



PICTURE MEMORIES OF  
DECADE 2002 TO 2012



# INDORE BRANCH OF CIRC OF ICAI NEWSLETTER

January, 2021 ► Price ₹ 20



## Chairman's Communiqué

**CA. Harsh Firoda**  
(Chairman)



At the outset, hearty wishes for a very Happy, Prosperous and Joyful New Year to all of you and family Members!

A proud moment when the Constitution of India came into existence is celebrated as the Indian Republic Day on 26 January every year. The entire country celebrates the day with utter enthusiasm and patriotism. Let us also celebrate 26th January at branch.

We are proud practicing professionals for the fact that we collectively assisted our clients in the last month of restlessness. And so, this month let us focus on health & physical activity by participating in sports tournament.

Great opportunities to help others seldom come, so I request every member to contribute to CABF fund. And it is good that help to family members of chartered accountant under CABF is increased.

Let us also set example if in case any help is required by any family member of fraternity due to any health or other issue.

The Family should get respectable amount per month which is possible only if all of us become life member of CABF. This will set example for all other profession, that we are self-sufficient.

This month's newsletter edition covers all the articles written by women members including Golden Edition Memories.

I also request members to see the You Tube Channel CA Rachna Ranade which already have 17.7 lakh subscriber. She has also recently appeared on CNBC TV 1\* on interview thus making building our brand.

Lastly, Indore Branch is proud to invite details of members for publishing Members' Directory 2020 on entering the Golden Jubilee Year of its establishment.

Stay Safe and Healthy



### MANAGING COMMITTEE

**CA. Kirti Joshi** (Vice-Chairman) **CA. Gaurav Maheshwari** (Secretary) **CA. Ankush Jain** (Treasurer)

**CA. Samkit Bhandari** (CICASA Chairman) **CA. Pankaj G. Shah** (Imm. Past Chairman),

**CA. Anand Jain** (Media & Digital Comm. Chairman)

Ex. Officio Member : **CA. Kemisha Soni** (CCM), **CA. Nilesh Gupta** (RCM), **CA. Churchill Jain** (RCM)



### **CA. Kemisha Soni**

Chairperson - ESB & WMED, ICAI

The story of Indore Branch from a small office to the present ICAI Bhawan has been a story of perseverance and dedication.

Indore Branch of CIRC of ICAI has entered in the Golden Jubilee Year of its establishment and it gives me immense pride that the Indore Branch of Central India Regional Council (CIRC) of the Institute of Chartered Accountants of the India (ICAI) has paved the path of commitment and integrity.

As we celebrate the Golden Jubilee year, my heartfelt sincere gratitude to the senior members of the profession whose continuous efforts have led towards the moments of glory and pride of Indore Branch.

As such this Golden Jubilee year is an occasion to not only bask in the professional glory but also introspect and leap into a future of endless possibilities and Indore Branch has miles to go.....

*The woods are lovely, dark and deep,  
But I have promises to keep,  
And miles to go before I sleep...*

This is a very famous phrase by Robert Frost, in his poem - Stopping By Woods on a Snowy Evening, this phrase points the realization of the poet regarding his duties and responsibilities to fulfil before going to sleep.

My best wishes and compliments for the bright progress of Indore Branch of ICAI. I am sure that Indore Branch will do the best for the betterment of its members and students.

Message



## DOWN THE MEMORY LANE



I am pleased to share my experience with the fellow members about my term in the managing committee from 1994 to 1996.

Interestingly, my tenure was unconventional and here's what will explain why.

I was invited to the committee as the first woman representative in 1994. It was indeed a great opportunity for me especially back then when professionals in Indore were not very conversant with the women in the fraternity.

In 1995, I held the post of Secretary to the Branch situated at Urvashi Complex that time. This role was right up my street as it involved clear communication skills as while working with PWC, Mumbai I had honed my drafting skills post qualification.

In the next year, when the Vice Chairman was not willing to serve as the Chairman, the members showed their inclination to elect me as the Chairperson. It was a tempting proposition to be the first woman to head Indore Branch. However, I declined the post due to personal reasons. I was carrying a child at that time and it was not feasible to justify this responsible role of the noble Institute in that condition. Even though, the committee members convinced me to continue Secretaryship as it could be handled remotely. The concept of 'work from home' was uncommon formerly, but our committee dealt with this very proficiently. I do express my gratitude towards all the members who offered their support during that time.

