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**STANDING COMMITTEE
ON FINANCE
(2004-05)**

FOURTEENTH LOK SABHA

**THE COMPANY SECRETARIES
(AMENDMENT) BILL, 2003**

THIRTEENTH REPORT



सत्यमेव जयते

**LOK SABHA SECRETARIAT
NEW DELHI**

February, 2005/Magha, 1926 (Saka)

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STANDING COMMITTEE ON FINANCE
(2004-05)

(FOURTEENTH LOK SABHA)

THE COMPANY SECRETARIES
(AMENDMENT) BILL, 2003

Presented to Lok Sabha on 25 February, 2005

Laid in Rajya Sabha on 25 February, 2005



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NEW DELHI

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CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION	(v)
REPORT	1
Minutes of the sitting of the Committee held on 6th October, 2004	20
Minutes of the sitting of the Committee held on 16th November, 2004	22
Minutes of the sitting of the Committee held on 17th November, 2004	24
Minutes of the sitting of the Committee held on 5th January, 2005	27
Minutes of the sitting of the Committee held on 17th January, 2005 ...	29
Minutes of the sitting of the Committee held on 18th January, 2005 ...	30
Minutes of the sitting of the Committee held on 27th January, 2005 ...	32
APPENDIX	
The Company Secretaries (Amendment) Bill, 2003	35

COMPOSITION OF STANDING COMMITTEE
ON FINANCE—2004-2005

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Shyama Charan Gupt
6. Shri Gurudas Kamat
7. Shri A. Krishnaswamy
8. Shri Bir Singh Mahato
9. Dr. Rajesh Kumar Mishra
10. Shri Madhusudan Mistry
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12. Shri Danve Raosaheb Patil
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16. Shri Lakshman Seth
17. Shri G.M. Siddeshwara
18. Shri Ajit Singh
19. Shri M.A. Kharabela Swain
20. Shri Vijoy Krishna
21. Shri Magunta Sreenivasulu Reddy

Rajya Sabha

22. Shri Murli Deora
23. Shri R.P. Goenka
24. Shri Jairam Ramesh
25. Shri M. Venkaiah Naidu
26. Shri Yashwant Sinha

(iv)

27. Shri Chittabrata Majumdar
28. Shri S.P.M. Syed Khan
29. Shri Amar Singh
30. Shri C. Ramachandraiah
31. Shri Mangani Lal Mandal

Secretariat

1. Shri P.D.T. Achary — Secretary
2. Dr. (Smt.) P. K. Sandhu — Joint Secretary
3. Shri R. K. Jain — Deputy Secretary
4. Shri R. C. Kakkar — Under Secretary

INTRODUCTION

I, Chairman of the Standing Committee on Finance having been authorised by the Committee to submit the Report on their behalf, present this Thirteenth Report on the Company Secretaries (Amendment) Bill, 2003.

2. The Company Secretaries (Amendment) Bill, 2003 was introduced in Rajya Sabha on 23rd December, 2003 and was referred to the Committee on 18th August, 2004 by the Hon'ble Speaker of Lok Sabha for examination and report thereon.

3. The Committee obtained written information on various provisions contained in the Bill from the nodal Ministry *i.e.* Ministry of Company Affairs who also briefed them at their sitting held on 6th October, 2004.

4. The Committee sought memoranda from the Chambers of Commerce and the Institute of Company Secretaries of India on the Bill. They took oral evidence of the representatives of ASSOCHAM and ICSI on 16th and 17th November, 2004 respectively. The Committee at their sitting held on 5th January, 2005 took oral evidence of the representatives of Ministry of Company Affairs on the provisions contained in the Company Secretaries (Amendment) Bill, 2003.

5. The Committee thereafter undertook consideration of the Draft Report on the Bill at their sitting held on 17th, 18th and 27th January, 2005 which was adopted by the Committee on 27th January, 2005.

6. The Committee wish to express their thanks to the representatives of (i) Chambers of Commerce *viz.* CII and ASSOCHAM (ii) the Institute of Company Secretaries of India and (iii) the officers of the Ministry of Company Affairs for co-operation extended in placing before them their considered views and perceptions on the subjects and for furnishing written notes and information that the Committee had desired in connection with the examination of the Bill.

7. For facility of reference and convenience, the observations/recommendations of the Committee have been printed in thick type in the body of the Report.

NEW DELHI;
23 February, 2005

4 Phalgun, 1926 (Saka)

MAJ. GEN. (RETD.) B.C. KHANDURI,
Chairman,
Standing Committee on Finance.

REPORT

Background

1. The Company Secretaries Act, 1980, which is in force for more than twenty years requires updation because of the changes that have taken place during this period and on the basis of experience by the Institute of Company Secretaries of India and the Government while administering and implementing the provisions of the Act. The basic objective of the Act is regulation and development of the profession of Company Secretaries. The role of Company Secretaries in practice has undergone a considerable change since the enactment of the Company Secretaries Act, 1980. In the present context, the role of Company Secretary is not limited to a company but also extends to other bodies corporate/co-operative societies, etc. He is considered to be a principal officer of a Company and has immense responsibilities towards investors, lenders, suppliers and employees as well.

2. The changing scenario calls for constantly raising the standards of education and training, accounting the auditing on the one hand, and capacity building measures on the other. The disciplinary mechanism, which was evolved at the relevant time, keeping in view the then membership strength also needs to be modified in line with the requirements of effective and expeditious disposal of disciplinary cases in the present day context.

3. Issues pertaining to corporate governance have been in lime light in the recent past. After the Enron debacle of 2001, came other scandals involving large US companies such as Worldcom, Qwest, Global Crossing and the auditing lacunae that eventually led to the collapse of Andersen. These scandals triggered another phase of reforms in corporate governance, accounting practices and disclosures this time more comprehensive than ever before. In July 2002, less than a year from the date when Enron filed for bankruptcy, the Sarbanes-Oxley Bill (popularly called SOX) was enacted. The Act brought with it fundamental changes in virtually every area of corporate governance.

4. A need was also felt in India that the Auditor-Company relationship might be clearly defined. Hence, a High Level Committee under the Chairmanship of Shri Naresh Chandra, former Cabinet Secretary, was constituted to examine, *inter alia* the Auditor-

Company relationship for the disciplinary mechanism for Auditors. The Naresh Chandra Committee have recommended the establishment of a Quality Review Board, a revision of Disciplinary Mechanism and recommendations regarding Auditor-Company Relationship.

5. In the light of the proposals from the Institute & report of the Naresh Chandra Committee, a Bill *viz.* the Company Secretaries (Amendment) Bill, 2003 incorporating the amendment in the provision of the Company Secretaries Act, 1959 was introduced in Rajya Sabha on 23rd December, 2003 which was referred to the Standing Committee on Finance on 18th August, 2004 by the Hon'ble Speaker of the Lok Sabha for examination and report thereon.

6. The salient features of the Bill are as follows:—

- (a) Strengthening of Disciplinary Committee and also providing for constitution of more than one Disciplinary Committee, as and when deemed fit, which will enable the disposal of the increased number of disciplinary cases, consequent upon the huge increase in the membership of the Institute and in the number of practicing Company Secretaries;
- (b) Appointment of a Prosecution Directorate which will hasten the disciplinary process and also impart an objectivity;
- (c) Constitution of an Appellate Authority to be headed by a person who is, or has been, or is qualified to be a judge of a High Court to deal with the appeals against the orders of the Council;
- (d) Setting up a mechanism for review of the quality of audit, enhancing the powers of the Council to fix fees, increase the term of the Council from three to four years, streamlining the election process and prescribing certain restrictions with regards to eligibility of members for contesting elections for the Council of the Institute.

7. With a view to have expert opinion on the various provisions of the Bill, the Committee sought memoranda from Chambers of Commerce and the Institute. In order to seek clarification with regard to the provisions contained in the Bill, the Committee also took evidence of ASSOCHAM, Institute of Company Secretaries (ICSI) and the representatives of Ministry of Company Affairs. Through the various memoranda received from

ASSOCHAM, CII and the ICSI, a view has been expressed against the erosion of autonomy of the Institute because of the various provisions contained in the Bill. The Institute has suggested that the power of the Central Government to make rules and issue directions to the Institute and dissolve the Council on persistent default in giving effect to the direction should be withdrawn. The ICSI have voiced their concern against the erosion of their autonomy and efforts of the Government to interfere in the day to day administration of the Institute. On the other hand the Government have stated that the Institute has been established under an Act of Parliament and being a Statutory Body, comes within the definition of "State". As a regulator, the Institute discharges an important public function in the financial sector of the economy. The functions discharged by the Institute/ members of the Institute impinge not only on the members of the profession but also on other stakeholders like students, companies, investors, financial institutions and Society — at large. Hence, it is important to ensure that interest of all stakeholders is adequately taken care of. Similarly it is important to ensure that the Institution works within the parameter of the Act and does not cross the limit prescribed by it. While the governing legislation provides for the autonomy of the Institute, occasions may arise which may require the State to assert its authority to enable the Institute to function properly in the public interest. The ultimate responsibility of the State would need to be discharged irrespective of the Institutional Autonomy, since issues affecting the professionals involved would have the capacity to de-stabilize the financial sector. In this context, it has been pleaded by Government that power to issue directions and dissolve the Council are already available in the existing Act. Such powers are also available with the Government under the Cost and Works Accountants Act, 1959 and some other Acts of the market regulators such as Telecom Regulatory Authority of India (TRAI), Securities and Exchange Board of India (SEBI), Insurance Regulatory Development Authority (IRDA) and Central Electric regulation Commission (CERC) etc.

8. After having considered the views expressed by representatives of the Chambers of Commerce, Institute and Government for and against the various proposals of the Bill, the Committee recommend the Company Secretaries (Amendment) Bill, 2003 for enactment subject to certain modifications/ Amendments as indicated in the subsequent paragraphs of this report.

Clause 3—Entry of names in Register—Determination of Fees

9. Clause 3 reads as under:—

"In section 4 of the principal Act, in sub-section (3), for the words "prescribed entrance fee, which shall not exceed four hundred rupees", the words "such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand" shall be substituted."

10. The Committee take note of the views expressed by ICSI in this regard wherein they have submitted that the requirement for seeking prior permission of the Central Government may be dispensed with as the Institute is a self funded body and also to avoid frequent amendments, ceiling on various fees should not be specified in the Act. The Committee are of the opinion that the provision for prior provision of Central Government for determination of fees is not required as it amounts to interference in the working of the Institute and affect its autonomy. Hence, they recommend that the Council may be empowered to determine the fee without prior approval of the Central Government.

11. They further recommend that the upper limit of the fee should remain unchanged. However, if the Council seeks to raise the fee beyond the maximum ceiling *i.e.* Rs. 3000 then they should seek prior permission from the Central Government.

