

KEY RESPONSIBILITIES ENTRUSTED TO ACCOUNTANTS IN THE COMPANIES' ACTS AND LEGISLATIONS

A GLOBAL PERSPECTIVE

*By: Muhammad Iqbal Ghori, FCMA, Chairman, Research and Publications Committee
Muhammad Kamran Jamil, Director, Research and Publications
Shahid Anwar, Joint Director, Research and Publications*

Abstract

This paper briefly analyses the specific role and key responsibilities entrusted to the Accountants, both Chartered Accountants and Cost and Management Accountants, in the companies' legislations of different countries, with special focus on their roles in incorporation of companies, audit of cost records, company management, certification, as well as in winding up and judicial matters related to dispute resolution and Tribunals etc. The purpose of this research is to provide a global perspective on the diversified role of accountants in management, administration and control of companies, for the consideration of policy makers in Pakistan to help them to assign similar role to Accountants, while developing a new Companies Act, 2015 for regulation of companies.

Keywords: Companies Act, Cost and Management Accountant, Chartered Accountant, Public Accountant, Certificate of Practice, Qualification, Expert, Official Liquidator, Tribunal, Judicial Member, Certification,

Preamble

The Companies Act contains laws relating to companies and provides the guidelines for the management, administration and control of companies. Every country drafts its companies legislations based upon the local circumstances and economic conditions. The history of companies law in the sub-continent is much older than the history of Pakistan. In fact, the concept of company developed by the end of 19th century i.e. after 1850s during which era several company legislations were introduced. The first Act was passed in British India in 1850 for the registration of joint stock companies. **In 1913**, the Companies Act, 1913 was passed in British India, which was, in fact a replica of the English Companies (Consolidation) Act, 1908. When Pakistan came into being in 1947, it adopted the Indian Companies Act of 1913 with some minor amendments. **In 1959**, a Company Law Commission was formed to review the Companies Act, 1913 whose report was published in 1962. Its recommendations were duly incorporated in the Companies Ordinance, 1984, which replaced the Companies Act of 1913.

Subsequently, **in 1991**, a Review Committee was formed by the government under the Chairmanship of Mian Mumtaz Abdullah, the then Chairman of Corporate Law Authority (now SECP) and former President, Institute of Cost and Management Accountants of Pakistan. This Review Committee submitted its report to the government in 1993. Its recommendations were incorporated in the law through an ordinance promulgated by a caretaker government, however, the ordinance lapsed and the recommendation could not be placed before the parliament. Thereafter **in 1997**, another Commission was formed under the chairmanship of Justice (Retd.) Shafi ur Rehman which presented its report in the same year. Some of its important recommendations were incorporated in the Companies (Amendment) Act, 1999. **In 2001**, a committee formed by the SECP reviewed the CO 1984 and its recommendations were included in the Companies (Amendment) Ordinance, 2002. **In 2005**, the SECP constituted a 'Corporate Law Review Commission (CLRC) under the chairmanship of Mr. Ajmal Mian, former Chief Justice of Pakistan. The CLRC submitted a 'Concept paper' in 2012 to formulate a conceptual framework for the development and regulation of corporate sector. Finally, in April 2015, the SECP constituted a Committee to review/ revamp the CO 1984 in light of CLRC's concept paper and development that had taken place in other countries. The said Committee has developed and released a draft 'Companies Bill, 2015' for public consultation.

Companies Acts - A Global Perspective

In this Research paper, we would be looking at the key responsibilities entrusted to the Accountants, both chartered accountants and cost and management accountants, in the companies legislations of different countries. A list of Companies Acts of these countries is given in Table-1. The key responsibilities that we have found during this research in various companies legislations are summarized as under:

- 1) Role of Accountants as 'Experts'
- 2) Role of Accountants in 'Incorporation of Companies'
- 3) Role of Accountants in 'Audit of Cost Records' of companies
- 4) Role of Accountants as 'Official Liquidator'
- 5) Role of Accountants as 'Judicial Manager' or 'Company Administrator'

- 6) Role of Accountants as 'Company Secretary'
- 7) Role of Accountants in 'Companies Tribunal'
- 8) Role of Accountants as 'Internal Auditor'
- 9) Certifying Role of Cost Accountants in Pakistan and India

