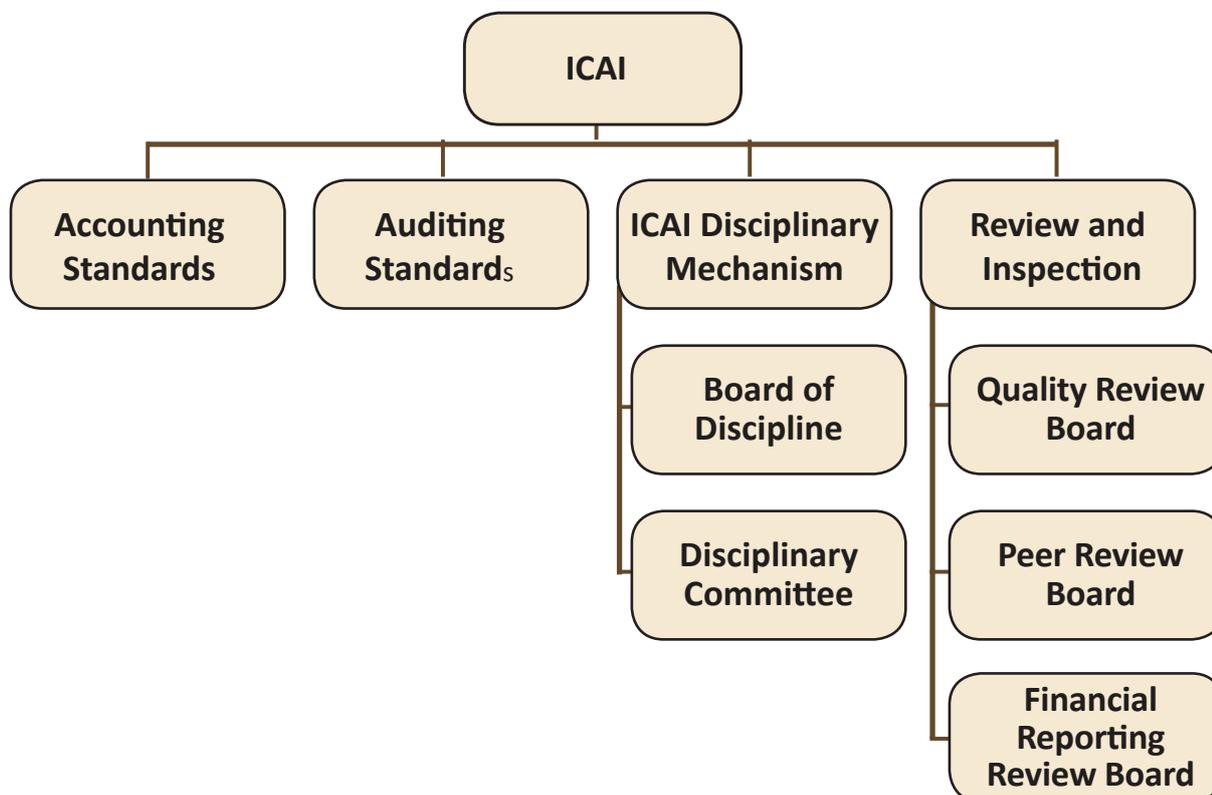
Therefore, it is requested to please increase the period of 2 days for reporting of fraud by the auditor to 21 days.

APPENDIX A TO ANNEXURE 5 TO CL&CGC/ 06/45/2016-2017/ REP-12 3; 1ST MAY 2016

Overview of ICAI and mechanisms for maintaining Audit Quality and regulating professional discipline

Regarding Constitution of National Financial Reporting Authority (Section 132 of the Companies Act 2013)

The Institute of Chartered Accountants of India



The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 (Act No. XXXVIII of 1949) for the regulation of the profession of Chartered Accountants in India. During its 67 years of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