Not only academic qualification but the appropriate opportunities given to the right candidates lead to self-development and group accomplishments; given the platform like Branch Operational Management. This notion has been proven by our Branch year after year by winning the Best Branch Awards.

I am privileged to be one brick of the elevated, beautiful building of the Indore Branch of CIRC of ICAI.

**CA. Mrinalini Biyani**

The first Women's day of the Indore branch was started from my tenure and I am elated to inform that the seed which we had sown has become a large tree as now more than 1/3<sup>rd</sup> of members of Indore branch are female. I congratulate the branch managing committee for grand celebrations of Golden Jubilee of our Alma mater.



**CA. Sheetal Jain**



It is a matter of pride for me to be a past chairman of such an incredible branch of ICAI. Indore branch of ICAI has achieved many milestones and achievements and, the completion of 50 years of existence adds another feather to the hat. I was very fortunate to hold a NATCON of ICAI at TGB, Indore during, my tenure as chairmen of the branch. "Every accomplishment starts with the decision to try."

I congratulate all the past and current committee members of the Indore branch for their decision to try. Congratulations to the Indore branch of ICAI on fifty years of unforgettable moments.

**CA. Garjana Rathore**



# MP MSME DEVELOPMENT POLICY 2019



CA Pooja Khathuria

## Operative period of the Policy and work areas

- 1 This Policy shall come into effect from 01.10.2019.
- 2 This policy will continue till the time replaced by the new policy.
- 3 The MSME units commencing commercial production after 30.09.2019 shall be eligible to avail benefits only under this policy. After the enforcement of this policy, the option of availing facilities/benefits for MSME promotion scheme 2017 will be closed for new manufacturing units which commence production on or after 01.10.2019. Units, which commence production before 01.10.2019 would be eligible to avail concessions under the MSME Development Policy 2017 or any earlier relevant policies.

## DISTRICT LEVEL ASSISTANCE COMMITTEE

Following committee at District level under the chairmanship of District Collector will be responsible to extend the concessions to the eligible MSMEs under the provisions of this policy :-

1. District Collector - Chairman
  2. Lead District Manager - Member
  3. General Manager - Member Secretary
- District Trade & Industries Centre  
Concessions (Both for New Industries and Existing industries on expansion)
1. 40% Subsidy on eligible investment made in Plant and Machinery and land and building (cost of building

not to exceed investment in plant and machinery for calculation of subsidy except in case of pharma industries where cost of building not to exceed two times of investment in plant and machinery).

2. Addition 2% incentive for per year for unit set up by women entrepreneur / SC/ ST (100% shareholding by women) or 2.5% incentive for per year for unit set up by SC/ST women entrepreneur.

3. Additional 2% incentive per year for unit exporting at least 25 % of export turnover and up to 50% and Additional 3% incentive for unit exporting more than 50% of turnover from export.

4. Subsidy to be given for four years. Eg. If a company owned by 100% women shareholders having more than 50% of export turnover will be eligible for 60% subsidy and per year 15 % assistance will be provided up to four years

There is no restriction to avail other incentive of central government assistance available to industries like tufts for textiles etc

## Other assistance provided in the scheme

1. Support in Quality Certification
2. Reimbursement for Patent
3. Assistance for Infrastructural development
4. Assistance for Energy audit
5. Special package to Powerloom, Pharma & Apparel Sector
6. Revival of Sick units

## IMPORTANT DEFINITIONS UNDER SCHEME

**Investment in plant and machinery** means as per Micro, Small and Medium Enterprises Development Act, 2006 (amendment from time to time Inclusive).

**Investment in building means investment in factory buildings & sheds**, which is used for production but shall not include dwelling units.

**New industrial unit** means such manufacturing unit of MSME category, which are established during the policy period.

**Existing industrial unit** means, a industrial unit which commenced commercial production before 01.10.2019 or new industrial units which made expansion/diversification/technical upgradation during the policy period.