Table 1: Existing Companies Acts/ Legislations in different countries			
No.	Country	Title of Act	Year of Enforcement
1	Pakistan	Companies Act, 2015 (draft)	In Process
2	India	Companies Act, 2013	2013
3	Bangladesh	Companies Act, 1994	1994
4	Sri Lanka	Companies Act, 2007	2007
5	Nepal	Companies Act, 1997	1997
6	Bhutan	Companies Act, 2001	2001
7	Australia	Corporations Act, 2001	2001
8	UK	Companies Act, 2006	2006
9	Ireland	Companies Act, 2014	2014
10	New Zealand	Companies Act, 1993	1993
11	Singapore	Companies Act, 2006	2006
12	South Africa	Companies Act, 2008	2008

Source: Websites of Companies Regulatory bodies

Definitions of 'Chartered Accountant' and 'Cost Accountant'

In SAARC countries, only the Indian Companies Act, 2013 provides separate definitions for 'Chartered Accountant' and 'Cost Accountant' whereas the Draft Companies Act 2015 of Pakistan (which is going to repeal the existing Companies Ordinance 1984) does not provide any definition of 'Cost Accountant'. Under the Indian Companies Act 2013, a 'Chartered Accountant' has been defined as one who is a member of Institute of Chartered Accountants of India (ICAI) and 'holds a valid certificate of practice'; whereas a 'Cost Accountant' means a cost accountant who is a member of Institute of Cost and Works Accountants of India (ICAI). The relevant clauses of both Pakistani and Indian Acts are given in Table-2.

It may be mentioned here that the Companies Ordinance, 1984 did not mention any definition for 'Chartered Accountant', however in the draft Companies Act 2015, a new definition of 'Chartered Accountant' has been proposed by especially mentioning that those 'who hold a Certificate of Practice under Chartered Accountants Ordinance, 1961, apparently by taking clue from the Indian Companies Act of 2013. In this context, it is suggested that a separate definition of 'Cost Accountant' may also be provided in the draft Companies Act, 2015 as follows to accord equal representation to both professions:

'Cost Accountant' means a cost and management accountant within the meaning of the Cost and Management Accountants Act, 1966 (XIV of 1966); and who holds a Certificate of Practice under that Act.

It is also possible that definition of both 'Chartered Accountant' and 'Cost Accountant' may be merged under a new head 'Accountant' in the Draft Companies Act 2015 with following wordings:

'Accountant' means a 'Chartered Accountant' within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961) holding a Certificate of Practice under that Ordinance; and a 'Cost and Management Accountant' within the meaning of Cost and Management Accountants Act, 1966 (XIV of 1966); holding a Certificate of Practice under that Act'.

Table 2 : Definition of Chartered Accountant and Cost Accountant in Indian and Pakistani Companies' Acts

Country	Definition of 'Chartered Accountant'	Definition of "Cost Accountant"
Indian Companies Act 2013	'Chartered Accountant' means a chartered accountant as defined in clause (b) of Sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act;	Cost Accountant means a cost accountant as defined in clause (b) of subsection (1) of section 2 of the Cost and Works Accountants Act, 1959;
Pakistani Draft Companies Act 2015	'Chartered Accountant' means a chartered accountant within the meaning of Chartered Accountants Ordinance, 1961 (X of 1961) and who holds a Certificate of Practice under that Ordinance;	Not Defined

ICMAP analysis reveals that the Companies Act, 1994 of Bangladesh; the Companies Act, 2007 of Sri Lanka; the Companies Act, 1997 of Nepal and the Companies Act, 2001 of Bhutan do not provide any definition either for 'Chartered Accountant' or 'Cost Accountant'. However, it is noted that in the Companies Act, 2006 of Singapore a term "accounting entity" has been defined as 'a public accountant, an accounting corporation, an accounting firm or an accounting limited liability partnership'. Similarly, the Corporations Act, 2001 of Australia defines 'Qualified Accountants' under its Section 88B as those persons who are 'members of a specified professional body or all persons in a specified class of members of a specified professional body', as declared by Australian Securities and Investments Commission (ASIC).