Clause 4 — Fellows and Associates — Determination of Fees

12. Clause 4 reads as under:—

"In section 5 of the principal Act, in Sub-section (3), for the words "the prescribed entrance fee, which shall not exceed four hundred rupees", the words "such fee, as may be determined, by notifications, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand" shall be substituted."

13. The Committee are inclined to accept the views expressed by ICSI in this regard wherein they have submitted that the requirement for seeking prior permission of the Central Government may be deleted as the Institute is a self funded body and also to avoid frequent amendments, ceiling on various fees should not be specified in the Act. The Committee are of the opinion that the provision for prior provision of Central Government for determination of fees is not required as it amounts

to interference in the working of the Institute and affect its autonomy. Hence, they recommend that the Council may be empowered to determine the fee without prior approval of the Central Government.

14. They further recommend that the upper limit of the fee should remain unchanged. However, if the Council seeks to raise the fee beyond the maximum ceiling i.e. Rs. 5000 then they should seek prior permission from the Central Government.

Clause 5 — Certificate of practice — Determination of Fees

15. Clause 5 reads as under:—

"In section 6 of the principal Act,—

(i) In sub-section (2), for the words "prescribed which shall not exceed two hundred rupees", the words "Determined by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand" shall be substituted;

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

"(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed."

16. The Committee take note of the views expressed by ICSI in this regard wherein they have submitted that the provision for seeking prior permission of the Central Government may be withdrawn as the Institute is a self funded body and also to avoid frequent amendments, ceiling on various fees should not be specified in the Act. The Committee are of the opinion that the provision for prior provision of Central Government for determination of fees is not required as it amounts to interference in the working of the Institute and affect its autonomy. Hence, they recommend that the Council may be empowered to determine the fee without prior approval of the Central Government.

17. They further recommend that the upper limit of the fee should remain unchanged. However, if the Council seeks to raise the fee beyond the maximum ceiling i.e. Rs. 3000 then they should seek permission from the Central Government.

Clause 6 — Composition of the Council

18. Clause 6 reads as under:

"In section 9 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

(2) The council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected in the specified manner by members of the Institute, from amongst the fellows of the Institute, and

(b) not more than five persons nominated in the specified manner by the Central Government.

(3) No person holding an office of profit under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2)".

19. The committee are of the opinion that some qualification should be prescribed in the Act for Government nominees. This will bring expertise in the Council. They therefore, recommend that the nominees of the Government should be experts in the field of Corporate law, Finance, Accountancy and other related fields. They further take note that the existing Act provides for a reference to the regional constituency through which each region currently elects specified number of members to make the total of elected component in the composition of the Council but the present Bill does not contain such a provision. They find that Government have themselves agreed to the proposal of retention of this reference. Hence, the Committee recommend that original provision having reference to the regional constituencies should be retained.

Clause 7 — Mode of Election to the Council

20. Clause 7 reads as under:

For section 10 of the principal Act, the following sections shall be substituted, namely:—

“10. (1) A member of the Council elected under clause (a) of sub-section (2) of section 9 shall be eligible for re-election but not for more than three consecutive terms.

(2) A member of the Council, who is or has been elected, as President under sub-section (1) of section 12, shall not be eligible for re-election as a member of the Council.

10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of the declaration of the result of the election to the Council which shall forward the same forthwith to the Central Government.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment—

(a) as a Presiding officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade-1 of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term; and

(c) as a Member holding the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and members of the Tribunal, their place of meetings, remuneration and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council."

21. The Committee are of the opinion that the proposed amendment would entitle a member for being elected for a period of twelve years which they feel is too long. They feel that the tenure of two consecutive terms i.e. for 8 years would be sufficient. Hence, they recommend that instead of three consecutive terms a member should be eligible for re-election for two consecutive terms. At the same time they feel that this restriction should be made applicable to the nominated members also.

22. The Committee note that under the provisions of present Bill it is not clear as to whether the Council is simply required to forward/refer the election petition/dispute to the Central Government or to do the same after application of mind. The committee note that Government have themselves suggested that instead of Council the Secretary of the Institute, who is non-

elected, could be authorised to forward such petition direct to the Central Government. They, therefore, recommend that Secretary of the Institute should be authorized to forward such petition direct to the Central Government.

23. The Committee feel that the provision contained in proposed sub-clause (2)(b) of the proposed new section 10B in the Bill could be interpreted to appoint even sitting members of the Council in the Election Tribunal. They take note of the Government reply in this regard wherein they have stated that it was not the intention of the Government to appoint a sitting member on the election Tribunal. They, therefore, recommend that it should be specifically provided in the Bill that no sitting member would be appointed in the Election Tribunal.

Clause 12 — Committees of the Council

24. Clause 12 reads as under:

In section 17 of the principal Act,—

(a) in sub-section (1), clause (iii) shall be omitted;

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex officio*, and minimum of three and maximum of five members of the Council elected by the Council, out of which one shall be the member nominated under clause (b) of sub-section (2) of section 9.

(c) sub-sections (4), (5) and (6) shall be omitted."

25. The committee are of the opinion that this provision contains a drafting lacuna. The reference of nominated member to be appointed to the Standing Committees out of elected members does not appear to be the correct position under the scheme of the present Bill. It should have been provided for clearly. However they find that the Government have themselves stated that in the context of the proposed rule based regime envisaged along with powers of the Central Government to issue directions/dissolve the Council, constitution of these two Committees could be left to the Council. In view of the Government's reply, the Committee, therefore, recommend that this clause should be amended accordingly.

Clause 13 — Register of Members

26. Clause 13 reads as under:

"In section 19 of the principal Act,—

(i) in sub-section (3), the words "on payment of such amount as may be prescribed" shall be inserted at the end;

(ii) in sub-section (4), for the word "prescribed, which shall not exceed three hundred rupees", the words "determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand" shall be substituted."

27. The Committee take note of the views expressed by ICSI in this regard wherein they have submitted that the provision for seeking prior permission of the Central Government is not required as the Institute is a self funded body and also to avoid frequent amendments, ceiling on various fees should not be specified in the Act. The Committee are of the opinion that the provision for prior provision of Central Government for determination of fees is not required as it amounts to interference in the working of the Institute and affect its autonomy. Hence, they recommend that the Council may be empowered to determine the fee without prior approval of the Central Government.

28. They further recommend that the upper limit of the fee should remain unchanged. However, if the Council seeks to raise the fee beyond the maximum ceiling i.e. Rs. 5000 then they should seek permission from the Central Government.

Clause 14 — Removal from the Register

29. Clause 14 reads as under:

"In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

'(3) If the name of any member has been removed from the register under clause (c) of sub-section (1), on receipt of an application, his name may be entered again in the register on payment of the arrears of determined annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees Two Thousand in any case."

30. The Committee take note of the views expressed by ICSI in this regard wherein they have submitted that the provision for seeking prior permission of the Central Government is not required as the Institute is a self funded body and also to avoid frequent amendments, ceiling on various fees should not be specified in the Act. The Committee are of the opinion that the provision for prior provision of Central Government for determination of fees is not required as it amounts to interference in the working of the Institute and affect its autonomy. Hence, they recommend that the Council may be empowered to determine the fee without prior approval of the Central Government.

31. They further recommend that the upper limit of the fee should remain unchanged. However, if the Council seeks to raise the fee beyond the maximum ceiling i.e. Rs. 2000 then they should seek permission from the Central Government.

Clause 15 — Disciplinary Committee

32. Clause 15 reads as under:—

"For section 21 of the principal Act, the following sections shall be substituted, namely:—

'21. (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members of the Council elected by the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, education, economics, business, finance, accountancy or public administration:

Provided that the Council may constitute more regional Disciplinary Committees as and when it deems fit.

(2) The Disciplinary Committee in making the inquiry under the provisions of this Act shall follow such procedure and submit the report to the Council within such time as may be specified.

21A. (1) The Council shall, by notification, appoint a Prosecution Director and such other employees for making inquiries in respect of any information or complaint received by it under the provisions of this Act.

(2) In order to make inquiries under the provisions of this Act, the Prosecution Director shall follow such procedures as may be specified.

21B. For the purposes of an inquiry under the provision of this Act, the authority, the Council, the Disciplinary Committee and the Prosecution Director shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) the discovery and production of any document; and
- (c) Receiving evidence on affidavit.

21C. (1) On receipt of a report from the Disciplinary Committee, if the Council is satisfied that the member of the Institute is guilty of any professional or other misconduct, it shall record its findings accordingly and shall proceed in accordance with the provisions of section 21D.

(2) In case the Council is not satisfied with the report of the Disciplinary Committee and is of the opinion that it requires further inquiry, it may refer the report again to the Disciplinary Committee for such further inquiry as may be directed through an order of the Council.

(3) If the Council disagrees with the findings of the Disciplinary Committee, it may direct the Prosecution Director to make an appeal to the Authority.

21D. Where the Council is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member; or
- (b) remove the name of the member from the register permanently or for such period, as it thinks fit.

Explanation:— For the purposes of this section "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry'."

33. The Committee take note that this clause seeks to insert new disciplinary mechanism by way of constituting disciplinary committees and appointment of Prosecution Director. The

Committee find that though a new mechanism has been provided to deal with the disciplinary cases in the present Bill but the same is also a very lengthy one since under this, the enquiry will be made first by the Disciplinary Committee and the report will be placed before the Council. It further provides that if the Council is not satisfied with the report of the Disciplinary committee and is of the opinion that this requires further inquiry, it may refer the report again to the Disciplinary Committee for such further enquiry as it may direct through an order. The Institute of Company Secretaries of India have submitted that since the Institute has low pendency of disciplinary cases and the existing mechanism for the disposal of these cases have been functioning adequately, there is no need to change the existing mechanism.

34. However, the Committee find that the Naresh Chandra Committee have also recommended an entirely new disciplinary procedure, which will bring about greater speed while ensuring independence and fair play. They also note that the Government have also during the course of evidence accepted the suggestion and have agreed to dispense with the lengthy process which has been provided in the existing Bill and have stated that the Disciplinary Committee could be empowered to award punishments in disciplinary cases. The appeal against the decision of the disciplinary committee could then lie to the Appellate Authority. This would reduce one time consuming tier of the disciplinary cases. The Committee are in agreement with such a proposal. They also feel that the existing provisions with regard to two nominated members from the field of law, education, business, finance, accountancy and public administration provided in proposed section 21(1) is too wide which will not serve any useful purpose. They are of the opinion that representation should be restricted to only the areas of law, finance and accountancy. Hence they recommend that only relevant fields such as law, finance and accountancy could be retained and the fields of business, education and public administration may be excluded.

