

24

STANDING COMMITTEE ON FINANCE

(2009-10)

FIFTEENTH LOK SABHA

Ministry of Corporate Affairs

**THE CHARTERED ACCOUNTANTS (AMENDMENT)
BILL, 2010**

TWENTY-FOURTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

August, 2010/ Bhadra, 1932 (Saka)

TWENTY-FOURTH REPORT

STANDING COMMITTEE ON FINANCE
(2009-2010)

(FIFTEENTH LOK SABHA)

Ministry of Corporate Affairs

THE CHARTERED ACCOUNTANTS (AMENDMENT) BILL, 2010

Presented to Lok Sabha on 31 August, 2010
Laid in Rajya Sabha on 31 August, 2010



LOK SABHA SECRETARIAT
NEW DELHI

August, 2010/Bhadra, 1932 (Saka)

CONTENTS

	PAGE
COMPOSITION OF THE COMMITTEE	(iii)
INTRODUCTION	(iv)

REPORT

1.	I. Introductory	1
2.	II. Amendments to the Chartered Accountants Act, 1949	3
	(A) Clause 2: Amendment of Section 2	
	(B) Clause 3: Amendment of Section 25 of the Act : Companies not to engage in accountancy	
3.	Recommendations	6

APPENDICES

I.	Minutes of the sittings of the Committee held on 7 July, 2010, 4 August, 2010 and 26 August, 2010.....
II.	The Chartered Accountants (Amendment) Bill, 2010.....

COMPOSITION OF STANDING COMMITTEE ON FINANCE – 2009-2010

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Dr. Baliram (Lalganj)
3. Shri Sudip Bandyopadhyay
4. Shri C.M. Chang
5. Shri Harishchandra Chavan
6. Shri Bhakta Charan Das
7. Shri Gurudas Dasgupta
8. Shri Khagen Das
9. Shri Nishikant Dubey
10. Smt. Jayaprada
11. Shri Bhartruhari Mahtab
12. Shri Mangani Lal Mandal
13. Shri Rayapati Sambasiva Rao
14. Shri Magunta Sreenivasulu Reddy
15. Shri Y.S. Jagan Mohan Reddy
16. Shri N. Dharam Singh
17. Shri Sarvey Sathyanarayana
18. Shri Manicka Tagore
19. Dr. M. Thambidurai
20. Shri Anjankumar M. Yadav
21. Shri G.M. Siddeshwara*

RAJYA SABHA

22. Shri Raashid Alvi
23. Dr. K.V.P. Ramachandra Rao
24. Vacant**
25. Shri S.S. Ahluwalia
26. Shri Moinul Hassan
27. Shri Mahendra Mohan
28. Vacant***
29. Dr. Mahendra Prasad
30. Shri Y.P. Trivedi
31. Shri Rajeev Chandrasekhar

SECRETARIAT

- | | | |
|----------------------------|---|----------------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T.G. Chandrasekhar | - | Additional Director |
| 3. Smt. B. Visala | - | Deputy Secretary |
| 4. Shri T. Mathivanan | - | Senior Executive Assistant |

* Nominated to this Committee w.e.f. 09.03.2010 vice Shri Gopinath Munde, MP

**Shri Vijay Jawaharlal Darda, MP retired on. 4 July, 2010

***Shri S. Anbalagan, MP retired on 29 June, 2010

INTRODUCTION

I, the Chairman of the Standing Committee on Finance, having been authorized by the Committee, present this Twenty-Fourth Report on “The Chartered Accountants (Amendment) Bill, 2010.”

2. The Chartered Accountants (Amendment) Bill, 2010 introduced in Rajya Sabha on 28 April, 2010, was referred to the Committee on 4 May, 2010 for examination and report thereon, by the Speaker, Lok Sabha in consultation with the Chairman, Rajya Sabha under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee obtained background note and written information on various provisions contained in the aforesaid Bill from the Ministry of Corporate Affairs.

4. Written views/memorandum was received from the Institute of Chartered Accountants of India (ICAI).

5. The Committee heard the views of the representatives of the ICAI on 7 July, 2010. The Committee also took evidence of the representatives of the Ministry of Corporate Affairs on 4 August, 2010.