Role of Accountant as 'Expert'

The Companies' Acts of Pakistan, India, Bangladesh and Sri Lanka include provision with regard to the role and responsibility

of Accountant as '**Experts**', along with other professionals viz. engineer, valuer, company secretary and auditor. The Draft Companies Act 2015 (Pakistan) proposes a separate meaning of term 'expert' under sub-section 1(29) of Section 2 'Definitions', duly recognizing the role of '**cost and management accountant**' along with the chartered accountant and other experts. It may be pointed out here that the existing Companies Ordinance, 1984 only mentions the word 'accountant' in explanation of 'expert' as given in sub-section 2 of Section 56. The Indian Companies Act, 2013 also specifically mentions the 'cost accountant' along with other professionals as experts. The companies legislations of Bangladesh and Sri Lanka, however, only mentions the word 'Accountant' in the definition of 'experts'.

Table-3 provides a comparison of definitions of 'experts' in the Companies Acts of SAARC:

Table 3 : Definition of 'Experts' in Companies Acts of SAARC countries

Country	Title of Act	Relevant Section	Definition of "Experts"
Pakistan	Draft Companies Act, 2015	2(29)	" expert " Includes an engineer, a valuer, a chartered accountant or a cost and management accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for time being in force;
India	Draft Companies Act, 2013	2(38)	" expert " Includes an engineer, a valuer, a chartered accountant a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for time being in force;
Bangladesh	Companies Act, 1994	136, 137, 139	For the purposes of this section 139 and section 136 and 137, the expression " expert " includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him.
Sri Lanka	Companies Act, 2007	38 (3)	For the purposes of this section, the term " expert " includes an engineer, a valuer, an auditor, an accountant and any other person having similar professional qualifications.

The Companies legislations of other countries mostly do not provide the definition of 'experts', however, the Companies Act, 2006 of Singapore; Corporations Act, 2001 of Australia and Companies Act, 2008 of South Africa do mention the meaning of experts as under:

- "**expert**" includes engineer, valuer, **accountant** and any other person whose profession or reputation gives authority to a statement made by him; (**Companies Act, 2006, Singapore**)
- "**expert**" in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter (**Corporations Act 2001, Australia**)
- "**expert**" means (i) a geologist, engineer, architect, quantity surveyor, valuer, **accountant** or auditor; or (ii) any person who professes—(aa) to be a person referred to in subparagraph (i); or (bb) to have extensive knowledge or experience, or to exercise special skill which gives or implies authority to a statement made by that person; (**Companies Act, 2008, South Africa**)

The **draft Companies Act, 2015 (Pakistan)** provides the role of expert under Section 293 (1) which says that "The Commission shall maintain a **panel of experts** to be called as the **Mediation and Conciliation Panel** consisting of such number of experts having such qualifications as may be specified for mediation between the parties during the pendency of any proceedings before the Commission or the Appellate Bench or the Court under this Act". This is a new section inserted in the draft Companies Act 2015, which did not exist in the present Companies Ordinance, 1984. ICMAP research indicates that this new Section 293 (1) is a replica of Section 442 (1) of the Indian Companies Act, 2013 which is reproduced below:

"**442. (1)** The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act". (**Companies Act, 2013, India**)

Role of Accountants in ‘Incorporation of Companies’

The Companies’ Acts of Pakistan and India provide specific role to the ‘Chartered Accountants’ as well as ‘Cost Accountants’ in incorporation of new companies i.e. in filing of memorandum and articles of association with the Registrar of Companies. Both the Companies Acts’ call for submission of a declaration by Chartered

Accountants and/or Cost and Management Accountants to the effect that all requirements, rules and regulations of respective Acts have been complied with (see Table- 4).

The Companies Acts of Bangladesh and Sri Lanka, however, mention that the written declaration required for company’s incorporation should be from Advocate and Director, respectively, instead of Accountant.