35. The Committee take note that a Prosecution Director has been proposed for appointment by way of proposed new section 21A who shall have powers of a Civil Court. The function of Prosecution Director is envisaged for making *prima-facie* inquiries in respect of information/complaints received and submission of cases to Disciplinary Committee for their consideration and to ensure that the proceedings are conducted as per rules and statute.

Disciplinary Committee is to deliberate on the subject matter, along with inquiry reports, if any, of the Prosecution Directorate. In the Bill, the Disciplinary Committee is to submit its report to the Council for decision. However, they find that Government have in their written submissions submitted to the Committee agreed that there will be a Prosecution Directorate instead of Prosecution Director who will handle minor offences under summary Disposal Mechanism apart from scrutinizing the complaints to be submitted before the Disciplinary Committee. It has also been noted by the Committee that the Government have themselves suggested the change of name of Prosecution Director which could be termed as Disciplinary Board who should be delegated the powers to dispose of minor cases in respect of defined acts of misconduct classified as Minor Offence through the summary disposal mechanism, with powers to impose punishment up to pre-determined threshold limit. They also find that the Government have stated that summary Disposal Mechanism will be available in the event of admission of guilt. In the light of Government's proposal, the Committee feel that it will not be possible for a single person to handle such an enormous task. Hence, they recommend that Government should amend this clause suitably to make it multi-member body providing for a mechanism to deal with the minor offences expeditiously. The Government should also clearly state the composition of such a body in the Bill itself. The Committee recommend that such a body should be headed by a person not below the rank of a Joint Secretary belonging to the legislative service. Two members should be the Council and two should be outside experts from the field of law and accountancy.

36. In view of their recommendation for authorizing the Disciplinary Committee to award punishment, the Committee recommend that proposed section 21 C in the Bill should be deleted and in proposed section 21D, the word 'Disciplinary Committee' should be substituted in place of 'Council'. The Committee also recommend that the Council should be authorized to give direction both to the Disciplinary Committee as well as the Appellate Authority to decide a case on priority in the event of its being of paramount public importance.

37. The Committee find that the existing provision provided in proposed section 21(D) for reprimanding or removing the name of the member from the register permanently, when found guilty of a professional or other misconduct mentioned in the schedule, is

inadequate as it does not provide for any monetary penalty as also was recommended by Naresh Chandra Committee. The Committee are inclined to accept the suggestion of ICSI that the Disciplinary Committee should also be authorized to impose a penalty in addition to the existing proposed powers of reprimand and removal of the name of the member permanently or for such period as it thinks fit. The Committee, therefore, recommend that the Disciplinary Committee should be authorized to impose a penalty upto Rs. 5,00,000. Besides the Disciplinary Committee should be authorized to club any two penalties and therefore instead of the word "or" the same should be amended to read "or/ and".

Clause 16 — Professional Misconduct defined

38. Clause 16 - reads as under :—

"In section 22 of the principal Act,-

(i) for the words "specified in any of the Schedules", the words "mentioned in the Schedule or as may be specified" shall be substituted;

(ii) the word "under sub-section (1) of section 21" shall be omitted."

39. The Committee find that the two schedules mentioned in the present Act deal with minor and major cases of professional misconduct respectively. They also find that the Government have already agreed to the proposal regarding Summary Disposal Mechanism for minor offences. Hence, they are of the opinion that merger of the two schedules will not be necessary. They therefore, recommend the deletion of the above clause

Clause 17—Constitution of the Appellate Authority

40. Clause 17 reads as under:—

"After section 22 of the principal Act, the following sections shall be inserted, namely:—

'22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949 shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause shall be substituted, namely:—

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries for at least one full term.

22B. (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier.

(2) A person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty seven years, whichever is earlier.

22C. (1) The allowances payable to, and other terms and conditions of service of, the Chairperson and members shall be such as may be specified.

(2) The allowances to the Chairperson and members shall be paid by the Council in such manner as may be specified.

22D. (1) The Authority shall meet at such time and place and follow in its meetings and in discharging its functions such procedure as may be specified.

(2) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members made available to the Authority shall be such as may be prescribed.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office: Provided that the Chairperson or a 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 term of office whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

22G. (1) Any member of the institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 21D, may within thirty days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Authority may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time .

(2) The Authority may, after calling for the records of any case revise any order made by the Council under section 21D and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Disciplinary Committee for such further inquiry as the Authority considers proper in the circumstances of the case; or

(d) pass such other order as the Authority thinks fit: Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.".

41. The provisions of the amendment seeks to provide for the nomination of two members by the Central Government from amongst persons having knowledge and practical experience in the field of law, business, economics, education, public administration, finance and accountancy. The Committee find that the fields are too wide which will not serve any useful purpose. Hence they recommend that only relevant fields such as law, finance and accountancy could be retained and the fields of business, education and public administration may be excluded.

42. New section 22(B) provides for the term of office of Chairperson and members of Appellate Authority. The Committee are of the opinion that the term provided in the Bill for Chairperson and members for five age of retirement as 70 and 65 years respectively is too long which could be lowered. They, therefore, recommend that the term of office of Chairperson and members should be reduced to three years instead of the five years proposed

in the Bill and the age of retirements should be 66 and 62 years respectively.

Clause 18—Establishment of Quality Review Board

43. Clause 18 reads as under:

After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VIIIA

QUALITY REVIEW BOARD

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairman and four other members.

(2) The Chairman and members of the Board shall be appointed from amongst the persons having eminence and experience in the field of law, education, economics, business, finance, accountancy or public administration.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. The Board shall perform the following functions, namely:—

(a) to fix standards for the services provided by the members of the Institute:

(b) to review the quality of services provided by the members of the institute including secretarial audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall follow in its meeting and in discharging its functions such procedure as may be specified.

29D. The terms and conditions of service of the Chairman and the members of the Board, their place of meetings, remuneration and allowances shall be such as may be specified .

29E. The expenditure of the Board shall be borne by the Council.”.

44. New Section 28(A) seeks to provide for the appointment of the Chairman and members by the Central Government from

amongst persons having knowledge and practical experience in the field of law, business, economics, education, public administration, finance and accountancy. The Committee find that the fields are too wide which will not serve any useful purpose. Hence, they recommend that only relevant fields such as law, finance and accountancy could be retained and the fields of business, education and public administration may be excluded.

Clause 20— Power of Central Government to issue directions

45. Clause 20 *inter alia* reads as under:—

“For section 35 of the principal Act, the following section shall be substituted, namely:—

“35.(1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit, and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorised any person or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification”.

The Committee had expressed the apprehensions that the provisions of the Bill, particularly the powers to issue directions and dissolve the Council are steps towards eroding the autonomy of the institutes, during the course of evidence. The Ministry of Company Affairs in their post-evidence reply stated as follows:

“As we move from a system of controls to regulation, the concerned agencies and bodies are to be provided necessary administrative, financial and functional freedom to carry out their functions effectively. The Government is not required to intervene in their day-to-day functions. In such cases, the ultimate and reserve

power of the State is limited to intervention in cases where system improvement is required or to address situations arising out of system breakdown. This framework is also envisaged for the functioning of the Institutes. Thus, the nature of the autonomy itself requires that residual powers of direction/dissolution lie with the Government to bring about changes and improvements as merited in the framework governing the system and also to meet extreme contingent situations.”

The Ministry further stated as:

“It is not the intention that the exercise of power to dissolve the Council would be done in a manner that would create a vacuum or provide scope for arbitrary exercise of power. Should an occasion arise to dissolve any Council, procedures would be laid down for:—

- (a) Time bound re-election and reconstruction of the new council.
- (b) Providing for conduct of business of the institute in the interim period through a transparent arrangement.”

46. The Committee find that similar provision exists in the parent Act also. While taking note of the justification advanced by the Government in respect of the empowerment to the Government to issue directions and dissolution of the Council the Committee opine that the present provision seems to be an open ended one. They are of the opinion that such blanket powers would rather impinge upon the autonomy of the Institute.

They, therefore, recommend that the power of the Central Government to issue directions/dissolution of the Council should be in consonance with the objectives mentioned in the Bill and the same should be restricted to the following :—

- to uphold and maintain the highest level of Secretaries audit;
- to maintain highest standards of the quality of audit; and
- to take appropriate action against the defaulters in the shortest possible time.

NEW DELHI;
23 February, 2005

4 Phalguna, 1926(Saka)

Maj. Gen. (Retd.) B.C.Khanduri,
Chairman,
Standing Committee on Finance.

MINUTES OF THE SEVENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Wednesday, 6th October, 2004 from 1100 to 1300 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Gurudas Dasgupta
3. Shri Shyama Charan Gupt
4. Shri A. Krishnaswamy
5. Shri Bir Singh Mahto
6. Shri Rupchand Pal
7. Shri Shriniwas D. Patil
8. Shri K.S. Rao
9. Shri Jyotiraditya Madhavrao Scindia
10. Shri Lakshaman Seth
11. Shri G.M. Siddeshwara
12. Shri Ajit Singh
13. Shri M.A. Kharabela Swain
14. Shri Vijoy Krishna

Rajya Sabha

15. Shri R.P Goenka
16. Shri Jairam Ramesh
17. Shri Chittabrata Mazumdar
18. Shri S.P.M. Syed Khan
19. Shri C. Ramchandraiah
20. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri. P.D.T. Achary — *Additional Secretary*
2. Dr.(Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*
4. Shri R.C. Kakkar — *Under Secretary*

WITNESSES

Ministry of Company Affairs

1. Smt. Komal Anand, Secretary, Ministry of Company Affairs
2. Dr. (Mrs.) Sheela Bhide, Joint Secretary
3. Shri Jitesh Khosla, Joint Secretary
4. Shri Paul Joseph, Economic Adviser
5. Shri A.K. Kapoor, Adviser, Cost
6. Shri V.S. Rao, Director, Inspection & Investigation
7. Shri R. Vasudevan, Director, Inspection & Investigation
8. Shri Neerabh Kumar Prasad, Director

2. At the outset, the Chairman welcomed the representatives of the Ministry of Company Affairs to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee was then briefed by the representatives of the Ministry of Company Affairs on (i) the Chartered Accountants (Amendment) Bill, 2003 (ii) the Cost and Works Accountants (Amendment) bill, 2003, and (iii) the Company Secretaries (Amendment) Bill, 2003 with the aid of an audio-visual presentation.

4. Thereafter, the Chairman requested the representatives of Ministry of Company Affairs to furnish notes on certain points raised by the Members to which replies were not readily available with them during the discussion.

5. The briefing was concluded.

6. A verbatim record of proceedings has been kept.

(The Committee then adjourned.)