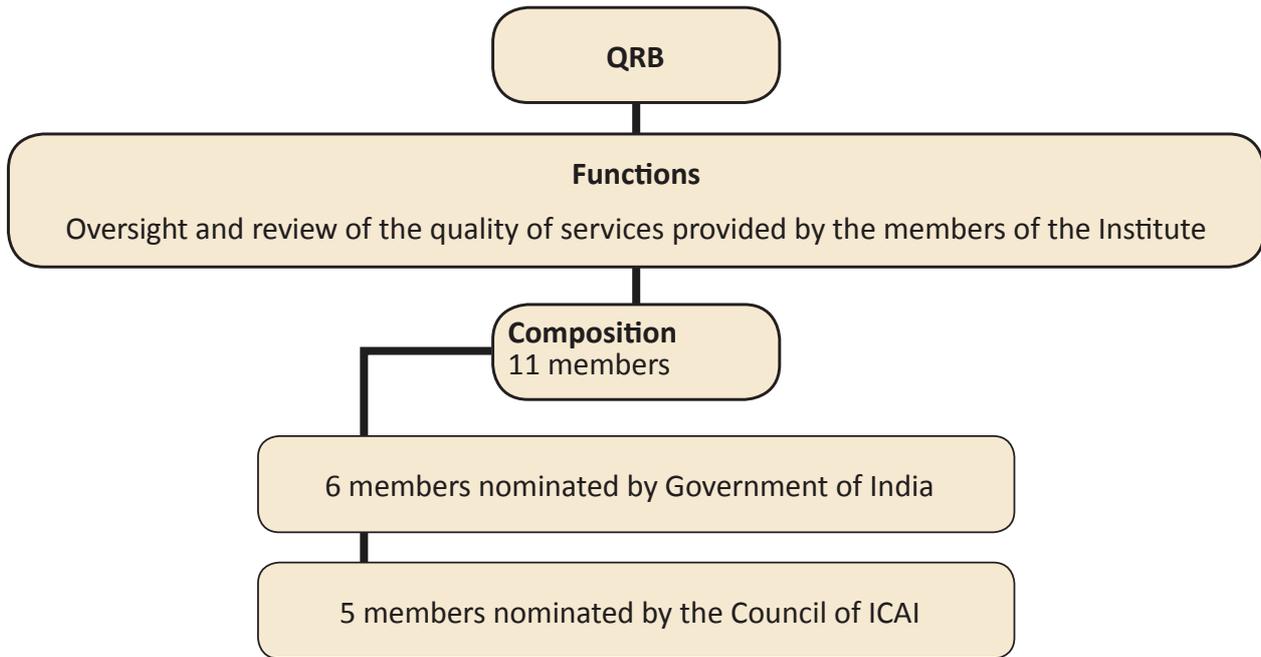
The functions of ICAI are administered by the Central Council comprising 32 elected members and 8 nominees of the Government of India. The Central Councils are assisted by 5 Regional Councils representing the South, East, West and Central Regions. The most important function of the Council is the regulation and maintenance of the status and standard of professional qualifications of members of the Institute.

ICAI as the statutory body for independent regulation of the profession has set up Disciplinary Directorate, Accounting Standards Board, Auditing and Assurance Standards Board, Peer Review Board and Financial Reporting Review Board. These units ensure Audit quality for protection of stakeholder and public interest

Board, Peer Review Board and Financial Reporting Review Board. These units ensure Audit quality for protection of stakeholder and public interest

The Naresh Chandra Committee on Corporate Audit and Governance appointed by the Ministry of Corporate Affairs in August, 2002 had submitted a Report regarding the functioning of ICAI. It dealt with the autonomy of the Institute, the Disciplinary proceedings and other important related matters. The recommendations of the Committee were accepted by the Government of India. Consequently, The Chartered Accountants Act, 1949 was amended in 2006.