Table 4 : Role of Chartered and Cost Accountants in Incorporation of Companies

Country	Title of Act	Relevant Section	Reproduced text of Relevant Section
Pakistan	Draft Companies Act, 2015	20 (a)	<p>20. Registration of memorandum and articles, etc.- (1) There shall be filed with the Registrar an application on the specified form containing the following information and documents for incorporation of a company, namely:-</p> <p>(a) a declaration on the specified form, by an advocate or a chartered accountant, or cost and management accountant, who is engaged in the formation of the company, or by a person named in the articles as a director, of compliance with all or any of the requirements of this Act and the rules and regulations made thereunder in respect of registration and matters precedent or incidental thereto.</p>
India	Companies Act, 2013	7 (1) (b)	<p>7. (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:-</p> <p>(a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;</p> <p>(b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;</p>
Bangladesh	Companies Act, 1994	25(2)	<p>25. Conclusiveness of certificate of incorporation: (1) A certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with and that the association is a company authorised to the registered and duly registered under this Act.</p> <p>(2) A declaration by an advocate entitled to appear before the High Court Division who is engaged in the formation of a company or by a person named in the articles as a director manager or secretary of the company of compliance with all or any of the said requirements shall be filed with the Registrar and the Registrar may accept such a declaration as sufficient evidence of compliance.</p>
Sri Lanka	Companies Act, 2007	40 (1) (b)	<p>40. (1) No prospectus shall be issued by or on behalf of a company or in relation to a company to be formed, unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy of such prospectus signed by every person who is named in such prospectus as a director or proposed director of the company, or by his agent authorised in writing, and having endorsed thereon or attached thereto-</p> <p>(a) written consent from an expert to the issue of the prospectus as required by section 38;</p> <p>(b) a declaration made and subscribed to by every person who is named in such prospectus as a director or a proposed director of the company, to the effect that he has read the provisions of this Act relating to the issue of a prospectus and that those provisions have been complied with;</p>



Role of Accountants in ‘Audit of Cost Records’

The Companies’ Acts of Pakistan, India and Bangladesh include provisions for audit of cost records by the Accountants. It may, however, be noted that in India and Bangladesh, only the **Cost Accountants** have been granted entitlement for audit of cost accounts of companies, whereas in Pakistan, the Chartered Accountants are also allowed along with cost and management accountants to perform statutory cost audit. The government of

Bangladesh, through an order dated December 3, 2005 of Commerce ministry has made it mandatory that cost audit be conducted only by a cost and management accountant as per CMA Ordinance 1977. The Companies Acts of other countries do not provide any such provision.

Table - 5 shows the relevant clauses of Companies Acts of Pakistan, Bangladesh and India.

Table 5 : Role of Accountants in Audit of Cost Records of Companies			
Country	Title of Act	Relevant Section	Reproduced text of Relevant Section
Pakistan	Draft Companies Act, 2015	252	252. Audit of cost accounts. - Where any company or class of companies is required under first proviso of sub-section (1) of section 224 to include in its books of account the particulars referred to therein, the Federal Government may direct that an audit of cost accounts of the company shall be conducted in such manner and with such stipulations as may be specified in the order by an auditor who is a chartered accountant within the meaning of the Chartered Accountants Ordinance, 1961 (X of 1961), or a cost and management accountant within the meaning of the Cost and Management Accountants Act, 1966 (XIV of 1966); and such auditor shall have the same powers, duties and liabilities as an auditor of a company and such other powers, duties and liabilities as may be prescribed.
India	Companies Act, 2013	148(2)	148. (2) If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order. (3) The audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed: Provided that no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records: Provided further that the auditor conducting the cost audit shall comply with the cost auditing standards. <i>Explanation.</i> —For the purposes of this sub-section, the expression “cost auditing standards” mean such standards as are issued by the Institute of Cost and Works Accountants of India, constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government. (4) An audit conducted under this section shall be in addition to the audit conducted under section 143.
Bangladesh	Companies Act, 1994	220	220. Audit of certain matters by Cost and Management Accountants. - (1) where in the opinion of the Government, it is necessary to do in relation to any company required under clause-(d) of sub-section (1) of section 181 to include in its books of accounts the particular referred to therein the Government may, by order, direct that an audit of cost accounts of the company shall be conducted in such manner as may be specified in the order by an auditor who shall be a Cost and management accountant within the meaning of the Cost and Management Accounts Ordinance, 1977 (L III of 1977). (2) An audit conducted by an auditor under this section shall be in addition to an audit conducted by an auditor appointed under section 210. (3) The provisions relating to audit of a company specified in this Act mutatis mutandis, and so far as they are applicable, apply to an audit conducted under this section.