MINUTES OF THE EIGHTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, 16th November, 2004 from 1430 to 1610 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Jaswant Singh Bishnoi
3. Shri Gurudas Dasgupta
4. Shri Bhartruhari Mahtab
5. Shri Shyama Charan Gupt
6. Shri A. Krishnaswamy
7. Shri K.S. Rao
8. Shri G.M. Siddeshwara
9. Shri M.A. Kharabela Swain
10. Shri Vijoy Krishna

Rajya Sabha

11. Shri R.P Goenka
12. Shri M. Venkaiah Naidu
13. Shri Chittabrata Mazumdar
14. Shri Amar Singh
15. Shri C. Ramachandraiah
16. Shri Mangani Lal Mandal

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
2. Shri R.K Jain — *Deputy Secretary*
3. Shri R.C. Kakkar — *Under Secretary*

WITNESSES

ASSOCHAM

1. Shri Vishesh Chandeok, Partner, Grant Thornton India Pvt. Ltd.
2. Shri Nesar Ahmed, Senior Committee Member
3. Shri Ashish Kochhar, Asstt. Director

2. At the outset, the Chairman welcomed the representatives of the ASSOCHAM to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

3. The Committee, then took oral evidence of the representatives of the ASSOCHAM on the provisions of the (i) the Chartered Accountants (Amendment) Bill, 2003 (ii) the Cost & Works Accountants (Amendment) Bill, 2003, and (iii) the Company Secretaries (Amendment) Bill, 2003.

4. The members asked clarificatory questions which were replied by the representatives. However, it was noticed by the Committee that the representatives were expressing their personal opinion on the Bills rather than presenting a considered and consolidated view of ASSOCHAM. The Committee took very serious view to the fact that junior functionaries have been deputed by ASSOCHAM to depose before a Parliamentary Committee who were not able to express properly.

5. The evidence was concluded.

6. A verbatim record of proceeding has been kept.

The witnesses then withdrew.

Part B

At 1600 hours

Confederation of Indian Industry (CII)

The Committee expressed their serious concern over the absence of senior executives of CII when they were informed that only two junior officers of the CII have come to tender evidence on the three Bills viz. (i) the Chartered Accountants (Amendment) Bill, 2003, (ii) the Cost & Works Accountants (Amendment) Bill, 2003 and (iii) the Company Secretaries (Amendment) Bill, 2003, and decided not to take oral evidence of the representatives. The decision of the Committee was conveyed to them.

The Committee then adjourned.

MINUTES OF THE NINTH SITTING OF STANDING COMMITTEE
ON FINANCE

The Committee sat on Wednesday, 17th November, 2004
from 1030 to 1200 hours, 1200 to 1300 hours and 1515 to 1545 hours.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Gurudas Dasgupta
3. Shri Bhartruhari Mahtab
4. Shri Shyama Charan Gupt
5. Shri A. Krishnaswamy
6. Shri Bir Singh Mahato
7. Shri Roopchand Pal
8. Shri K.S. Rao
9. Shri Jyotiraditya Madhavrao Scindia
10. Shri M.A. Kharabela Swain

Rajya Sabha

11. Shri M. Venkaiah Naidu
12. Shri Chittabrata Mazumdar
13. Shri S.P.M. Syed Khan
14. Shri Amar Singh
15. Shri C. Ramachandraiah

SECRETARIAT

1. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
2. Shri R.K.Jain — *Deputy Secretary*
3. Shri R.C. Kakkar — *Under Secretary*

Part I

WITNESSES

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

1. Shri Sunil Goyal, President
2. Shri Kamlesh K. Vikamsey, Vice President
3. Dr. Ashok Haldia, Secretary
4. Shri T.N.Manoharan, Council Member
5. Shri S.C. Vasudeva, Council Member & Chairman,
Accounting Standards Board of ICAI

Part II

At 1200 hours

THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

1. Shri Mahesh Anant Athavale, President, the ICSI
2. Shri N.K. Jain, Secretary , the ICSI
3. Shri Nesar Ahmed, Council Member, the ICSI
4. Ms. Preeti Malhotra, Council Member, the ICSI
5. Shri P.K.Mittal, Council Member, the ICSI
6. Shri V.K. Aggarwal, Senior Director, the ICSI
7. Shri S. Kumar, Director, the ICSI

Part III

At 1515 hours

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS OF INDIA

1. Dr. H.R. Subramanya, President, ICWAI
2. Dr. D. Jagannathan, Central Council Member, Government Nominee
3. Shri Rakesh Singh, Central Council Member

Part I

At the outset, the Chairman welcomed the representatives of the Institute of Chartered Accountants of India to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

2. The Committee, then took oral evidence of the representatives of the Institute of Chartered Accountants of India on the provisions of the Chartered Accountant (Amendment) Bill, 2003. The President of ICAI gave an audio-visual presentation after seeking the permission of the Committee.

3. Thereafter, the Members raised queries which were replied to by the witnesses.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The Witnesses then withdrew.

Part II

At the outset, the Chairman welcomed the representatives of the Institute of Company Secretaries of India to the sitting of the

Committee and invited thier attention to Direction 55 of the Directions by the Speaker , Lok Sabha.

2. The Committee, then took oral evidence of the representatives of the Institute of Company Secretaries of India on the provisions of the Company Secretary (Amendment) Bill, 2003. The President of ICSI gave an audio-visual presentation after seeking the permission of the Committee.

3. Thereafter, the Members raised queries which were replied to by witnesses.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

Part III

At the outset, the Chairman welcomed the representatives of the Institute of Cost and Works Accountants of India to the sitting of the Committee and invited their attention to Direction 55 of the Directions by the Speaker, Lok Sabha.

2. The Committee, then took oral evidence of the representatives of the Institute of Cost and Works Accountants of India on the provisions of the Cost and Works Accountants (Amendment) Bill, 2003. The President of ICWAI gave an audio-visual presentation after seeking the permission of the Committee.

3. Thereafter, the Members raised queries which were replied to by the witnesses.

4. The evidence was concluded.

5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE TWELFTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Wednesday, 5th January, 2005 from 1100 to 1230 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri - *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Shyama Charan Gupta
4. Shri Bir Singh Mahato
5. Dr. Rajesh Kumar Mishra
6. Shri Madhusudan Mistry
7. Shri Rupchand Pal
8. Shri K.S. Rao
9. Shri Jyotiraditya Madhavrao Scindia
10. Shri M.A. Kharabela Swain
11. Shri Vijoy Krishna

Rajya Sabha

12. Shri Jairam Ramesh
13. Shri M. Venkaiah Naidu
14. Shri Chittabrata Mazumdar
15. Shri C. Ramachandraiah
16. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri P.D.T. Achary — *Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*
4. Shri R.C. Kakkar — *Under Secretary*

WITNESSES

Ministry of Company Affairs

1. Smt. Komal Anand, Secretary
2. Shri Jitesh Khosla, Joint Secretary
3. Shri Y.S. Malik, Joint Secretary
4. Shri Paul Joseph, Economic Advisor

5. Shri V.S. Rao, DII
6. Shri R. Vasudevan, DII
7. Shri A.K. Kapoor, Advisor, Cost
8. Shri O.P. Arya, Director, SFIO

2. At the outset, the Chairman welcomed the representatives of the Ministry of Company Affairs to the sitting of the Committee and invited their attention to the provisions contained in Direction 55 of the Directions by the Speaker.

3. The Committee then took oral evidence of the representatives of the Ministry of Company Affairs on (i) the Chartered Accountants (Amendment) Bill, 2003, (ii) the Cost and Works Accountants (Amendment) Bill, 2003, and (iii) the Company Secretaries (Amendment) Bill, 2003.

4. The evidence was concluded.
5. A verbatim record of proceedings has been kept.

The witnesses then withdrew.

(The Committee then adjourned.)

MINUTES OF THE THIRTEENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Monday, 17 January 2005 from 1615 hrs. to 1645 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Gurudas Kamat
4. Shri Bir Singh Mahato
5. Shri Madhusudan Mistry
6. Shri Rupchand Pal
7. Shri K.S. Rao
8. Shri Jyotiraditya Madhavrao Scindia
9. Shri Ajit Singh
10. Shri M.A. Kharabela Swain
11. Shri Vijoy Krishna
12. Shri Magunta Sreenivasulu Reddy

Rajya Sabha

13. Shri R.P. Goenka
14. Shri Jairam Ramesh
15. Shri Yashwant Sinha
16. Shri Chittabrata Majumdar
17. Shri S.P.M. Syed Khan
18. Shri C. Ramachandraiah

SECRETARIAT

1. Dr. (Smt.) P.K.Sandhu — *Joint Secretary*
2. Shri R.K. Jain — *Deputy Secretary*
3. Shri R.C. Kakkar — *Under Secretary*

(from 1615 to 1645 hours)

2. The Chairman and Members decided to have a preliminary discussion on the draft reports on (i) the Chartered Accountants (Amendment) Bill, 2003, (ii) the Cost & Works Accountants (Amendment) Bill, 2003 and (iii) the Company Secretaries (Amendment) Bill, 2003.

3. Thereafter, the Committee decided to consider and adopt the aforesaid reports on 18.01.2005.

MINUTES OF THE FOURTEENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, 18 January, 2005 from 1645 hrs. to 1710 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Gurudas Dasgupta
3. Shri Bhartruhari Mahtab
4. Shri A. Krishnaswamy
5. Shri Bir Singh Mahato
6. Shri Madusudan Mistry
7. Shri Rupchand Pal
8. Shri Shriniwas D. Patil
9. Shri K.S. Rao
10. Shri Jyotiraditya Madhavrao Scindia
11. Shri M.A.Kharabela Swain
12. Shri Vijoy Krishna
13. Shri Magunta Sreenivasulu Reddy

Rajya Sabha

14. Shri Jairam Ramesh
15. Shri Yashwant Sinha
16. Shri Chittabrata Majumdar
17. Shri C. Ramachandraiah
18. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri P.D.T. Achary — *Secretary*
2. Dr. (Smt.) P.K. Sandhu — *Joint Secretary*
3. Shri R.K. Jain — *Deputy Secretary*
4. Shri R.C Kakkar — *Under Secretary*

2. The Committee took further consideration of the draft reports on (i) the Chartered Accountants (Amendment) Bill, 2003, (ii) the Cost & Works Accountants (Amendment) Bill, 2003, and (iii) the Company Secretaries (Amendment) Bill, 2003. The Chairman requested the

Members of the Committee to furnish their suggestions on the recommendations contained in the aforementioned reports. The Members suggested some modifications in the Reports. The Chairman directed that these modifications be incorporated in the draft reports. Then, the Chairman also directed that the revised drafts should be circulated to the Members of the Committee for their perusal. The Committee decided to take up further consideration and adoption of the aforesaid reports on 27.01.2005

3. The meeting was concluded.

The Committee then adjourned.

MINUTES OF THE FIFTEENTH SITTING OF STANDING
COMMITTEE ON FINANCE

The Committee sat on Tuesday, 27 January, 2005 from 1400 hrs. to 1430 hrs.