6. The Committee considered and adopted the Report at their sitting held on 26 August, 2010.

7. The Committee wish to express their thanks to the representatives of the Ministry of Corporate Affairs for appearing before the Committee and furnishing the material and information which were desired in connection with the examination of the Bill.

8. The Committee also wish to express their thanks to the Institute of Chartered Accountants of India (ICAI) for furnishing written views/memorandum and appearing before the Committee for placing their views.

9. For facility of reference, the observations/recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi :
26 August, 2010
4 Bhadra, 1932 (Saka)

YASHWANT SINHA
Chairman
Standing Committee on Finance

Report

I. Introductory

The Institute of Chartered Accountants of India (ICAI) is a statutory body enacted under the Chartered Accountant Act, 1949 for regulation of the profession of Chartered Accountants in India.

(i) **The Chartered Accountants Act, 1949**

2. The Chartered Accountants Act, 1949 governs the profession of the chartered accountants. The said Act was amended in 2006 by the Chartered Accountants (Amendment) Act, 2006, *inter alia*, to enable the members of the Institute of Chartered Accountants of India to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

(ii) **Chartered Accountants (Amendment) Bill, 2010**

3. The Chartered Accountants (Amendment) Bill, 2010, was introduced in the Rajya Sabha on 28 April, 2010 and referred to the Standing Committee on Finance by the Speaker, Lok Sabha on 4 May, 2010 for examination and report thereon. The Bill *inter alia*, proposes to amend the Chartered Accountants Act, 1949 to:

- (i) apply certain provisions of the Limited Liability Partnership Act, 2008 to the Chartered Accountants Act, 1949 in order to allow the members of the professional institute governed by the Chartered Accountants Act, 1949 to form the limited liability partnership and insert new definitions of "firm", "partner", "partnership" and "sole proprietorship" for the said purpose;
- (ii) amend the Chartered Accountants Act, 1949 on lines similar with the provisions of the Company Secretaries Act, 1980 so as to allow the professionals of the Institute of Chartered Accounts of India to form partnership with members of such other recognized professions.

4. On the issue of Limited Liability Partnership firms, the Naresh Chandra Committee on Corporate Audit and Governance which submitted its report in 2002 had *inter alia* recommended as under:

“Related issues regarding the maximum number of partners, number of audits per partner etc. were discussed and reviewed by the Committee.the Committee accepted the suggestion of introducing the concept of ‘limited liability’, as per the prevalent international norms, in India for partnership firms of professionals. This would encourage quality talent to be attracted to the profession, and allow for faster growth and consolidation of firms, by reducing fear of unlimited liability for all partners. The Committee therefore recommends that necessary changes in the law be made to allow for the incorporation/conversion of partnership firms to ‘limited liability’ firms.”

5. The Limited Liability Partnership Act was enacted in the year 2008 to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto. The limited liability partnership is an organized form of business which operates on the basis of an agreement and gives the benefits of limited liability of a company and the flexibility of a partnership. It will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the limited liability partnership which may be of tangible or intangible nature or both tangible and intangible in nature. Any two or more persons associating for carrying on a lawful business with a view to profit may set up an LLP.

6. The Committee, apart from taking evidence of the representatives of the representatives of the Ministry of Corporate affairs in connection with the examination of the Bill, also heard the views of the representatives of the Institute of Chartered Accountants of India(ICAI) on the provisions of the Bill. The Institute also furnished their written views/suggestions thereon for consideration of the Committee.

7. The Background note furnished to the Committee on the Chartered Accountants (Amendment) Bill, 2010, states inter-alia:

“Consultations with the CA institute have been held which have revealed that if definition of the firm is added to the CA Act it will enable the

members of the CA institutes to form LLPs and take benefits of the provisions of the LLP Act. This will enlarge the spectrum of the services provided by the Members of the CA Institute. It will also ensure the competitiveness of the members of the professions. Apart from the inclusion of the definition of the firm, some allied definitions like partner, partnership and sole proprietorship would also be required in the Act and as such have been included in the proposed Bill.”

