

A regulator to oversee the CA institute is necessary

Acting tough: Auditors can refuse to sign off if their concerns are not addressed by the management. Gettyimages/iStockAndreyPopov

The Union Cabinet has at last approved the proposal for establishment of the National Financial Reporting Authority as envisaged under section 132 of the Companies Act, 2013.

For well over five years, the section has neither been notified nor implemented. Since 1948, India's finances and audit have been left to the care of the The Institute of Chartered Accountants of India.

The JPC indicted chartered accountants for their role in the stock market scam of 1992. Fourteen leading firms were to have been proceeded against. The profession was not brought to book and the very same firms continued to get the patronage of the CAG, RBI and the Ministry of Finance.

Responsibility of CAs

Harshad Mehta, Ketan Parikh, the Satyam imbroglio and the latest scam involving our second-largest public sector bank — all exploded in public view, proving that all was not well with the way audits were being conducted. The Companies Act casts a responsibility on auditors to see that corporate accounts are in order. Auditors can choose not to sign the accounts if their concerns are not addressed by the management.

This is what happened in the case of Fortis Healthcare. That is rare. The Companies Act also allows auditors to report to the Centre if they believe an offence involving fraud is being committed by the company, by its officers or employees.

The Audit Committee of PNB included not only chartered accountants but also an IAS officer. Despite ICAI Guidelines, the CAs did not tally entries made in the Swift (Society for Worldwide Interbank Financial Telecommunications) software with those made in the core banking solution. The Institute's Guidelines specifically required auditors to check the records independently.

However, chartered accountants can turn out to be a charming lot. The Economist once referred to them as the "party with the deepest pockets." On occasion, a deviant CA can come up with ingenious devices to circumvent the law. He or she can help window-dress numbers and camouflage it as creative accounting. Under his or her watch, debt can be disguised as equity.

Off balance sheet financing can come in handy. Double accounting is now well known — one for the shareholder and one for the Income Tax Officer, which practice had led to the introduction of the minimum alternate tax (MAT).

It may be recalled that Dr. Raja Chelliah had held the profession responsible for the failure of the presumptive tax scheme.

The National Financial Reporting Authority (NFRA) was brought into the Companies Act on the specific recommendations of the Standing Committee on Finance. It will oversee the functioning of the ICAI and ensure credibility in financial reporting.

Its jurisdiction will cover investigation of chartered accountants and their firms covering both listed and unlisted public companies. The inherent regulatory role of the ICAI as provided for in the Chartered Accountants Act, 1969 will continue. Threshold limits will be modified.

Oversight provisions

Enron exploded onto the international financial scene and this led to the creation of the Public Companies Accounting Oversight Board (PCOAB) under the Sarbenes-Oxley Act, 2002.

American auditors are subject to external and independent oversight in order to protect investors and public interests by promoting informative, accurate and independent audit reports.

After the Enron and the Worldcom scandals, the U.K. used an independent regulator, the Financial Reporting Council (FRC), transforming a system of self regulation into a mixed system in which FRC and professional bodies have major responsibilities.

The setting up of the NFRA has been delayed beyond time. The government is answerable for not having notified the law since 2013. The Bourbons, it is said, learnt nothing and forgot nothing. Will this maxim apply to the situation prevailing in India?

(The writer is a former Chief Commissioner of Income Tax and an advocate)

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