PRESENT

Maj. Gen. (Retd.) B.C. Khanduri — *Chairman*

MEMBERS

Lok Sabha

2. Shri Bhartruhari Mahtab
3. Shri Syama Charan Gupt
4. Shri A. Krishnaswamy
5. Shri Bir Singh Mahato
6. Shri Madusudan Mistry
7. Shri Rupchand Pal
8. Shri Shrinivas D. Patil
9. Shri M.A. Kharabela Swain

Rajya Sabha

10. Shri M. Venkaiya Naidu
11. Shri Chittabrata Majumdar
12. Shri C. Ramachandraiah
13. Shri Mangani Lal Mandal

SECRETARIAT

1. Shri P.D.T. Achary — *Secretary*
2. Shri R.K. Jain — *Deputy Secretary*
3. Shri R.C. Kakkar — *Under Secretary*

2. The Committee took up for consideration the revised draft reports on (i) the Chartered Accountants (Amendment) Bill, 2003, (ii) the Cost & Works Accountants (Amendment) Bill, 2003 and (iii) the Company Secretaries (Amendment) Bill, 2003. The Committee after deliberation adopted the same with modifications/amendments as shown in Annexures I, and II.

3. The Committee authorised the Chairman to finalise the draft Reports in the light of the modifications as also to make verbal and consequential changes and present the same to the Speaker.

The Committee then adjourned.

[MODIFICATIONS/AMENDMENTS MADE BY STANDING COMMITTEE ON FINANCE IN THEIR DRAFT REPORT ON THE COMPANY SECRETARIES (AMENDMENT) BILL, 2003 OF THE MINISTRY OF COMPANY AFFAIRS AT THEIR SITTING HELD ON 27 JANUARY,2005]

Page No. 15

After Para No.44

Insert New Para Nos. 45 & 46:

45. Clause 20 *inter alia* reads as under:

For section 35 of the principal Act, the following section shall be substituted, namely:-

“35. (1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any persons or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification.”

The Committee had expressed the apprehensions that the provisions of the Bill, particularly the powers to issue directions and dissolve the Council are steps towards eroding the autonomy of the Institute. The Ministry of Company Affairs in their post evidence reply stated as follows:

“As we move from a system of controls to regulation, the concerned agencies and bodies are to be provided necessary

administrative, financial and functional freedom to carry out their functions effectively. The Government is not required to intervene in their day to day functions. In such cases, the ultimate and reserve power of the State is limited to intervention in cases where system improvement is required or to address situations arising out of system breakdown. This framework is also envisaged for the functioning of the institutes. Thus the nature of the autonomy itself requires that residual powers of direction/dissolution lie with the government to bring about changes and improvements as merited in the framework governing the system and also to meet extreme contingent situations.”

The Ministry further stated as:

“It is not the intention that the exercise of power to dissolve the Council would be done in a manner that would create a vacuum or provide scope for arbitrary exercise of power. Should an occasion arise to dissolve any Council, procedures would be laid down for:—

(a) Time bound re-election and reconstruction of the new council.

(b) Providing for conduct of business of the institute in the interim period through a transparent arrangement.”

46. The Committee find that similar provision exists in the parent Act also. While taking note of the justification by the Government in respect of the empowerment to the Government to issue directions and dissolution of the Council, the Committee opine that the present provision seems to be an open ended one. They are of the opinion that such blanket powers would rather impinge upon the autonomy of the Institute .

They, therefore, recommend that the power of the Central Government to issue directions/dissolution of the Council should be inconsonance with the objectives mentioned in the Bill and the same should be restricted to the following:—

- to uphold and maintain the highest level of secretarial audit;
- to maintain highest standards of the quality of audit; and,
- to take appropriate action against the defaulters in the shortest possible time.”

REPRINT

As Introduced in The Rajya Sabha
on the 23rd December, 2003.

Bill No. LXXVIII of 2003.

THE COMPANY SECRETARIES (AMENDMENT) BILL,
2003

A

BILL

further to amend the Company Secretaries Act, 1980.

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

1. (1) This Act may be called the Company Secretaries (Amendment) Act, 2003.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

56 of 1980. 2. In the Company Secretaries Act, 1980 (hereafter referred to as the principal Act), in sub-section (1) of section (2),—

Amendment of section 2.

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

‘(aa) “Authority” means the Appellate Authority referred to in section 22A;

(aaa) “Board” means the Quality Review Board constituted under section 29A;’;

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

‘(ga) “notification” means a notification published in the Official Gazette;’; (iii) after clause j), the following clauses shall be inserted, namely:-

‘(ja) “specified” means specified by rules made by the Central Government under this Act;

(jb) “Tribunal” means a Tribunal established under sub-section (1) of section 10B;’.

Amendment of section 4.

3. In section 4 of the principal Act, in sub-section (3), for the words “prescribed entrance fee, which shall not exceed four hundred rupees”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand” shall be substituted.

Amendment of section 5.

4. In section 5 of the principal Act, in sub-section (3), for the words “the prescribed entrance fee, which shall not exceed four hundred rupees”, the words “such fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand” shall be substituted.

Amendment of section 6.

5. In section 6 of the principal Act,—

(i) in sub-section (2), for the words “prescribed which shall not exceed two hundred rupees”, the words “determined by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees three thousand” shall be substituted;

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

“(3) The certificate of practice obtained under sub-section (1) may be cancelled by the Council under such circumstances as may be prescribed.”.

6. In section 9 of the principal Act, for sub-section (2), the following sub-sections shall be substituted, namely:—

Amendment of section 9.

“(2) The Council shall be composed of the following persons, namely:—

(a) not more than fifteen persons elected in the specified manner by members of the Institute, from amongst the fellows of the Institute, and

(b) not more than five persons nominated in the specified manner by the Central Government.

(3) No person holding an office of profit under the Central Government or a State Government shall be eligible for election to the Council under clause (a) of sub-section (2).”.

7. For section 10 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 10.

“10. (1) A member of the Council elected under clause (a) of sub-section (2) of section 9 shall be eligible for re-election but not for more than three consecutive terms.

Re-election to Council.

(2) A member of the Council, who is or has been elected, as President under sub-section (1) of section 12, shall not be eligible for re-election as a member of the Council.

10A. In case of any dispute regarding any election under clause (a) of sub-section (2) of section 9, the aggrieved person may make an application within thirty days from the date of the declaration of the result of the election to the Council which shall forward the same forthwith to the Central Government.

Settlement of dispute regarding election.

Establishment
of Tribunal.

10B. (1) On receipt of any application under section 10A, the Central Government shall, by notification, establish a Tribunal consisting of a Presiding Officer and two other Members to decide such dispute and the decision of such Tribunal shall be final.

(2) A person shall not be qualified for appointment,—

(a) as a Presiding Officer of the Tribunal unless he has been a member of the Indian Legal Service and has held a post in Grade I of the service for at least three years;

(b) as a Member unless he has been a member of the Council for at least one full term; and

(c) as a Member holding the post of a Joint Secretary to the Government of India or any other post under the Central Government carrying a scale of pay which is not less than that of a Joint Secretary to the Government of India.

(3) The terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances shall be such as may be specified.

(4) The expenses of the Tribunal shall be borne by the Council.”.

Amendment of
section 12.

8. In section 12 of the principal Act, in sub-section (4), for the word “President” wherever it occurs, the words “President and the Vice-President” shall be substituted.

Amendment of
section 13.

9. In section 13 of the principal Act, in the proviso to sub-section (3), for the words “six months”, the words “one year” shall be substituted.

Amendment of
section 14.

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

11. In section 16 of the principal Act, in sub-section (1), for clause (c), the following clauses shall be inserted, namely:—

Amendment of section 16.

“(c) with the previous sanction of the Central Government, fix the allowances of the President, Vice-President and other members of the Council and members of its Committees;

(d) approve the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute in such manner as may be specified.”.

12. In section 17 of the principal Act,—

Amendment of section 17.

(a) in sub-section (1), clause (b) shall be omitted;
(b) for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) Each of the Standing Committees shall consist of the President and the Vice-President *ex-officio*, and minimum of three and maximum of five members of the Council elected by the Council, out of which one shall be the member nominated under clause (b) of sub-section (2) of section 9.”;

(c) sub-sections (4), (5) and (6) shall be omitted.

13. In section 19 of the principal Act,—

Amendment of section 19.

(i) in sub-section (3), the words “on payment of such amount as may be prescribed” shall be inserted at the end;

(ii) in sub-section (4), for the word “prescribed, which shall not exceed three hundred rupees”, the words “determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees five thousand” shall be substituted.

14. In section 20 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

Amendment of section 20.

“(3) If the name of any member has been removed from the register under clause (c) of sub-section (1), on

receipt of an application, his name may be entered again in the register on payment of the arrears of determined annual fee and entrance fee along with such additional fee, as may be determined, by notification, by the Council with the prior approval of the Central Government, which shall not exceed rupees two thousand in any case.”.

Substitution of new section for section 21.

Disciplinary Committee.

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

‘21, (1) The Council shall constitute a Disciplinary Committee consisting of the President or the Vice-President of the Council as the Presiding Officer and two members of the Council elected by the Council and two members to be nominated by the Central Government from amongst the persons of eminence having experience in the field of law, education, economics, business, finance, accountancy or public administration:

Provided that the Council may constitute more regional Disciplinary Committees as and when it deems fit.

(2) The Disciplinary Committee in making the inquiry under the provisions of this Act shall follow such procedure and submit the report to the Council within such time as may be specified.

Appointment of Prosecution Director.

21A. (1) The Council shall, by notification, appoint a Prosecution Director and such other employees for making inquiries in respect of any information or complaint received by it under the provisions of this Act.

(2) In order to make inquiries under the provisions of this Act, the Prosecution Director shall follow such procedures as may be specified.

Authority, Council, Disciplinary Committee and Prosecution Director to have powers of Civil Court.

21B. For the purposes of an inquiry under the provision of this Act, the Authority, the Council, the Disciplinary Committee and the Prosecution Director shall have the same powers as are vested in

a Civil Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him oath;

(b) the discovery and production of any document; and (c) receiving evidence on affidavit.

21C. (1) On receipt of a report from the Disciplinary Committee, if the Council is satisfied that the member of the Institute is guilty of any professional or other misconduct, it shall record its findings accordingly and shall proceed in accordance with the provisions of section 21D.

Action by Council on Disciplinary Committee's report.

(2) In case the Council is not satisfied with the report of the Disciplinary Committee and is of the opinion that it requires further inquiry, it may refer the report again to the Disciplinary Committee for such further inquiry as may be directed through an order of the Council.

(3) If the Council disagrees with the findings of the Disciplinary Committee, it may direct the Prosecution Director to make an appeal to the Authority.