**The State Government** means the Micro, Small and Medium Enterprises Department of Government of Madhya Pradesh.

**District Trade & Industries Centre** means the district level office of MSME Directorate under the Micro, Small and Medium Enterprises Department of Government of Madhya Pradesh.

## LIST OF INELIGIBLE INDUSTRIES UNDER THIS POLICY

1. Activities pertaining to trading and services
2. Beer and liquor which contains alcohol
3. Manufacturing of all kinds of pan masala and gutkha
4. Manufacturing of Tobacco and tobacco based products
5. Manufacturing of plastic bags of thickness 40 micron or lesser and all type of polythene bags.
6. Industrial units set up by central or state government or their undertaking
7. Stone crusher
8. Grinding of minerals, Calcination (Excluding manufacturing of artificial sand from crushed stone)
9. Defaulter of state government/state government undertaking

10. All types of mining activity (where there is no value addition)
11. Manufacturing of Charcoal
12. All type of Solvent extraction plant (Excluding edible oil expeller units, which invested Rs. 1 crore or less in plant & machinery)
13. All type of oil refineries
14. Cement /Clinker manufacturing
15. Publishing and Printing processes of all types
16. Saw milling & planing of wood
17. Pressing of iron/steel scrap into blocks or any other shapes
18. Electricity generation units
19. Package drinking water
20. Sortex plant and Sorting/Grading/Cleaning of crops/grain
21. All types of aerated/ carbonated drinks
22. Slaughter house and industries based on meat
23. Any industry declared by state government from time to time with reference to MP MSME Development Policy 2019

## OTHER IMPORTANT FACTS:

On the date of application for sanction of subsidy by unit/ agency/ organization/ investor, it is mandatory that the operations/ work/ production are established by unit/ powerloom unit/ private industrial area/ multistory industrial premises/ MSME built in cluster industrial structure/ waste treatment plant/ public waste treatment plant. Also, it is mandatory to keep going the operation/ work/ production for 4 years or facility period, whichever is earlier for the unit/ private industrial area/ multistory industrial premises. During this period if the unit/ private industrial area/ multistory industrial premises remain close for the consecutive period of 6 months then the entity will have to return the sanction subsidy along with 12% penal interest.

It is mandatory for the entity to give employment of 70% to the residents of M.P. from its total employment. Also from that 70% there should be reservation Quota declared by M.P. Government for ST, SC & OBC people.





# How a degree from ICAI can take you to places!!!

No other career offers the mobility that a Chartered Accountancy qualification does. Once you become a CA, you will be taking on the role of business advisor who makes high-level strategic decisions aimed at driving business, improving profit margins and increasing market share for your employers/clients. Apart from all these, many individuals use their expertise to create their own businesses and become highly successful entrepreneurs. When it comes to becoming a CA in India, you have to talk about ICAI. No other professional accounting qualification provides students with the above par support, excellent structure, guidance and quality of education throughout the training process which lasts for 4-5 years.

Now, although a Chartered Accountancy degree will enable you to start your career as a Chartered Accountant in India, we must know that it's a global qualification. There are numerous opportunities for Indian Qualified Chartered Accountants in other parts of the world like Ireland, Canada, Australia and many more. Determining how well received your qualification is on the global market is an important investigation which should be undertaken by anybody considering a career in accountancy. For an accountancy qualification to be truly global, relevant bodies in other countries must recognize not only your education, but also the training you undertook to become qualified. Members of ICAI have true global mobility with both their education, and most importantly, their training recognized internationally. ICAI holds Memorandum of

CA Kinjal Gupta



Understanding (MOU) with multiple partner countries and this offers all the members of ICAI an excellent entry points to be in any part of the world.

I still remember the day when I decided to become a CA. Even then I knew that I am going to explore and see what this profession has in store for me. Going abroad and using my skills was always on my planner and I grabbed the very first opportunity I got. Just like anyone else, I gave a great deal of thought selecting a country and considered multiple factors before I eventually settled for Ireland. For me, the fact that The Institute of Certified Public Accountants in Ireland (CPA Ireland) and the Institute of Chartered Accountants India (ICA India) holds a Mutual Recognition Agreement (MRA) stole the deal. Other than that, all the big 6 finance companies have their headquarters in Ireland which puts the cherry on the top.