Quality Review Board



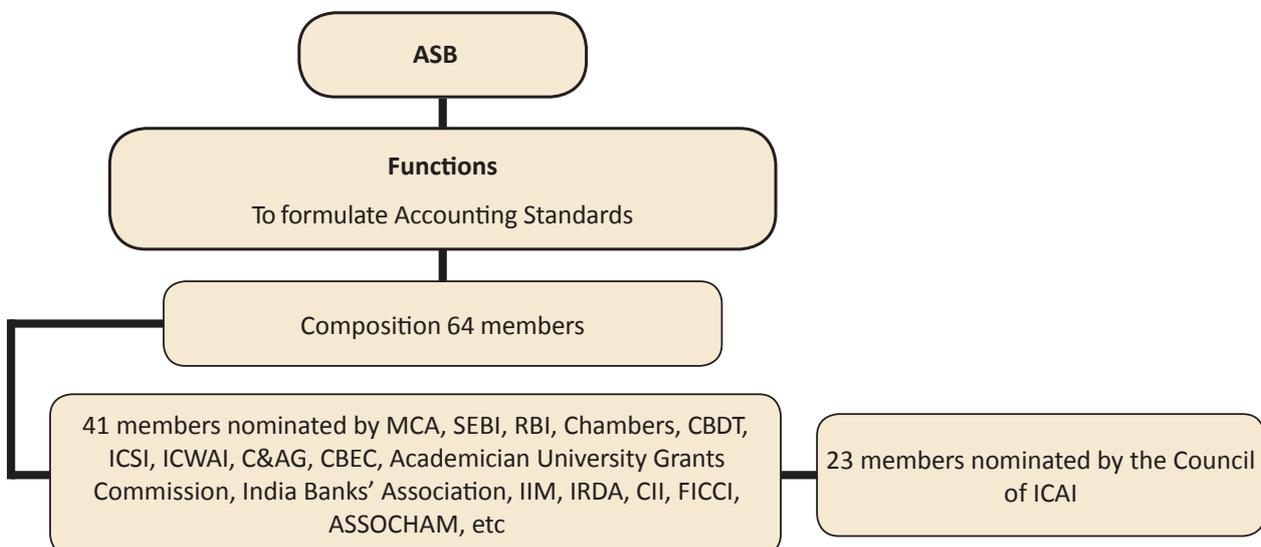
The Government has already established Quality Review Board under Section 28A of the Chartered Accountants Act, 1949, for the purpose of oversight and review of the quality of services provided by the members of the Institute.

The QRB consists of 11 members, whose Chairman and five members are appointed by the Central Government and remaining five members are nominated by the Council of the Institute of Chartered Accountants of India. The Chairman to the Board is also nominated by the Central Government, thereby ensuring independence vis a vis ICAI in the regulatory activities of the Board.

The Quality Review Board has also given suggestions/ comments/ observations on the draft National Financial Reporting Authority Rules, 2013.

The Quality Review Board, established by the Central Government u/s 28A of the Chartered Accountants Act, 1949, should be entrusted to continue to perform this function of compliance monitoring review and overseeing the quality of service of the audit profession. This will avoid duplicity of review of audit firms both by QRB and NFRA.

Accounting Standards Board



The Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India was constituted on April 21, 1977. The prime objective of ASB is to formulate Accounting Standards with a view to assisting the Council of the ICAI in evolving and establishing Accounting Standards in India.

The evolution of accounting standards in India received tremendous boost when legal recognition was accorded to the standards through amendment in the Companies Act, 1956, whereby every company is required to comply with the accounting standards and the statutory auditors of every company are required to report whether the Accounting Standards have been complied with or not.

The legal recognition to the Accounting Standards was accorded for the companies in the Companies Act, 1956, by introduction of section 211(3C) through the Companies (Amendment) Act, 1999, whereby it is required that the companies shall follow the Accounting Standards notified by the Central Government on a recommendation made by the National Advisory Committee on Accounting Standards (NACAS) constituted under section 210A of the said Act.

The Government of India, (Ministry of Corporate Affairs), issued a Notification dated December 7, 2006, prescribing Accounting Standards 1 to 7 and 9 to 29 as recommended by the Institute of Chartered Accountants of India, which have come into effect in respect of the accounting periods commencing on or after the aforesaid date with the publication of these Accounting Standards in the Official Gazette. For other than companies, Accounting Standards issued by the ICAI are applicable.