The Indian Companies Act 2013 has provided legal protection to the practicing ‘Cost Accountants’ to work independently, whereas the Companies Acts of Pakistan and Bangladesh are silent on this aspect. There are, however, separate rules on cost audit in Pakistan and Bangladesh which provide the procedures for conduct of audit of cost records of companies in selected industries by practicing cost accountants such as ‘Cost Audit (Report) Rules, 1997 of Bangladesh and Companies (Audit of Cost Accounts) Rules 1998 of Pakistan.

The Indian Companies Act, 2013, under sub-section (5) of Section 148, has made it mandatory for the companies to provide all assistance and facilities to the ‘cost auditor’ in auditing the cost records of company. The cost audit report is submitted by the cost auditor to the Board of Directors of Company, which is then

required to furnish a report along with full information and explanation on every reservation or qualification contained in cost audit report to the Central Government within 30 days from date of its receipt.

The Indian Companies Act further empowers a ‘Cost Accountant’ conducting cost audit of company, that while performing his duty, if he has reason to believe that an offence involving fraud is being/ has been committed against the company by its officers/ employees, he shall immediately report it to the Central Government. Under sub-section 14 of Section 143 of Indian Companies Act, 2013, the cost accountant in practice conducting cost audit under section 148 and/or the company secretary in practice conducting secretariat audit under section 204 has been referred on which the above provisions shall apply.

In case, any auditor, cost accountant or company secretary in practice fails to comply with this provision i.e. do not report any fraudulent act to the central government, he shall be punishable with fine which shall be between one lakh rupees and twenty five lakh rupees.

Role of Accountants as ‘official Liquidator’

A ‘Liquidator’ is defined as ‘a person appointed to wind up the affairs of a company. The companies Act of many countries provide provision for ‘accountants’ to act as official liquidator for companies. Let’s have a look at the companies act of few major countries vis-à-vis the role of chartered and cost accountants.

Pakistan : The existing Companies Ordinance, 1984 in Section 231 “Official Liquidators” mentions that the Court shall appoint a ‘provision manager’ or ‘official liquidator’ from a ‘panel of persons’ recommended by the SECP. The draft Companies Act, 2015, however, in sub-section (3) of Section 332 (3) “Appointment of Official Liquidator” specifically proposes the composition of the aforesaid ‘Panel of persons’ which includes the chartered accountants, cost and management accountants, company secretaries and such other persons as may be specified by the Commission (SECP). The only condition is that they should have at least ten years experience in company matters. **The appointment of CMAs as ‘official liquidator’ of companies would open new avenue for our practicing management accountants.**

India : According to Section 275 (2) of Indian Companies Act, 2013, the cost accountants, along with chartered accountants, company secretaries, advocates and other professionals notified by the Central government, can be appointed by the Tribunal as ‘official liquidator’ or ‘company liquidator’.

Furthermore, under Section 291 of Companies Act 2013, “Provision for professional assistance to Company Liquidator”, the company liquidator appointed by the Tribunal has been empowered to appoint one or more chartered accountants or cost accountants or company secretaries or legal practitioners or such other professional, to assist him in the performance of his duties and functions under this Act.

The Indian Companies Act 2013 also makes provision for ‘cost accountants’ to be appointed as ‘**Authorized Representative**’ of a person in case of winding up proceedings under Section 300 (4) (b) which states:

Quote: (b) may at his own cost employ chartered accountants or company secretaries or **cost accountants** or legal practitioners entitled to appear before the Tribunal under section 432, who shall be at liberty to put to him such questions as the Tribunal may consider just for the purpose of enabling him to explain or qualify any answers given by him. **Unquote**

Bangladesh : The Companies Act 1994 of Bangladesh does not specifically mention the appointment of accountants as official liquidator. Under Section 255 of the said Act, the Court may appoint ‘a person or persons’ other than the official receiver, to be called an ‘official liquidator’ or ‘official liquidators’ for the purpose of conducting the proceedings in winding up a company.