Depending on your background, there may be different entry routes into Ireland. Firstly, you can come here and start working for any employer on work visa. This option might fall on the more ambitious side of things as in order to land yourself



into a direct job requires good amount of experience. On top of that, even if you have the required experience, finding an employer who will sponsor your work visa directly from India is a rare thing to happen and only a few are able to get that. Still, none of this should stop you from trying. Secondly, come here on a student visa and get yourself enrolled in a postgraduate degree. Once you have completed your degree, you can then start your career in Ireland. For a lot of people this comes naturally as a more practical choice as by the time you graduate, you get a good understanding of Irish work culture, the people and you are completely prepared to enter the real world. In both the cases, getting yourself CPA qualified would certainly give you an added advantage. Considering it's an Irish qualification, you have more chances finding an employer who is ready to sponsor your work visa. Generally, there are 3 exam stages with 14 exams in total and 3 years training you must complete to become a CPA member, having that ICAI certification comes in handy in this situation. Being an ICAI member, you just have to pass 3 easy papers and get yourself CPA qualified. The entire process is online and can be completed from the comfort of your home.

### YOU CAN JOIN CPA IN 5 STEPS:

- COMPLETE ONLINE APPLICATION FORM
- COMPLETE AND PASS TWO ON-LINE COURSES (OVERVIEW OF IRISH TAXATION, OVERVIEW OF IRISH LAW)
- COMPLETE AND PASS ONLINE STRATEGY COURSE
- PAY ADMINISTRATION FEES OF 200 EUROS
- SEND ALL RELEVANT DOCUMENTATION:
  - (a) LETTER OF GOOD STANDING
  - (b) 2 REFERENCES
  - (c) ID (PASSPORT OR DRIVING LICENSE)
  - (d) COPY OF ICAI MEMBERSHIP CERTIFICATE



### An ICAI member seeking admission to CPA Ireland should have successfully completed:

- Be a holder of recognized degree or Have at least 5 years of experience
- Have successfully completed the ICAI examinations and CAI Practical experience requirements
- Be a member in good standing and not currently subject to any disciplinary sanctions or investigations and have not been subject to any disciplinary sanction in the past 5 years

Just like Ireland, there are many other countries that provide all the ICAI members with similar benefits. Whether you want to move out of India, or you want to stay there and continue working, being a Qualified Chartered Accountant gives you the potential and flexibility to work in most parts of the world. Here's one more reason to be a proud ICAI member.