21D. Where the Council is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Schedule, it shall afford to the member a reasonable opportunity of being heard before making any order against him and may thereafter take anyone or more of the following actions, namely:—

Member to be afforded opportunity of being heard.

(a) reprimand the member; or

(b) remove the name of the member from the register permanently or for such period, as it thinks fit.

Explanation.—For the purposes of this section “member of the Institute” includes a person who was a member of the Institute on the date of the

alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.’ .

Amendment of section 22.

16. In section 22 of the principal Act,—

(i) for the words “specified in any of the Schedules”, the words “mentioned in the Schedule or as may be specified” shall be substituted;

(ii) the words “under sub-section (1) of section 21” shall be omitted.

Insertion of new sections for section 22.

17. After section 22 of the principal Act, the following sections shall be inserted, namely:—

Constitution of Authority.

“22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause *(b)* of said sub-section (1), the following clause shall be substituted, namely:—

(b) the Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Company Secretaries for at least one full term.

22B. (1) A person appointed as Chairperson shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of seventy years whichever is earlier.

(2) A person appointed as a member shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-seven years, whichever is earlier.

Term of office of Chairperson and members of Authority.

Allowances and conditions of service of Chairperson and members of Authority.

22C. (1) The allowances payable to, and other terms and conditions of service of, the Chairperson and members shall be such as may be specified.

(2) The allowances to the Chairperson and members shall be paid by the Council in such manner as may be specified.

22D. (1) The Authority shall meet at such time and place and follow in its meetings and in discharging its functions such procedure as may be specified.

Procedure to be regulated by Authority.

(2) All orders and decisions of the Authority shall be authenticated by an officer duly authorised by the Chairperson in this behalf.

22E. (1) The Council shall make available to the Authority such officers and other staff members as may be necessary for the efficient performance of the functions of the Authority.

Office and other staff of Authority.

(2) The salaries and allowances and conditions of service of the officers and other staff members made available to the Authority shall be such as may be prescribed.

22F. (1) The Chairperson or a member may, by notice in writing under his hand addressed to the Central Government, resign his office:

Resignation and removal of Chairperson and members.

Provided that the Chairperson or a 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 term of office, whichever is earlier.

(2) The Chairperson or a member shall not be removed from his office except by an order of the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by such person as the President may appoint for this purpose in which the Chairperson or a member concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of such charges.

22G. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in section 21D, may within

Appeal to Authority.

thirty days of the date on which the order is communicated to him, prefer an appeal to the Authority:

Provided that the Authority may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The Authority may, after calling for the records of any case, revise any order made by the Council under section 21D and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, or enhance the penalty imposed by the order;

(c) remit the case to the Disciplinary Committee for such further inquiry as the Authority considers proper in the circumstances of the case; or

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

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has also been given an opportunity of being heard.’

18. After Chapter VII of the principal Act, the following Chapter shall be inserted, namely:—

“CHAPTER VIIIA

QUALITY REVIEW BOARD

29A. (1) The Central Government shall, by notification, constitute a Quality Review Board consisting of a Chairman and four other members.

(2) The Chairman and members of the Board shall be appointed from amongst the persons having eminence and experience in the field of law, education, economics, business, finance, accountancy or public administration.

Insertion of
new Chapter
VIIA.

Establishment
of Quality
Review Board.

(3) Two members of the Board shall be nominated by the Council and other two members shall be nominated by the Central Government.

29B. The Board shall perform the following functions, namely:—

Functions of Board.

(a) to fix standards for the services provided by the members of the Institute;

(b) to review the quality of services provided by the members of the Institute including secretarial audit services; and

(c) to guide the members of the Institute to improve the quality of services and adherence to the various statutory and other regulatory requirements.

29C. The Board shall follow in its meeting and in discharging its functions such procedure as may be specified.

Procedure of Board.

29D. The terms and conditions of service of the Chairman and the members of the Board, their place of meetings, remuneration and allowances shall be such as may be specified.

Terms and conditions of Chairman and members of Board.

29E. The expenditure of the Board shall be borne by the Council.”.

Expenditure of Board.

19. Section 30 of the principal Act shall be omitted.

Omission of section 30.

20. For sections 35 and 36 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 35 and 36.

“35. (1) For the purposes of this Act, the Central Government may, from time to time, give to the Council such general or special directions as it thinks fit, and the Council shall, in the discharge of its functions under this Act, comply with any such directions.

Power of Central Government to issue directions.

(2) If, in the opinion of the Central Government, the Council has persistently made default in giving effect to the directions issued under sub-section (1), it may, after giving an opportunity of being heard to

the Council, by notification, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be decided by the Central Government.

(3) Where the Central Government has issued a notification under sub-section (2) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Council and to exercise such functions as may be mentioned in the notification.

Protection of
action taken in
good faith

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council or the Disciplinary Committee or the Tribunal or the Authority or the Board or the Prosecution Director or any officer of that Government, Council, Committee, Tribunal, Authority or Board, for any thing which is in good faith done or intended to be done under this Act or any rule, regulation, notification, direction or order made thereunder.

Members, etc.
to be public
servants.

36A. The Chairpersons, members and other officers and employees of the Tribunal, Authority and Board, and the Prosecution Director shall be deemed to be public servants 45 of 1860 within the meaning of section 21 of the Indian Penal Code.”.

Insertion of
new section.
38A.

21. After section 38 of the principal Act, the following section shall be inserted, namely:—

Power of
Central
Government to
make rules.

“38A. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,

namely:—

(a) the manner of election and nomination in respect of members to the Council under sub-section (2) of section 9;

(b) the terms and conditions of service of the Presiding Officers and Members of the Tribunal, place of meeting, remuneration and allowances to be paid to them under sub-section (3) of section 10B;

(c) the manner of approval for the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute under clause (d) of sub-section (1) of section 16;

(d) the procedure of inquiry and submission of report by the Disciplinary Committee under sub-section (2) of section 21;

(e) the procedure of inquiry by the Prosecution Director under sub-section (2) of section 21A;

(f) any act or omission which may be determined as professional misconduct under section 22;

(g) the allowances and terms and conditions of service of the Chairperson and members of the Authority and the manner of payment of allowances by the Council under section 22C;

(h) the procedure to be followed by the Authority in its meetings and in discharging its functions under sub-section (1) of section 22D;

(i) the procedure to be followed by the Board in its meeting and in discharging its functions under section 29C; and

(j) terms and conditions of service of the Chairman and Members of the Board under section 29D.”.

Amendment of
section 39.

22. In section 39 of the principal Act, for sub-section (4), the following shall be substituted, namely:—

“(4) Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or the regulation, or both Houses agree that the rule or the regulation should not be made, the rule or the regulation, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”.

Substitution of
new Schedule
for the First
Schedule and
the Second
Schedule.

23. For the First Schedule and the Second Schedule to the principal Act, the following Schedule shall be substituted, namely:—

“THE SCHEDULE

(See sections 21D and 22)

PART I

Professional misconduct in relation to members of the Institute in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognised profession as may be prescribed in this behalf, and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or a retired partner or the legal representative of a deceased partner.

Explanation.— In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept, except from a member of the Institute or from anyone belonging to any of the recognised professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;

(4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognised profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any rule or regulation made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act.

(11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm anything which he is required to certify as a Company Secretary, or any other statements related thereto;

(13) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him without the consent of such client, or otherwise than as required by any law for the time being in force;

(14) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company

Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;

(15) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(16) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(17) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;

(18) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;

(19) is grossly negligent in the conduct of his professional duties;

(20) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(21) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(22) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profits or gains

from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment other-wise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a Fellow styles himself as a Fellow;

(3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;

(4) defalcates or embezzles moneys received in his professional capacity;

(5) contravenes any of the provisions of this Act or the rules or regulations made thereunder;

(6) is guilty of such other act or omission as may be specified.”.

STATEMENT OF OBJECTS AND REASONS

The Company Secretaries Act, 1980, which is in force for more than twenty years requires updation because of the changes that have taken place during this period and on the basis of experience by the Institute of Company Secretaries of India and the Government while administering and implementing the provisions of the Act.

2. A High Level Committee under the Chairmanship of Shri Naresh Chandra, former Cabinet Secretary, was in the meanwhile constituted, *inter alia*, to examine the Auditor-Company relationship and the disciplinary mechanism for the Auditors. It is proposed to bring about amendments in the Act to implement the Naresh Chandra Committee's recommendations regarding disciplinary procedure and setting up of Quality Review Board.

3. The Institute also has faced certain difficulties, like in increasing membership fee to cover increased activities, short term of the Council, etc., and has suggested a number of amendments in the Act.

4. It has also been felt necessary to bring, as far as possible, uniformity in the Acts of the three professional Institutes, namely the Institute of Chartered Accountants of India, Institute of Cost and Works Accountants of India and the Institute of Company Secretaries of India. Some of the amendments in the Act have become necessary to achieve this uniformity.

5. Some of the main amendments proposed to be made in the Bill are as follows:—

(a) strengthening of Disciplinary Committee and also providing for constitution of more than one disciplinary committee, as and when deemed fit, which will enable the disposal of the increased number of disciplinary cases, consequent upon the increase in the membership of the Institute and in the number of practising company secretaries;

(b) appointment of a Prosecution Directorate which will hasten the disciplinary process and also impart an objectivity;

(c) constitution of an Appellate Authority to be headed by a person who is, or has been, or is qualified to be a judge of a High Court to deal with the appeals against the orders of the Council;

(d) setting up a mechanism for review of the quality of secretarial audit, enhancing the powers to the Council to fix fees, increase the term of the Council from three to four years, streamlining the election process and prescribing certain restrictions with regards to eligibility of members for contesting elections for the Council of the Institute.

6. The Bill seeks to achieve the above objects.

JASWANT SINGH

NEW DELHI;

The 22nd December, 2003.

Notes on Clauses

Clause 2 seeks to define various expressions used in the Bill.

Clause 3 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of associate members of the Institute.

Clause 4 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee of fellow members of the Institute.

Clause 5 seeks to provide that the Council, with the prior approval of the Central Government, may determine the fee for certificate of practice. The clause also provides for cancellation of certificate of practice under the circumstances as may be prescribed by regulations.

Clause 6 seeks to provide for enhancing the total strength of the Council of the Institute from sixteen to twenty and also provides that the manner of election and nomination will be specified by rules. The clause also debars persons holding office of profit under Central Government or a State Government from contesting election to the Council.

Clause 7 seeks to provide that a member of the Council shall be eligible for re-election for a maximum of three consecutive terms. The clause debars sitting and former Presidents of the Council from contesting election of the Council. This clause also provides for settlement of election disputes and establishment of election tribunal.

Clause 8 seeks to provide for the continuation in office of the Vice-President till his successor takes charge, as is the case with the President of the Council.

Clause 9 seeks to change the period for not filling up a causal vacancy from six months to one year, prior to the date of expiration of the duration of the Council.