Though existing Accounting Standards are based on International Accounting Standards/International financial Reporting Standards, keeping in view the global developments and expected benefits of convergence with IFRS, ICAI constituted Task Force in 2006 to explore approach for achieving convergence with IFRS.

The Council of the ICAI in 2007 accepted recommendations of the Task Force to converge with IFRS and approach to be followed for the same. The Ministry of Corporate Affairs, Govt. of India, also supported the initiative of ICAI to converge with IFRS in order to bring the accounting practices followed in India at par with the best international practices. After constant efforts, in 2010, Accounting Standards Board accomplished the target of formulation of IFRS-converged Indian Accounting Standards (Ind AS) and submitted the same to the National Advisory Committee on Accounting Standards (NACAS) with a view to achieve convergence with IFRSs. Now, the Ministry of Corporate Affairs has notified Ind AS for adoption by corporate sector.

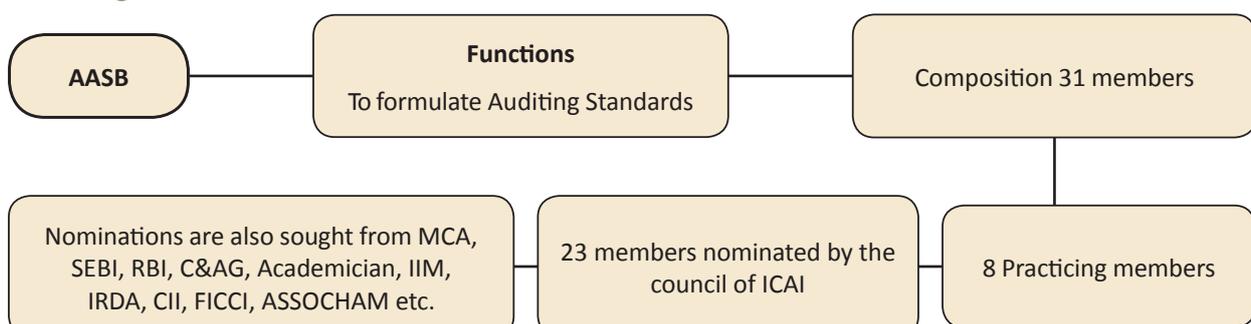
Composition of ASB

Composition of the ASB is fairly broad-based and ensures participation of all interest-groups in the standard-setting process.

It includes elected members of the Council of the ICAI nominated on the ASB, Nominees of the Central Government representing the MCA, C&AG, CBDT, SEBI as well as representatives of RBI, C&AG, CBEC, ICWAI, ICSI and various Chambers of Commerce and Industry, academics Institutions, etc.,

Eminent professionals co-opted by the ICAI (they may be in practice or in industry, government, education, etc.) apart from this ASB includes representative (s) of any other body, as considered appropriate by the ICAI.

Auditing and Assurance Standards Board



The Auditing and Assurance Standards Board (AASB) of the Institute of Chartered Accountants of India was established in September 1982. The prime objective of the Board is to develop Auditing Standards

ICAI being a member of the International Federation of Accountants, while developing these Standards, the Board takes into consideration, the requirements of the corresponding International Standards of the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants.

In addition, the requirements of the national laws and customs and usages and trade practices prevalent in India are also important considerations in formulation of auditing standards. These Standards are issued under the authority of the Council of the Institute and are mandatory in nature. The Auditing standards in India are formulated following a due process approved by the Council of the ICAI.

Composition of AASB

As a responsible public body whose main concern is serving the public interest, the Institute has ensured that the composition of its Auditing and Assurance Standards Board is such as endorses transparency, objectivity, independence and greater public participation in its working.