## COMPLIANCE CHART JANUARY - FEBRUARY 2021

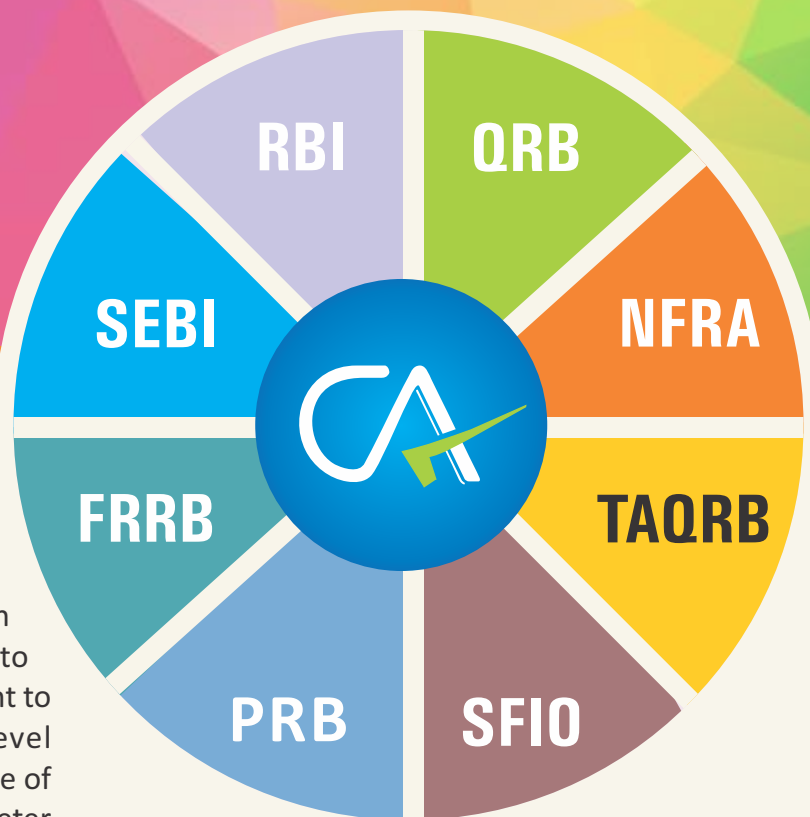
Return / Forms	Month/Year	Due/ Extended Date	Remark
GSTR 3B	DEC-20	20 January 2021	RP having ATO > Rs 5CR
		22 January 2021	For State of MP and South of MP
		24 January 2021	For States North of MP
GSTR 1	DEC-20	11 January 2021	RP having monthly filing of return
GSTR 5	DEC-20	20 January 2021	Non-Resident taxable person
GSTR 6	DEC-20	13 January 2021	ISD return
GSTR 7	DEC-20	10 January 2021	TDS return
GSTR 8	DEC-20	10 January 2021	TCS return
GSTR 2B	DEC-20	13 January 2021	Auto-populate data for Rule 36(4)
GSTR 1	OCT - DEC 20	13 January 2021	RP having quarterly filing of return
CMP 08	OCT - DEC 20	18 January 2021	RP opted for Composition scheme
QRMP scheme	OCT - DEC 20	31 January 2021	Last date to Opt in or opt out of scheme
GSTR 3B	JAN-21	20 February 2021	RP having ATO > Rs 5CR
		22 February 2021	For State of MP and South of MP
		24 February 2021	For States North of MP
GSTR 1	JAN-21	11 February 2021	RP having monthly filing of return
GSTR 5	JAN-21	20 February 2021	Non-Resident taxable person
GSTR 6	JAN-21	13 February 2021	ISD return
GSTR 7	JAN-21	10 February 2021	TDS return
GSTR 8	JAN-21	10 February 2021	TCS return
GSTR 2B	JAN-21	13 February 2021	Auto-populate data for Rule 36(4)
PMT 06	JAN-21	25 February 2021	Taxpayer opting QRMP scheme
Invoice Furnishing Facility (IFF)	JAN-21	13 February 2021	
GSTR 9	19-20	28 February 2021	Annual Return
GSTR 9C	19-20	28 February 2021	GST Audit (RP having ATO > Rs 5 Cr)
Depositing TDS/TCS	DEC-20	07 January 2021	
Depositing Equalization levy	DEC-20	07 January 2021	
Payment of PF & ESI Contribution	DEC-20	15 January 2021	

# AUDITORS UNDER LENS

We Chartered accountant as an auditor are entrusted with much greater role and responsibilities. We have not just responsibility to audit an entity and present a true and fair view but the report that is formulated by us is being used by each and every stakeholder – be it an investor taking decision to invest, or owner to analyze the profitability of business or government to evaluate and take that data for national level assimilation or statistical purpose. The significance of an audit report has elevated over years. As Peter Parker principal says - "With great powers comes great responsibility". Hence we must ensure that work performed by auditor ought to be reliable as many agencies are utilizing our reports for their further reporting and analysis.

So, by this article let us know the number of watchful eyes over auditors before we head start our audit planning and procedures and reporting thereon.