Nepal : The Nepalese Companies Act, 1997 also does not provide any provision for appointment of accountants as official liquidator. Under Section 103 of the said Act, the Office of the Company Registrar, while issuing an order to liquidate a company, shall appoint a ‘liquidator’ to conduct liquidation proceedings.

Sri Lanka : Section 285 of the Companies Act, 2007 of Sri Lanka calls for the appointment of liquidator or liquidators by the Court for the purpose of winding up proceedings of company. However, it also does not specifically mentions the name of professionals e.g. accountants, advocates, etc

Role of Accountants as ‘Judicial Manager’ or ‘Company Administrator’

ICMAP research indicates that the **Companies Act 2006 of Singapore** and the **Companies Act, 2013 of India** have a unique provision of appointing ‘**Accountant**’ as ‘Judicial Manager’ or ‘Company Administrator’ in companies who creditor (s) file application in the Court that the said company has failed to pay their debts.

Under Section 227B of Companies Act, 2006 of Singapore, a company or its directors or creditor or creditors can submit an application in the Court to pass a judicial management order to place the company under judicial management of a ‘judicial manager’. Under the relevant provision of the Act, the applicant shall have to nominate a person who should be a ‘**public accountant**’, and not the auditor of the company, to act as a judicial manager. This kind of special provision could not be found in Companies Acts of other countries. Furthermore, in the Eleventh Schedule of Companies Act, 2006 of Singapore, under the title of ‘Powers of Judicial Manager’, there is a provision that the judicial manager may also ‘appoint a ‘solicitor or **accountant** or other professionally qualified person to assist him in performance of his functions’.

Similarly, **under Section 258 of Indian Companies Act, 2013,** the secured creditors (representing fifty percent or more of outstanding amount of debt) of a company which has failed to pay the debt, can file application in the Tribunal for a determination that the company be declared a ‘sick company’. If the Tribunal has enough evidence to prove that it is not possible to revive and rehabilitate the said company, it can order to initiate proceedings for winding up the company. However, if the Tribunal is of the firm opinion that the company can be revived by adopting certain measures, it can appoint a ‘company administrator’ for the company and cause such administrator to take over the assets or management of the company and prepare a scheme of revival and rehabilitation of the sick company. It is also at the discretion of the Tribunal to appoint an ‘Interim Administrator’ as the Company Administrator.

Under Section 259 of Indian Companies Act, it has been specified that “the interim administrator or company administrator shall be appointed by the Tribunal from a data bank maintained by the Central Government or any Institute or Agency authorized by the Central Government, consisting of names of company secretaries, **chartered accountants, cost accountants** and such other professionals notified by government”

Role of Accountants as ‘Company Secretary’

The **Companies Act, 2006 of United Kingdom** under Section 273 titled ‘Qualifications of Secretaries of Public Companies’ mentions qualifications of secretaries of public companies which, inter alia, includes Chartered Accountants; Chartered Certified Accountants; Chartered Secretaries and Administrators; and Management Accountants, in addition to a barrister, advocate or solicitor. Sub-section (3) of Section 273 specifically mentions the names of members of the following professional bodies:

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Association of Chartered Certified Accountants;
- (d) the Institute of Chartered Accountants in Ireland;
- (e) the Institute of Chartered Secretaries and Administrators;
- (f) the Chartered Institute of **Management Accountants**;
- (g) the Chartered Institute of Public Finance and Accountancy.

The companies legislations of other countries do not provide specific provision for appointing chartered or management accountants for the position of company secretary. Mostly, the companies acts defines that the company secretary should have 'prescribed qualification' or he should be member of 'Institute of Company Secretaries. However, the Companies Act, 1997 of Nepal provides under Section 142 that 'a public company which has issued capital of ten million rupees or more shall have to appoint to the post of the company secretary a Nepalese citizen who has done at least Bachelor degree in Law, Management or Commerce.