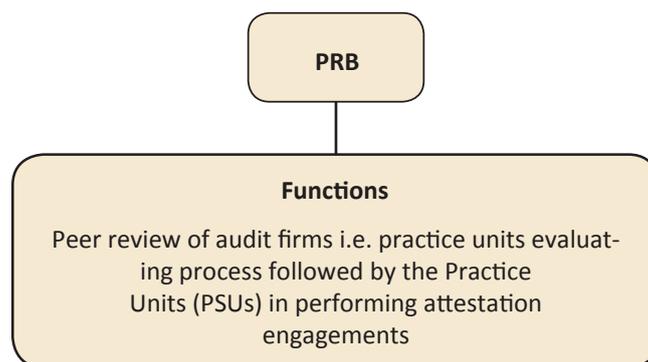
Accordingly, in addition to the elected members from ICAI’s Central Council, the Board also comprises senior chartered accountants drawn from public practice as well as nominees of from industry associations such as FICCI, ASSOCHAM, etc., as well as academicians from various Indian Institutes of Management and also from regulators such as the Reserve Bank of India, the Securities and Exchange Board of India, the Insurance Regulatory and Development Authority of India, etc.

Such representation of a cross section of stakeholders in the financial reporting and audit process also ensures that the apprehensions, issues and concerns of the stakeholders are addressed through an open consultative process in a timely manner.

Open and participative meetings of the Board, provide a learning and improvement platform for the auditing profession and help it to remain responsive to the expectations of the society as a whole from the profession.

The Auditing and Assurance Standards Board, having completed convergence with the International Standards on Auditing, its prime focus is now on encouraging compliance with these auditing standards among members.

Peer Review Board



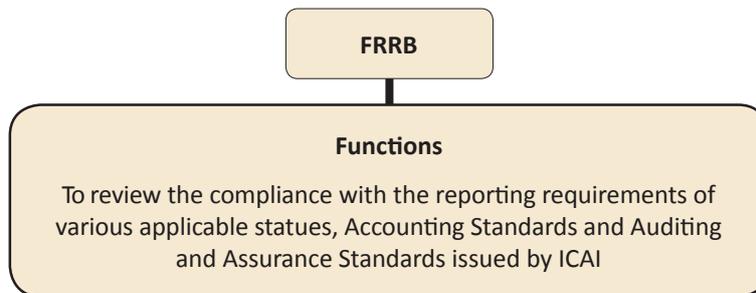
The Institute also has in place a system of peer review of audit firms (i.e., practice units), done under the aegis of the Peer Review Board of the ICAI, established in April, 2002. The Board consists of eight members appointed by the Council of the ICAI of whom seven are from amongst the members of the Council and one is from C&AG.

The Board also has representatives from the Ministry of Corporate Affairs, the Comptroller and Auditor General of India, the Securities and Exchange Board of India and the Industry (as represented by FICCI/ CII). The review process involves an evaluation of the process followed by the Practice Units (PUs) in performing attestation engagements.

Under a peer review, the reviewer examines the adequacy of the founding pillars of quality control system in an audit firm viz., compliance with technical standards, audit procedures and documentation, quality of reporting, office systems and procedures and training of the staff makes a report thereon.

The report, rather than being a fault-finding weapon, is aimed at helping the reviewer to improve its performance. Importantly, the Practice Units found wanting/ deficient by the peer reviewer are again subjected to a peer review process after a period of about six to twelve months to assess the improvements made by them.

Financial Reporting Review Board



The Financial Reporting Review Board (FRRB) constituted by the Council of the Institute of Chartered Accountants of India in July 2002, comprises of the members of the Council of the Institute (including a nominee of the Central Government on the Council) as well as representatives of the Insurance Regulatory and Development Authority and the Comptroller and Auditor General of India as special invitees.

The primary function of the FRRB is to review the compliance, *inter alia*, with the reporting requirements of various applicable statutes, Accounting Standards and Auditing and Assurance Standards issued by the ICAI.