II. Amendments to the Chartered Accountants Act, 1949

(A) Clause 2: Amendment of Section 2

8. Section 2 (1) & (2) define and interpret various terms in the Chartered Accountants Act, 1949, Clause 2 of the Bill which, inter alia seeks to include the definitions of ‘firm, ‘ partner’, ‘partnership’ and ‘sole proprietorship’ in section 2 of the Act reads as under:

“In the Chartered Accountants Act, 1949(hereinafter referred to as the principal Act) in section 2,-

(i) in sub-section (1),—

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

‘(ca) “firm” shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes,—

(j) the limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008;

(ii) the sole proprietorship,
registered with the Institute;’;

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

‘(eb) “partner” shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 or in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be;

(ec) “partnership” means—

(A) a partnership as defined in section 4 of the Indian Partnership Act, 1932; or

(B) a limited liability partnership which has no company as its partner;’;

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

‘(haa) “sole proprietorship” means an individual who engages himself in the practice of accountancy or offers to perform services referred to in clauses (ii) to (iv) of sub-section (2);’;

(ii) in sub-section (2),—

(a) after the words “chartered accountants in practice”, the words “or in partnership with members of such other recognised professions as may be prescribed” shall be inserted;

(b) in the *Explanation*, for the words “a firm of such chartered accountants”, the words “a firm of such chartered accountants or firm consisting of one or more chartered accountant and members of any other professional body having prescribed qualifications” shall be substituted.

(B) Clause 3: Amendment of Section 25 of the Act : Companies not to engage in accountancy

9. Section 25(1) of the Act reads as under:

“ No company, whether incorporated in India or elsewhere, shall practise as chartered accountants.”

Clause 3 of the Bill reads as under:

“In section 25 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted, namely:—

Explanation.—For the removal of doubts, it is hereby declared that the "company" shall include any limited liability partnership which has company as its partner for the purposes of this section.'.”

10. The Institute of Chartered Accountants of India (ICAI), in their written memorandum and in the course of personal hearing of the representatives before the Committee, expressed agreement with the amendment proposals of the Bill enabling Chartered Accountants to form Limited Liability Partnership.

11. However, while deposing before the Committee a representative of the Institute of Chartered Accountants of India, with specific reference to the amendments

proposed to sub-section (2) of section (2), suggested an alternate formulation. In this regard, the representative stated:

“...There is another Clause in the first Schedule of the Act, which clearly mentions, ‘prescribed by the Central Government or Council, the qualifications’. Here the amendment is with regard to the professional bodies whereas the existing Act says it should have qualifications. It should not restrict to only professional bodies but experts can be partners of LLP. For example in the case of forensic audit we need a forensic expert to be partner of the audit firm. In case of Management Finance we can have an MBA analyst within our firm. For this, there is an enabling existing provision available that he should have a prescribed qualification as per the Council or Government, instead of the word ‘profession’ specifically specified in relation to the Chartered Accountants in practice. That is the only amendment we are proposing. It will give more weightage to these professional firms. Wherever, we want the qualifications prescribed by the Government or the Council. This is in harmony with the existing law and we have already circulated it”.

12. The alternate formulation of the amendment proposal suggested by the Institute of Chartered Accountants of India (ICAI) reads as under:

“(ii) in sub-section (2) of Section 2 - Clauses (a) and (b) be substituted with the following -

(a) For the words “*chartered accountants in practice*” the words “*a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed or whose qualifications are recognized by the Central Government or the Council in terms of Item (4) of Part-I of First Schedule*”, shall be substituted.

(b) In the explanation for the words “*a firm of such chartered accountants*” the words “*a firm of such chartered accountants or a firm consisting of one or more chartered accountants and such other person who is a member of any other professional body having such qualifications as may be prescribed or whose qualifications are recognized by the Central Government or the Council in terms of Item (4) of Part-I of First Schedule*” shall be substituted”.