Clause 10 seeks to provide for enhancement of duration of the Council from three to four years.

Clause 11 seeks to provide that the Council shall fix allowances of office bearers of the Council and members of its Committees by previous sanction of the Government and also to provide that the Council shall approve foreign travel tours of the members of the

Council and its Committees and staff of the Institute in accordance with rules framed by the Central Government for this purpose.

Clause 12 seeks to, *inter alia*, provide for increasing the strength of the Executive Committee and the Examination Committee.

Clause 13 seeks to provide that the Council, with the prior approval of the Central Government, may determine the annual membership fee of the Institute. The clause also provides that the list of members can be supplied to the members on payment of the prescribed amount.

Clause 14 seeks to provide that the Council may re-enter the name of the member of the Institute, if his name has been removed for non-payment of dues, on payment of such additional fee as may be determined by the Council with the prior approval of the Central Government.

Clause 15 seeks to, *inter alia*, provide for constitution of more than one Disciplinary Committee, appointment of a prosecution directorate and empowering them and the Appellate Authority to, summon and enforce the attendance of any person and examining him on oath, to discover and production of any document, and receive evidence on affidavit. The clause also provides for action to be taken by the Council on the Disciplinary Committee report and the penalties, which Council can impose on a member of the Institute.

Clause 17 seeks to, *inter alia*, provide that the Appellate Authority constituted under Chartered Accountants Act, 1949 shall deemed to be Appellate Authority under this Act with some changes with the term of office of Chairperson and Members, their allowances and terms and conditions of service and resignation and removal of Chairperson and Members. It also provides for the procedures to be adopted by the authority and powers of the authority with regards to the orders passed by the Council.

Clause 18 seeks to, *inter alia*, provide for establishment of a Quality Review Board, its functions, procedures, the terms and conditions of service of Chairman and Members, which will review the quality of audit and other services provided by the members of the Institute.

Clause 20 seeks to, *inter alia*, empower the Central Government to issue such general or special directions, as it thinks fit, to the Council, making it obligatory on the part of the Council to comply with such

directions. It also empowers the Central Government to dissolve the Council after giving an opportunity of being heard. The clause also seeks to make provision for protection of action taken in good faith.

Clause 21 seeks to confer upon the Central Government the power to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of this clause enumerates the various matters in respect of which such rules may be made.

Clause 22 seeks to provide for laying of the rules and regulations on the table of both the Houses of Parliament.

Clause 23 seeks to provide for substitution of a new Schedule for the existing two Schedules.

FINANCIAL MEMORANDUM

The Bill seeks to appoint a Prosecution Director, constitute an Appellate Authority and establish a Quality Review Board. The expenditure in this regard is to be borne by the Council of the Institute and there shall be no expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 3, 4, 5 and 13 of the Bill seek to amend sections 4, 5, 6 and 19 of the principal Act so as to empower the Council to determine the fee with the prior approval of the Central Government.

2. Clause 5 also seeks to amend section 6 of the principal Act so as to empower the Council to cancel the certificate of practice under the circumstances as may be prescribed by regulations.

3. Clause 6 of the Bill seeks to amend section 9 of the principal Act so as to empower the Central Government to specify by rules the manner of election and nomination of the members to the Council.

4. Clause 7 of the Bill seeks to insert a new section 10B so as to empower the Central Government to specify the terms and conditions of service of the Presiding Officer and Members of the Tribunal, their place of meetings, remuneration and allowances.

5. Clause 11 of the Bill seeks to amend section 16 of the principal Act so as to empower the Central Government to specify by rules the manner of approval of the foreign travel tours of the President, the Vice-President and members of the Council and member of its Committees, and officers and employees of the Institute.

6. Clause 13 of the Bill also seeks to amend section 19 of the principal Act so as to empower the Council to prescribe by regulation the amount a member is to pay for a copy of the list of members.

7. Clause 14 of the Bill seeks to amend section 20 of the principal Act so as to empower the Council to determine the additional fee for re-entering the name of a member with the prior approval of the Central Government.

8. Clause 15 of the Bill seeks to amend section 21 of the principal Act so as to empower the Central Government to specify by rules the procedure of inquiry and the period for submission of report by the Disciplinary Committee and the procedure of inquiry by the Prosecution Director.

9. Clause 16 of the Bill seeks to amend section 22 of the principal Act so as to empower the Central Government to specify by rules act or omission which may be determined as professional misconduct.

10. Clause 17 of the Bill seeks to add a new section after section 22 of the principal Act so as to empower the Central Government to specify by rules the allowances and terms and conditions of service of

the Chairperson and members of the Authority and the manner of payment of allowances by the Council and the procedure to be followed by the Authority in its meetings and in discharging its functions.

11. Clause 18 of the Bill seeks to insert a new Chapter after Chapter VII to the principal Act so as to empower the Central Government to specify by rules the procedure to be followed by the Board in its meeting and in discharging its functions and the terms and conditions of service of the Chairman and the members of the Board.

12. The matters in respect of which the said rules or regulations may be made are matters of procedure and administrative detail and it is not practicable to provide them in the proposed legislation itself.

13. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE COMPANY SECRETARIES ACT, 1980

(56 OF 1980)

* * * * *

2. (1) In this Act, unless the context otherwise requires,—

Definitions and interpretation.

(a) “Associate means an Associate member of Institute;

* * * * *

4. (1) * * * * *

Entry of names in the Register.

(3) Every person belonging to any of the classes mentioned in clauses (c), (d) and (e) of sub-section (1) shall have his name entered in the Register on application being made and granted in the prescribed manner and on payment of prescribed entrance fee; which shall not exceed four hundred rupees in any case.

* * * * *

5. (1) * * * * *

Associates and Fellows.

(3) A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years and a person who has been an Associate for a continuous period of not less than five years and who possesses such qualifications or practical experience as the Council may prescribe with a view to ensuring that he has experience equivalent to the experience normally acquired as a result of continuous practice for a period of five years as a Company Secretary shall, on payment of the prescribed entrance fee, which shall not exceed four hundred rupees in any case, and on application made and granted in the prescribed manner, be entered in the Register as a Fellow.

Explanation I.—For the purposes of this sub-section, a person shall be deemed to have practised in India for any period for which he has held a certificate of practice under section 6, notwithstanding that he did not actually practise during that period.

Explanation II.— In computing the period during which a person has been an Associate of the Institute, there shall be included any continuous period during which the person has been an Associate of the dissolved company immediately before he became an Associate of the Institute.

* * * * *

Certificate of practice. **6. (1)** * * * * *

(2) A member who desires to be entitled to practise shall make an application in such form and pay such annual fee, for his certificate as may be prescribed which shall not exceed two hundred rupees in any case, and such fee shall be payable on or before the 1st day of April in each year.

* * * * *

CHAPTER III COUNCIL OF THE INSTITUTE

Constitution of the Council of the Institute. **9. (1)** * * * * *

(2) The Council shall be composed of—

(a) not more than twelve persons elected by members of the Institute from amongst the Fellows chosen in such manner and from such regional constituencies as may be notified in this behalf by the Central Government in the Official Gazette; and

(b) not more than four persons nominated by the Central Government.

Mode of election to the Council. **10. (1)** Elections under clause (a) of sub-section (2) of section 9 shall be conducted in the prescribed manner.

(2) Where any dispute arises regarding any such election, the matter shall be referred by the Council to a Tribunal appointed by the Central Government in this behalf and the decision of such Tribunal shall be final:

Provided that no such reference shall be made except on an application made to the Council by an aggrieved party within thirty days from the date of the declaration of the result of the election.

(3) The expenses of the Tribunal shall be borne by the Council.

(4) Notwithstanding anything contained in this section and in Chapter IX, the Council of the dissolved company shall, on the commencement of this Act, become the Council of the Institute and shall function as such—

(i) for a period of two years from such commencement, or

(ii) till the Council is constituted in accordance with the provisions of sub-section (2) of section 9, whichever is earlier.

Explanation.—For the purposes of this sub-section, the Council shall be deemed to have been constituted in accordance with the provisions of sub-section (2) of section 9 with effect from such date [not being later than thirty days from the date on which the results of the first elections, under clause (a) of the said sub-section (2) are announced] as the Central Government may notify in the Official Gazette.

* * * * *

12. (1) * * * * *

President and Vice-President.

(4) On the expiration of the duration of the Council, or of the term of office of the President thereof, the President shall continue to hold office until such time as a new President is elected and takes over charge of his duties.

* * * * *

13. (1) * * * * *

Resignation of membership and casual vacancies.

(3) A casual vacancy in the office of a member of the Council shall be filled by fresh election from the constituency concerned or by nomination by the Central Government, as the case may be, and the person elected or nominated to fill the vacancy shall hold office until the dissolution of the Council:

Provided that no election shall be held to fill a

casual vacancy occurring within six months prior to the date of the expiration of the term of the Council, but such a vacancy may be filled by nomination by the Central Government after consultation with the President of the Council.

* * * * *

Duration and dissolution of the Council.

14. (1) The duration of any Council constituted under this Act shall be three years from the date of its first meeting.

* * * * *

Staff, remuneration and allowances.

16. (1) For the efficient performance of its duties and functions, the Council shall appoint a Secretary who shall be a member of the Institute and may—

* * * * *

(c) fix the allowances of the President, Vice-President and other members of the Council and its Committees.

* * * * *

Committees of the Council.

17. (1) The Council shall constitute from amongst its members the following Standing Committees, namely:—

* * * * *

(b) a Disciplinary Committee; and

* * * * *

(3) The Executive Committee shall consist of the President, and the Vice-President, *ex officio*, and three other members of the Council elected by the Council.

(4) The Disciplinary Committee shall consist of the President, *ex officio*, one member to be nominated by the Central Government from amongst the members nominated to the Council by that Government and one member to be elected by the Council.

(5) The Examination Committee shall consist of the President or the Vice-President, *ex officio*, as the Council may decide, and two other members of the Council elected by the Council.

(6) Notwithstanding anything contained in this section, any Committee formed under sub-section (2), may, with the sanction of the Council co-opt such other members of the Institute not exceeding two-thirds of the total membership of the Committee as the Committee thinks fit, and any member so co-opted shall be entitled to exercise all the rights of a member of the Committee.

* * * * *

CHAPTER IV

REGISTER OF MEMBERS

19. (1) * * * * * Register.

(3) The Council shall cause to be published in such manner as may be prescribed a list of members of the Institute as on the 1st day of April of each year, and shall, if requested to do so by any such member, send him a copy of such list.

(4) Every member of the Institute shall, on his name being entered in the Register, pay such annual membership fee different in amount according as he is an Associate or a Fellow as may be prescribed, which shall not exceed three hundred rupees in any case.