Role of Accountants in 'Companies Tribunal'

The Indian Companies Act, 2013, under Section 408, calls for the constitution of a '**National Company Law Tribunal**', comprising of a President, who should be or has been a Judge of High Court for five years; and such number of '**Judicial and Technical members**' as may be appointed by the Central Government. As per Section 409 (3), there are specified several qualification which can be appointed as 'Technical Member' on National Company Law Tribunal, which also includes practicing **Chartered Accountants, Cost Accountants** and Company Secretaries for at least fifteen years. Other professionals having fifteen years experience in law, industrial finance, industrial management or administration, industrial reconstruction, investment, **accountancy**, labour matters or such other disciplines related to management, conduct of affairs, revival, rehabilitation and winding up of companies etc, are also eligible to be appointed as Technical member.

Cost Accountants can also appear before the Tribunal. Under Section 432 of Indian Companies Act, 2013, a party to any proceeding or appeal before the Tribunal or the Appellate Tribunal may either appeal in person or authorize one or more **Chartered Accountants or Cost Accountants** or Company Secretaries or Legal Practitioners or any other person to present his case before the Tribunal or Appellate Tribunal.

The **Companies Act, 2008 of South Africa** has also provision for formation of 'Companies Tribunal' to resolve disputes related to company affairs. Under Section 194 of said Act, the Minister, who is a member of the Cabinet responsible for companies, can appoint the Chairperson and other members of the Tribunal with suitable qualifications and having experience in economics, law, commerce, industry or public affairs.

Role of Accountants as 'Internal Auditor'

The **Indian Companies Act, 2013** has a special provision, not found in the companies legislations of other countries, of appointing chartered accountants or cost accountants as 'internal auditor' of the company. Section 138 of the Indian Companies Act deals with internal audit of companies and states that "certain classes of companies 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". This is a new Section introduced in the Indian

Companies Act. The Ministry of Corporate Affairs of India have published rules under the above relevant section of Companies Act, 2013 which calls for appointment of internal auditor for every 'listed company' and every 'public company' with a paid up capital of INR 100 million or more.

The existing Companies Ordinance, 1984 and the draft Companies Act, 2015 of Pakistan do not have any provision with regard to appointment of internal auditor. However, the Code of Corporate Governance 2012 of Pakistan does specify qualifications for appointment of internal auditor. Under Clause (xiv) of the Code, no person shall be appointed as the Head of Internal Audit of a 'listed company' unless he/she has five years of relevant audit experience and is either member of a recognized body of professional Accountants, or a Certified Internal Auditor or a Certified Fraud Examiner or a Certified Internal Control Auditor.

“ It is suggested that the Securities and Exchange Commission of Pakistan (SECP) may consider to include in the draft Companies Act, 2015, similar provision as in the Indian Companies Act, to allow appointment of Chartered Accountants and Cost and Management Accountants for the position of Internal auditor. This would especially open new avenues for CMAs to utilize their professional skills in successful operation of the listed companies in Pakistan. ”

Certifying Role of Cost Accountants in Pakistan and India

The **Indian Companies Act, 2013** and the **Pakistani Companies Act, 2015** incorporate relevant provision for the cost and management accountant to play role in certifying statements. Under **Section 232 (7)** of the Indian Companies Act, a cost accountant (along with chartered accountant) can certify the statement to be filed with the Registrar in case of compromise or arrangement under reconstruction or merger of amalgamation. This provision gives special responsibility to Indian cost accountants in certifying compliance of the order given by the National Companies Law Tribunal (NCLT).

Similarly, under **Section 73(b)** of draft Companies Act, 2015 of Pakistan, a practicing cost and management accountant, along with the chartered accountant, has been empowered to issue a certificate to a company, which is intending to file a return of share allotment (as paid up in cash) with the Registrar. The certificate shall certify that the amount of consideration has been received in full by the company and share certificates have been issued to each allottee. This certificate is submitted by the company to the Registrar along with the return of allotment.

References

Draft Companies Bill, 2015 of Pakistan and Companies Acts and legislations of India, Bangladesh, Sri Lanka, Nepal, Bhutan, Australia, Canada, Ireland, New Zealand, Singapore, South Africa and UK.