13. In terms of item (4) of Part 1 of the Chartered Accountants Act, 1949, a Chartered Accountant shall be deemed to be guilty of professional misconduct, if he -

“(4) enters into partnership, in or outside India, with any person other than a chartered accountant in practice or such other person who is a member of any other professional body having such qualifications as may be prescribed, including a resident who but for his residence abroad would be entitled to be registered as a member under clause (v) of sub-section (1) of Section 4 or whose qualifications are recognized by the Central Government or the Council for the purpose of permitting such partnership”

14. Asked to give comments on the above suggestion of ICAI, the Ministry of Corporate Affairs, reply states:

“The proposed amendment to sub-section (2) of Section 2 in the CA (Amendment) Bill, 2010 is on the lines of that of existing provisions of CS Act, 1980 so as to allow professionals of the Institute to form partnership with members of such other recognized professions. Similar provisions have been proposed in CWA (Amendment) Bill, 2010. This is only to harmonise the three statutes. This issue had already been discussed with Legislative Department where representatives of ICAI were also present.”

15. Way back in 2002, the Naresh Chandra Committee on Corporate Audit and Governance had recommended making appropriate legislative changes for enabling the professional group of chartered accountants to form limited liability partnership firms. The Chartered Accountants (Amendment) Bill, 2010 seeks inter-alia to add the definitions of ‘firm’, ‘partner’, ‘partnership’ and ‘sole proprietorship’ in the Act so as to enable chartered accountants to take the benefits of the Limited Liability Partnership Act, 2008.

16. There is a divergence in the submissions of the ICAI and the stance of the Ministry in regard to the formulation of the amendment proposed to sub-section (2) of section (2) under clause 3, which relates to partnerships of chartered accountants with members of other professions. Though the amendment proposals of the Bill are stated to have been framed in consultation with the legislative department as well as ICAI, the issue of aligning the provision

proposed with the existing stipulations of the Chartered Accountants Act has been placed before the Committee by the ICAI. The Committee while recommending the Bill for consideration feel it to be essential on the part of the Ministry to review the proposed amendment to sub-section (2) of section (2) under clause 3, so as to avoid any ambiguity.

New Delhi :
26 August, 2010
4 Bhadra, 1932 (Saka)

YASHWANT SINHA
Chairman
Standing Committee on Finance

Minutes of the Twenty First sitting of the Standing Committee on Finance

The Committee sat on Wednesday, the 7th July, 2010 from 1100 hrs. to 1615 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri Sudip Bandyopadhyay
3. Shri C.M. Chang
4. Shri Gurudas Dasgupta
5. Shri Khagen Das
6. Shri Nishikant Dubey
7. Shri Bhatruhari Mahtab
8. Shri Mangani Lal Mandal
9. Shri G. M. Siddeshwara
10. Shri Rayapati Sambasiva Rao
11. Shri N. Dharam Singh
12. Shri Manicka Tagore
13. Dr. M. Thambidurai

RAJYA SABHA

14. Shri Raashid Alvi
15. Shri S. S. Ahluwalia
16. Shri Moinul Hassan
17. Shri Mahendra Mohan
18. Shri Y.P. Trivedi

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | - | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |
| 4. Smt. B. Visala | - | Deputy Secretary |

Part I

(1100 to 1230 hrs.)

XX	XX	XX	XX
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Part II
(1415 to 1430 hrs.)

XX	XX	XX	XX
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Part III
(1430 to 1500 hrs.)

XX	XX	XX	XX
XX	XX	XX	XX

Part IV
(1500 to 1530 hrs.)

WITNESSES

Institutes of Chartered Accountants of India (ICAI)

- | | |
|------------------------|-----------------------|
| 1. CA. Amarjit Chopra | President, ICAI |
| 2. CA. G. Ramaswamy | Vice President, ICAI |
| 3. CA. Atul C. Bheda | Council Member, ICAI |
| 4. Shri Shri N.P Singh | Joint Secretary, ICAI |

The Committee heard the views of the representatives of the Institutes of Chartered Accountants of India (ICAI) in connection with examination of the Chartered Accountants (Amendment) Bill, 2010. The major issues discussed with the representatives included, definition of 'Management Accounting', role and functions of cost accountants, the role of ICAI to propagate management accounting, the reasons why ICAI is opposed to the proposal of the change of name of the Institute of Cost and Works Accountants of India to Institute of Cost and Management Accountants of India etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members at an early date.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

The Committee then adjourned.