The Board reviews general-purpose financial statements and the auditors' reports thereon of certain randomly selected enterprises with a view to determine, to the extent possible:

- Compliance with the generally accepted accounting principles in the preparation and presentation of financial statements;
- Compliance with the disclosure requirements prescribed by regulatory bodies, statutes and rules and regulations relevant to the enterprise; and
- Compliance with the reporting obligations of the auditor

The FRRB can review the general purpose financial statements of the enterprise and the auditor's report thereon either *suo moto* or on a reference made to it by any regulatory body like, Reserve Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Ministry of Corporate Affairs, etc.

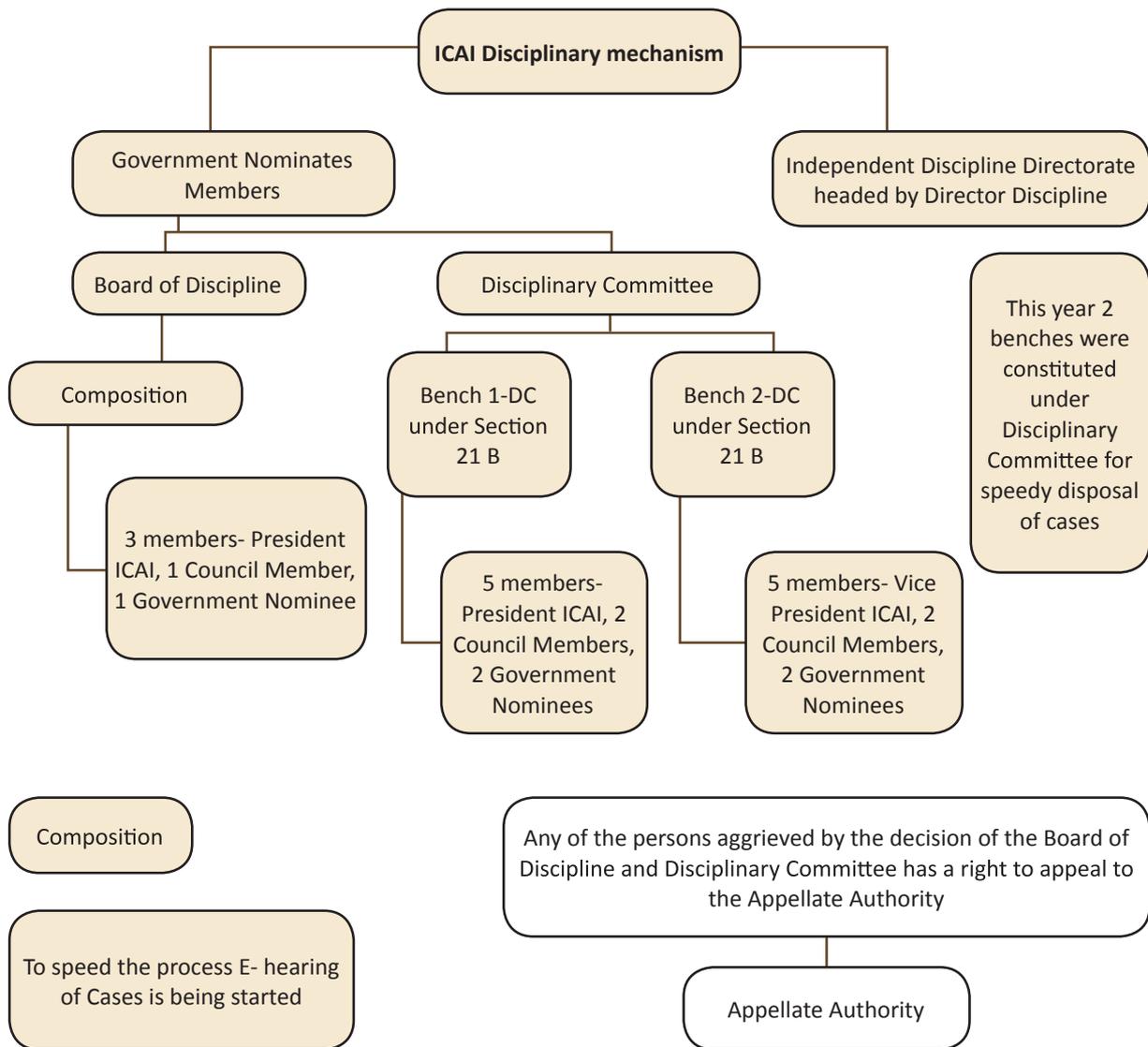
The FRRB may also review general purpose financial statements of the enterprises and the auditor's report thereon relating to which serious accounting irregularities in the general purpose financial statements have been highlighted by the media reports