* * * * *

CHAPTER V

MISCONDUCT

21. (1) Where on receipt of information by, or a complaint made to it, the Council is *prima facie* of opinion that any member of the Institute has been guilty of any professional or other misconduct, the Council shall refer the case to the Disciplinary Committee constituted under section 17, and the Disciplinary Committee shall thereupon hold such inquiry and in such manner as may be prescribed and shall report the result of its inquiry to the Council.

Procedure in inquiries relating to misconduct of members of the Institute.

(2) If on receipt of such report the Council finds that the member of the Institute is not guilty of any

professional or other misconduct, it shall record its finding accordingly and direct that the proceedings shall be filed, or the complaint shall be dismissed, as the case may be.

(3) If on receipt of such report the Council finds that the member of the Institute is guilty of any professional or other misconduct, it shall record its finding accordingly, and shall proceed in the manner laid down in the succeeding sub-sections.

(4) Where the finding is that a member of the Institute has been guilty of a professional misconduct specified in the First Schedule, the Council shall afford to the member an opportunity of being heard before orders are passed against him on the case, and may thereafter make any of the following orders, namely:-

(a) reprimand the member;

(b) remove the name of the member from the Register for such period, not exceeding five years, as the Council thinks fit:

Provided that where the Council is of opinion that the case is one in which the name of the member ought to be removed from the Register for a period exceeding five years or permanently, it shall not make any order referred to in clause (a) or clause (b), but shall forward the case to the High Court with its recommendations thereon.

(5) Where the misconduct in respect of which the Council has found any member of the Institute guilty is a misconduct specified in the Second Schedule, it shall forward the case to the High Court with its recommendations thereon.

(6) On receipt of any case under sub-section (4) or sub-section (5), the High Court shall fix a date for the hearing of the case and shall cause notice of the date so fixed to be given to the member of the institute concerned, the Council and to the Central Government, and shall afford such member, the Council and the Central Government an

opportunity of being heard and may thereafter make any of the following orders, namely:-

(a) direct that the proceedings be filed, or dismiss the complaint as the case may be;

(b) reprimand the member;

(c) remove him from membership of the Institute either permanently or for such period as the High Court thinks fit;

(d) refer the case to the Council for further inquiry and report.

(7) Where it appears to the High Court that the transfer of any case pending before it to another High Court will promote the ends of justice or tend to the general convenience of the parties it may so transfer the case, subject to such conditions, if any, as it thinks fit to impose, and the High Court to which such cases transferred shall deal with it as if the case had been forwarded to it by the Council.

Explanation I.-In this section, "High Court" means the highest civil court of appeal, not including the Supreme Court exercising jurisdiction in the area in which the person whose conduct is being inquired into is in service or carries on his profession or has his principal place of profession at the commencement of the inquiry:

Provided that where the cases relating to two or more members of the institute have to be forwarded by the Council to different High Courts, the Central Government shall, having regard to the ends of justice and the general convenience of the parties, determine which of the High Courts to the exclusion of others shall hear the cases against all the members.

Explanation II.-For the purposes of this section, "member of the Institute" includes a person who was a member of the Institute on the date of the alleged misconduct although he has ceased to be a member of the Institute at the time of the inquiry.

(8) For the purposes of any inquiry under this section, the Council and the Disciplinary Committee referred to in sub-section (1) shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, in respect of the following ^{5 of 1908.} matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) the discovery and production of any document; and

(c) receiving evidence on affidavits.

Professional
misconduct
defined.

22. For the purposes of this Act, the expression “professional misconduct” shall be deemed to include any act or omission specified in any of the Schedules, but nothing in this section shall be construed to limit or abridge in any way the power conferred or duty cast on the Council under sub-section (1) of section 21 to inquire into the conduct of any member of the Institute under any other circumstances.

* * * * *

CHAPTER VIII

APPEALS

Appeals.

30. (1) Any member of the Institute aggrieved by any order of the Council imposing on him any of the penalties referred to in clause (a) or clause (b) of sub-section (4) of section 21, may, within thirty days of the date on which the order is communicated to him, prefer an appeal to the High Court:

Provided that the High Court may entertain any such appeal after the expiry of the said period of thirty days, if it is satisfied that the member was prevented by sufficient cause from filing the appeal in time.

(2) The High Court may, on its own motion or otherwise, after calling for the records of any case, revise any order made by the Council under sub-section (2) or sub-section (4) of section 21 and may—

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the Council for such further enquiry as the High Court considers proper in the circumstances of the case;

(d) pass such other order as the High Court thinks fit:

Provided that no order of the Council shall be modified or set aside unless the Council has been given an opportunity of being heard and no order imposing or enhancing a penalty shall be passed unless the person concerned has been given an opportunity of being heard.

Explanation.—In this section “High Court” and “member of the Institute” have the same meanings as in section 21.

* * * * *

35. (1) The Central Government may, from time to time, issue such directions to the Council as in the opinion of the Central Government are conducive to the fulfilment of the objects of this Act and in the discharge of its functions, the Council shall be bound to carry out any such directions.

Directions of
the Central
Government.

(2) Directions issued under sub-section (1) may include directions to the Council to make any regulations or to amend or revoke any regulations already made.

(3) If, in the opinion of the Central Government, the Council has persistently committed default in giving effect to the directions issued under this section, the Central Government may, after giving an opportunity to the Council to state its case, by order, dissolve the Council, whereafter a new Council shall be constituted in accordance with the provisions of this Act with effect from such date as may be specified by the Central Government.

(4) Where the Central Government passes an order

under sub-section (3) dissolving the Council, it may, pending the constitution of a new Council in accordance with the provisions of this Act, authorise any person or body of persons to take over the management of the affairs of the Institute and to exercise such functions as may be specified in this behalf by the Central Government.

Protection of action taken in good faith.

36. No suit, prosecution or other legal proceeding shall lie against the Central Government or the Council in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any regulations or orders made thereunder.

* * * * *

Power to make regulations.

39. (1) * * * * *

(4) Every regulation shall, as soon as may be after its made by the Council, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

THE FIRST SCHEDULE

[See sections 21 (4) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) allows any other person to practise in his name as a Company Secretary unless such other person is a Company Secretary or is a member of such other recognised profession as may be prescribed in this behalf, and is in partnership with or employed by him;

(2) pays or allows or agrees to pay or allow, directly or indirectly, any share, commission or brokerage in the fees or profits of his professional work to any person, other than a member of the Institute or a partner or retired partner of the legal representative of a deceased partner;

Explanation.—In this item, “partner” includes a person residing outside India with whom a Company Secretary in practice has entered into partnership which is not in contravention of item (4) of this Part;

(3) accepts or agrees to accept, except from a member of the Institute or from anyone belonging to any of the recognised professions prescribed for the purpose, any part of the profits, fees or other remuneration arising out of the work which is not of a professional nature;

(4) enters into partnership with any person other than a Company Secretary in practice or a member of any other recognised profession as may be prescribed or a person resident without India who but for his residence abroad would have been entitled to be registered as a member of the Institute under clause (e) of sub-section (1) of section 4 or whose qualifications are recognised by the Central Government or the Council for the purpose of membership of the Institute provided that the Company Secretary shares in the fees or profit of the professional work of the partnership both within and without India;

(5) secures, either through the services of a person not qualified to be his partner or by means which are not open to a Company Secretary, any professional work;

(6) solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication or interview or by any other means;

(7) advertises his professional attainments or services, or uses any designation or expression other than Company Secretary on professional documents, visiting cards, letterheads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute or of any other institution that has been recognised by the Central Government or may be recognised by the Council;

(8) accepts the position of a Company Secretary in practice previously held by another Company Secretary in practice without first communicating with him in writing;

(9) charges or offers to charge, accepts or offers to accept, in respect of any professional employment fees which are based on a percentage of profits or which are contingent upon the findings or results of such employment, except in cases which are permitted under any regulations made under this Act;

(10) engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage:

Provided that nothing contained herein shall disentitle a Company Secretary from being a director of a company except as provided in the Companies Act;

(11) accepts a position as Company Secretary in practice previously held by some other Company Secretary in practice in such conditions as to constitute under-cutting;

(12) allows a person not being a member of the Institute in practice or a member not being his partner to sign on his behalf or on behalf of his firm

anything which he is required to certify as a Company Secretary, or any other statements related thereto.

PART II

Professional misconduct in relation to members of the Institute in service

A member of the Institute (other than a member in practice) shall be deemed to be guilty of professional misconduct, if he, being an employee of any company, firm or person—

(1) pays or allows or agrees to pay, directly or indirectly, to any person any share in the emoluments of the employment undertaken by the member;

(2) accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Company Secretary or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification;

(3) discloses confidential information acquired in the course of his employment otherwise than as required by any law for the time being in force or as permitted by his employer.

PART III

Professional misconduct in relation to members of the Institute generally

A member of the Institute whether in practice or not shall be deemed to be guilty of professional misconduct, if he—

(1) includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false;

(2) not being a Fellow styles himself as a Fellow;

(3) does not supply the information called for or does not comply with the requirements asked for by the Council or any of its Committees;

(4) defalcates or embezzles moneys received in his professional capacity.

THE SECOND SCHEDULE

[See sections 21 (5) and 22]

PART I

Professional misconduct in relation to members of the Institute in practice requiring action by a High Court

A Company Secretary in practice shall be deemed to be guilty of professional misconduct, if he—

(1) discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force;

(2) certifies or submits in his name or in the name of his firm a report of an examination of the matters relating to Company Secretarial practice and related statements unless the examination of such statements has been made by him or by a partner or any employee in his firm or by another Company Secretary in practice;

(3) permits his name or the name of his firm to be used in connection with any report or statement contingent upon future transactions in a manner which may lead to the belief that he vouches for the accuracy of the forecast;

(4) expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest, unless he discloses the interest also in his report;

(5) deliberately aids in or abets the concealment in his report or statement of a material fact known to him although the disclosure of which is necessary to make such statement not misleading;

(6) fails to disclose in his report a material mis-statement known to him and with which he is concerned in a professional capacity;

(7) is grossly negligent in the conduct of his professional duties;

(8) fails to obtain sufficient information to warrant the expression of an opinion or makes exceptions which are sufficiently material to negate the expression of an opinion;

(9) fails to invite attention to any material departure from the generally accepted procedure relating to the secretarial practice;

(10) fails to keep moneys of his client in a separate banking account or to use such moneys for purposes for which they are intended.

PART II

Professional misconduct in relation to members of the Institute generally requiring action by a High Court

A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(1) contravenes any of the provisions of this Act or the regulations made thereunder;

(2) is guilty of such other act or omission as may be specified by the Council in this behalf, by notification in the Official Gazette.

RAJYA SABHA

A
BILL

further to amend the Company Secretaries Act, 1980.

(Shri Jaswant Singh, Minister of Finance.)