Minutes of the Twenty Third sitting of the Standing Committee on Finance

The Committee sat on Wednesday, the 4th August, 2010 from 1600 hrs. to 1900 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Khagen Das
5. Shri Nishikant Dubey
6. Shri G. M. Siddeshwara
7. Shri Rayapati Sambasiva Rao
8. Shri Magunta Sreenivasulu Reddy
9. Shri N. Dharam Singh
10. Shri Sarvey Sathyanarayana
11. Dr. M. Thamibidurai
12. Shri Anjankumar M. Yadav

RAJYA SABHA

13. Shri Raashid Alvi
14. Shri S. S. Ahluwalia
15. Shri Moinul Hassan
16. Shri Mahendra Mohan
17. Dr. Mahendra Prasad
18. Shri Y.P. Trivedi
19. Shri Rajeev Chandrasekhar

SECRETARIAT

- | | | |
|---------------------------------|---|---------------------|
| 1. Shri A.K. Singh | - | Joint Secretary |
| 2. Shri T. G. Chandrasekhar | - | Additional Director |
| 3. Shri Ramkumar Suryanarayanan | - | Deputy Secretary |
| 4. Smt. B. Visala | - | Deputy Secretary |

Part I
(1600 to 1640 hrs.)

WITNESSES

Ministry of Corporate Affairs

1. Shri R. Bandyopadhyay – Secretary
2. Shri P. D. Sudhakar – Special Secretary
3. Smt. Renuka Kumar – Joint Secretary

2. The Committee heard the views of the representatives of the Ministry of Corporate Affairs on the Chartered Accountants (Amendment) Bill, 2010, the Company Secretaries (Amendment) Bill, 2010 and the Cost and Works Accountants (Amendment) Bill, 2010.

3. The major issues discussed with the representatives included, necessity of the proposed amendment Bills, change proposed in the name of the Institute of Cost and Works Accountants of India to the Institute of Cost and Management Accountants of India, and consequent change of name of members of the Institute to 'Cost and Management Accountants', distinction in the roles of a Cost and Works Accountant and a Cost and Management Accountant, nomenclature of 'Cost and Works Accountants' in other Countries etc. The Chairman directed the representatives to furnish written replies to the queries raised by Members within a week.

The witnesses then withdrew.

A verbatim record of proceedings was kept.

Part II
(1645 to 1900 hrs.)

WITNESSES

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XX	XX	XX	XX

The Committee then adjourned.

Minutes of the Twenty fifth sitting of the Standing Committee on Finance

The Committee sat on Thursday, the 26th August, 2010 from 1500 hrs. to 1600 hrs.

PRESENT

Shri Yashwant Sinha - Chairman

MEMBERS

LOK SABHA

2. Shri C.M. Chang
3. Shri Harishchandra Chavan
4. Shri Khagen Das
5. Shri Bhartruhari Mahtab
6. Shri G. M. Siddeshwara
7. Shri Rayapati Sambasiva Rao
8. Shri Magunta Sreenivasulu Reddy
9. Shri Y.S. Jagan Mohan Reddy
10. Shri N. Dharam Singh

RAJYA SABHA

11. Shri Moinul Hassan
12. Shri S. S. Ahluwalia

SECRETARIAT

1. Shri A.K. Singh - Joint Secretary
2. Shri T.G. Chandrasekhar - Additional Director
3. Shri R.K. Suryanarayanan - Deputy Secretary
4. Smt. B. Visala - Deputy Secretary

2. The Committee took up the following draft Reports for consideration and adoption:-

- (i) Draft Report on the Companies Bill, 2009;
- (ii) Draft Report on the Coinage Bill, 2009;
- (iii) Draft Report on the Company Secretaries (Amendment) Bill, 2010;
- (iv) Draft Report on the Chartered Accountants (Amendment) Bill, 2010; and
- (iv) Draft Report on the Cost and Works Accountants (Amendment) Bill, 2010.

3. The Committee adopted the draft reports at (i) with the modifications/amendments as shown in Annexure and (ii) and (iv) above with minor modifications. The Committee adopted the remaining draft reports without any change.

4. The Committee authorized the Chairman to finalise the Reports in the light of the modifications suggested and present all the reports to Parliament in the current session.

The Committee adjourned at 1600 hours.