Further, SEBI Board through its "*Consultative Paper on Review of Corporate Governance Norms in India*" has put in place a mechanism to process qualified annual audit reports filed by the listed entities with stock exchanges and Annual Audit Reports where accounting irregularities have been pointed out by Financial Reporting Review Board of the Institute of Chartered Accountants of India (ICAI-FRRB). In order to enhance the quality of financial reporting done by listed entities:

- Deficiencies in the present process are examined and rectified.
- SEBI has created Qualified Audit Report review Committee (QARC) represented by ICAI, Stock Exchanges, etc. to guide SEBI in processing audit reports where auditors have given qualified audit reports.

- Listed entities are required to file annual audit reports to the stock exchanges alongwith the applicable Forms (Form A: 'Unqualified' / 'Matter of Emphasis Report'; Form B: 'Qualified' / 'Subject To' / 'Except For Audit Report').
- After preliminary scrutiny and based on materiality, these reports are being referred by exchanges to SEBI/QARC
- Cases wherein the qualifications are significant and explanation given by Company is unsatisfactory are referred to the ICAI-FRRB. If ICAI-FRRB opines that the qualification is justified, SEBI may mandate a restatement of the accounts of the entity and require the entity to inform the same to the shareholders by making the announcement to stock exchanges.

ICAI Disciplinary mechanism



The ICAI disciplinary mechanism consists of an independent Discipline Directorate headed by Director Discipline. The Council constitutes Board of Discipline and Disciplinary Committee in terms of the provisions of the Chartered Accountants Act, 1949.

The Director Discipline initiates the disciplinary proceedings on receipt of any information or complaint and places it for adjudication before Board of Discipline and Disciplinary Committee. The decisions of Board of Discipline and Disciplinary Committee are subject to appeal before an Appellate Authority which is presided by a person who is or has been a Judge of the High Court.

- o **Board of Discipline:** The Board of Discipline consists of the President of ICAI as the presiding officer and of two members, one of whom shall be a member of the Central Council and the other a person to be nominated by the Central Government out of persons of experience having eminence in the field of law, economics, business, finance or accountancy.
- o **Disciplinary Committee:** ICAI also has a Disciplinary Committee which consists of the President or Vice-President of ICAI as the presiding officer and of two members who are members of the Central Council of ICAI and two members to be nominated by the Central Government from amongst persons of eminence having experience in the field of law, economics, business, finance or accounting. The Disciplinary Committee looks into complaints against members falling under both the First Schedule as well as the Second Schedule to the Chartered Accountants Act, 1949. Since the Board of Discipline and Disciplinary Committee is having members who are having experience in law and having knowledge of disciplinary matter(s) and are having independent Government nominated members, dual purpose of independence and the required expertise in dealing with these cases judiciously has been fully met.

The Discipline mechanism has been effectively working for speedy disposal of cases. Further, the time taken in disposal of the disciplinary cases has been reduced under the new mechanism.

To further speed-up the processes an initiative has been taken for starting e hearing of Disciplinary Cases as is being done by some Courts & Tribunals. There are such e benches of ITAT in Mumbai and Delhi and the parties appear from different cities. Similar practice is being worked-out for ICAI Disciplinary Cases. This would enable the cases to be heard from across the country. This initiative will further reduce the time taken in disposal of cases.

Appellate Authority

Any of the members aggrieved by the decision of the Board of Discipline and Disciplinary Committee has a right to appeal to the Appellate Authority (constituted under section 22A of CA Act) under Section 22G. With this provision, time taken in processing the disciplinary cases has been reduced to large extent.

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