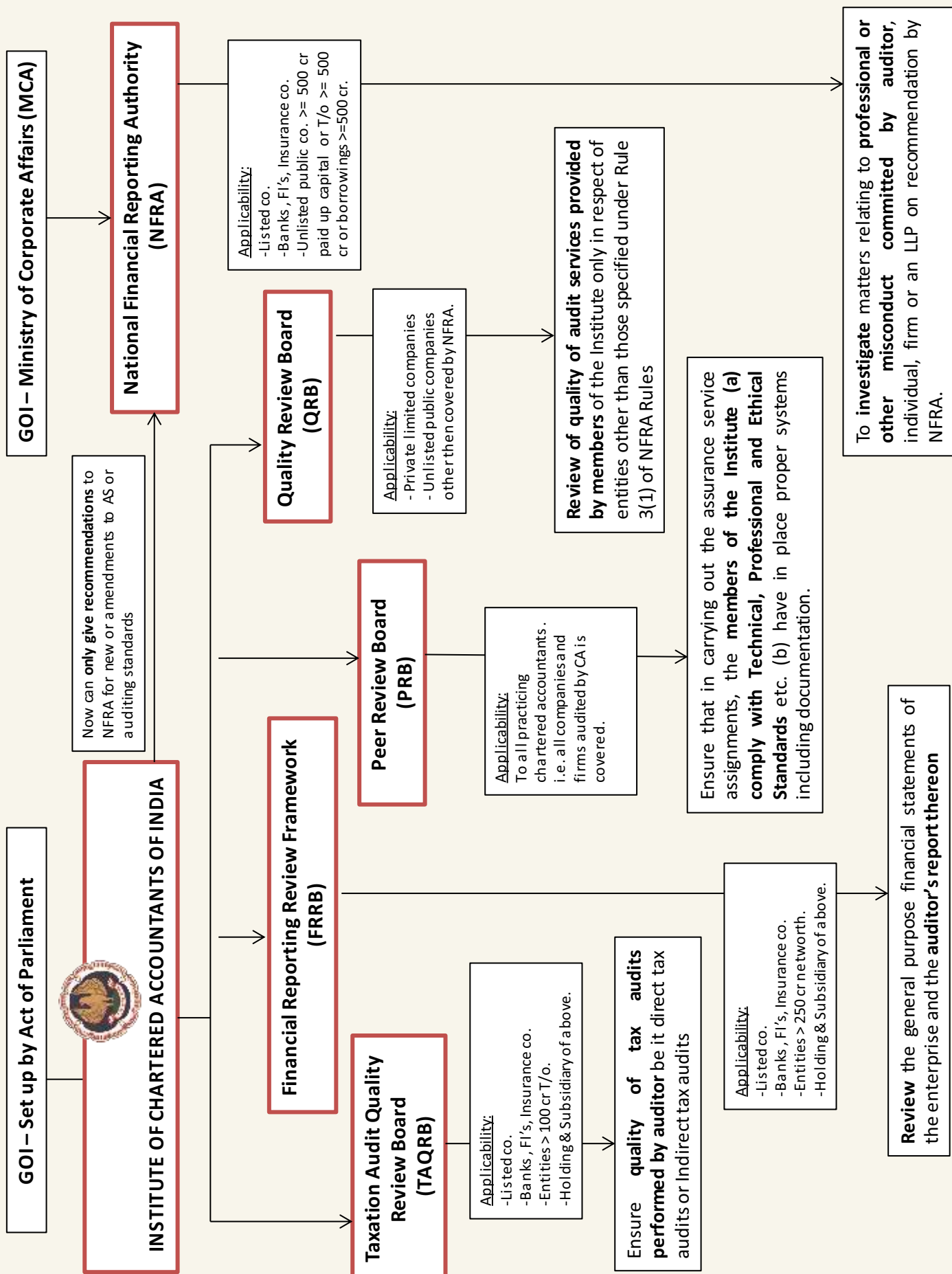
The number of boards and agencies reviewing auditor in one or other way are numerous. Every stage of audit process conducted by auditor is under lens. To elaborate, audit planning and procedure and documentation is reviewed by Peer Review board (PRB). PRB also reviews that members comply with professional, technical and ethical requirements. Thereafter Financial Reporting Review Board (FRRB) is reviewing compliance of GAAP, disclosures requirement as applicable and reporting obligations of auditors. Then the quality of assurance services offered by auditor is again monitored by Quality review board (QRB) and board also monitors the quality control framework and basis of reporting by the auditor. Another supreme authority notified by MCA, National Financial Reporting Authority (NFRA) is appointed to exercise effective oversight of auditing



functions performed by auditor and in case of professional or other misconduct NFRA has powers to investigate auditors and impose sanctions against defaulting auditor. Apart from these boards there is also another board called Taxation Audit Quality Review Board which exists to review the quality of tax audits certified by auditors, be it Income tax audit or GST audit. Apart from these let us not forget the powers of RBI & SEBI to review the company and our report.

