

Position of Chartered Accountants under Companies Bill, 2011

<http://www.caclubindia.com/forum/position-of-chartered-accountants-under-companies-bill-2011-181379.asp>

Dear All,

In my earlier post I have described the position of Company Secretaries in the Companies Bill, 2011 and promised you to write something about position and interests of Chartered Accountants in the Companies Bill, 2011.

Before starting the same please have a look at the analysis of Companies Bill, 2011 and the position of Company Secretaries under Companies Bill, 2011, shared couple of days back in Caclubindia. This analysis is available at the link mentioned below:

ANALYSIS OF THE COMPANIES BILL, 2011

<http://www.caclubindia.com/forum/analysis-of-the-companies-bill-2011-a-must-read-180904.asp>

POSITION OF COMPANY SECRETARY UNDER COMPANIES BILL 2011

<http://www.caclubindia.com/forum/position-of-company-secretary-under-companies-bill-2011-181172.asp>

POSITION OF “CHARTERED ACCOUNTANTS” UNDER COMPANIES BILL, 2011

Now let's discuss the Position of Chartered Accountants in the Companies Bill, 2011:

1. Role of National Financial Reporting Authority and Chartered Accountants

Clause 132 of the Companies Bill, 2011 empowers Central Government to constitute National Financial Reporting Authority which according to clause 133 recommend Accounting Standards in consultation with The Institute of Chartered Accountants of India. Hence the Role of ICAI has been retained by Central Government in recommending the Accounting Standards.

2. Chartered Accountants as Internal Auditors (Clause 138)

This is a new clause and seeks to provide that prescribed Companies shall be required to conduct internal audit of functions and activities of the company by internal auditor appointed by the company. Manner of conducting internal audit shall be prescribed by the Central Government.

As per Clause 138 of the Companies Bill, 2011, such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

So in the Companies Bill, 2011, chartered accountant considered as the first choice to do Internal Audit of companies.

3. Chartered Accountants as Company Liquidator

As per Clause 275 of the Companies Bill, 2011, for the purpose of winding up of a Company the Tribunal Shall appoint an Official Liquidator or a Provisional liquidator.

As per Clause 275(2) (2), the provisional liquidator or the Company Liquidator, as the case may be, shall be appointed from a panel maintained by the Central Government consisting of the names of chartered accountants, advocates, company secretaries, cost accountants or firms or bodies corporate as may be notified by the Central Government.

Clause 275 opens a wonderful opportunity for experienced Chartered Accountants to be appointed as Liquidator in winding up proceedings.

4. Professional Assistance to Company Liquidator

As per Clause 291 of the Companies Bill, 2011, the Company Liquidator may, with the sanction of the Tribunal, appoint one or more chartered accountant on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions under this Act.

5. Right to Legal representation

As per Clause 432 A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

6. Appointment of chartered accountants as Auditors

Clause 139 to 148 of the Companies Bill, 2011 deals with provisions related to Statutory Auditor.

(a.) Appointment of Auditor (Clause 139)

This clause corresponds to section 224 of the Companies Act, 1956. As per Clause 139 every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting **till the conclusion of its sixth annual general meeting** subject to his written consent.

Explanation.—For the purposes of this Chapter, “appointment” includes reappointment.

A restriction has been proposed on Auditors regarding their continuous re-appointment in the companies. Accordingly no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint—

(a) an individual as auditor for more than one term of five consecutive years which means now an individual auditor has to face a mandatory rotation in every five (5) years; and

(b) an audit firm as auditor for more than two terms of five consecutive years which means now an audit firm has to face a mandatory rotation in every Ten (10) years:

Provided also that, nothing contained in this clause 139, shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

(b.) Qualification and Dis qualification of Auditor (Clause 141)

This clause corresponds to sections 226 of the Companies Act, 1956 and **seeks to provide for appointment of only Chartered Accountant in practice as auditors.** The firm whereof majority of partners practicing in India are qualified for appointment, may be appointed by its firm name to be auditor of a company. The clause further provides for the persons who are not eligible for appointment as an auditor of a company.

(c.) Power and Duties of Auditors (Clause 143)

This clause corresponds to section 227 of the Companies Act, 1956 and seeks to provide for the powers and duties of auditors. Every auditor can access books of accounts, vouchers and seek such information and explanation from the company. In case of financial statements, auditor of holding company can access records of subsidiaries. The auditor has to make a report to the members on that accounts, financial statement or other documents required to be laid in general meeting give a true and fair view of the state of the company's affairs, about the

company having adequate internal financial controls system in place and other specified matters . The report shall state reasons for negative and qualified remarks.

(d.) Other services by Auditors (Clause 144)

This is a new clause and it seeks to provide that an auditor can do such other services as approved by the Board or audit committee. The clause further provides for the services which the auditor cannot perform, directly or indirectly to the company or its holding company, subsidiary company or associate company.

(e.) Penalty (Clause 447)

In case the audit is being conducted by an audit firm and the partners of audit firm acted in a fraudulent manner, then partners shall be punishable in the manner as provided in section 447 relating to fraud.

7. Some other provisions giving recognition to the profession of Chartered Accountants

- A.** As per Clause 143(12) of the Companies Bill, 2011, Auditor shall immediately report to the Central Government, if they have reason to believe in pursuance of their duties that an offence involving fraud is being committed against the company by officers or employees of the company, which he believe to be committed during the course of performance of his duties as an auditor.
- B.** Clause 432 of the Companies Bill, 2011, corresponds to section 10GD of the Companies Act, 1956 and seeks to provide that a party to the proceeding may appear in person or authorise a Chartered Accountant or Legal Practitioner to present the case before the Tribunal or the Appellate Tribunal.
- C.** As per Clause 140 of the Companies Bill, 2011, in the form to be prescribed by Central Government, a Chartered Accountants engaged in the formation of a company, shall declare that all requirements of the Act and rules in respect of registration and the matters precedent or incidental thereto have been complied with.

I sincerely hope that the above article will help you to under the Importance and positions of Chartered Accountant in the New Companies Bill, 2011. If you like the above article, please share your views.

Regards
RG