It is also interesting to note that the checker of books' Auditors' are reviewed by a technical reviewer (TR), whose reports are again reexamined by a specific board. That way one should understand the gravity of quality of work to be performed by an auditor as his reports are reviewed at multiple stages by various authorities. One may think that audit quality check is done only for big corporates where external stakeholders are interested. But it is a misconception, the quality check-up is done at every stage of audit and for all size of entities as mentioned in various regulations, glimpse of which is discussed further.

**Let us take a helicopter view of reviewing agencies over an auditor.**





## Financial Reporting Review Framework (FRRB)

### **PURPOSE:**

To determine, to the extent possible:

- I Compliance with the GAAP in the preparation and presentation of financial statements;
- I Compliance with the disclosure requirements prescribed by regulatory bodies, statutes and rules and regulations relevant to the enterprise; and
- I Compliance with the reporting obligations of the auditor.

It can initiate Scrutiny by Regulatory body like, Reserve Bank of India, Securities and Exchange Board of India, Insurance Regulatory and Development Authority, Ministry of Corporate Affairs, Election Commission of India etc. Can also scrutinize if any irregularities highlighted by Media, or Suo motto

#### **The enterprises within the purview:**

- I Entities whose equity or debt securities are **listed or are in the process of listing.**
- I Banks, FI's or entities carrying on insurance business.
- I All commercial entities, whose **net worth exceeding 250 crores** in PY.
- I **Holding & subsidiary** entities of any one of the above.
- I Such other enterprise or category of enterprises, for which any information relating to non-compliance of GAAP or disclosure requirements or reporting by auditor's.

**Non Compliance:** FRRB finds any material / serious non-compliance in respect of the factors stated at paragraph 1 above, it would refer the case to the Director (Discipline) of the ICAI for initiating action against the auditor under the CA Act, 1949.

Observes non-compliance viz.-a-viz. paragraph 1 above, which are not material non-compliances and which do not affect the true and fair view of financial statements, the FRRB may not refer the case to the Director (Discipline) of the ICAI for initiating action against the auditor under the CA's Act, 1949. In such cases, the FRRB would appropriately bring the non-compliance to the attention of the auditor.

### **PEER REVIEW BOARD (PRB)**

#### **Scope & Purpose of Peer Review:**

Every Practice Unit (PU), based on their category as Level

I, Level II, Level III be subject to Peer Review. This process shall apply to all the assurance services provided by a PU.

The Peer Review Report should state that the system of quality control for the assurance services of the Practice Unit for the period under. Review has been designed so as to carry out the assurance services in a manner that ensures compliance with Technical, Professional and Ethical standards.

**Reporting:** After the conclusion of a cycle of Reviews the Board has powers to make a Special Report to the Council on:

(i) The level of implementation and adherence to Technical, Professional and Ethical Standards amongst Practice Units and

(ii) Its suggestions for further improvement in quality of Peer Review.

(iii) Such other related matters and or information it may deem fit.

### **QUALITY REVIEW BOARD (QRB)**

**Purpose:** a) To make recommendations to the Council with regard to the quality of services provided by the members of the Institute;

b) To review the quality of services provided by the members of the Institute including 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.

**Entities Covered:** The MCA, has clarified to the QRB that in view of Sec.132 (2) of the Companies Act, 2013 r/w Rule 9(4) of NFRA Rules, 2018, the issue of QRB reviewing audits of the companies/bodies corporate specified under Rule 3 of the NFRA Rules, 2018 will only arise in case a reference is so made to QRB by NFRA, and not otherwise.

Accordingly, QRB would now be able to initiate reviews of quality of audit services provided by members of the Institute only in respect of entities other than those specified under Rule 3(1) of NFRA Rules, 2018, namely, private limited companies, unlisted public companies below the thresholds specified under Rule 3(1) and other; and those specifically referred to QRB by.

**Reporting:** The Board also issues periodic Reports on Audit Quality Review Findings providing analysis and summary of observations made by the Technical Reviewers in review reports.

## National Financial Reporting Authority (NFRA)

### Purpose & Functions:

As per Rule 3 (1) of National Financial Reporting Authority Rules, 2018, as notified by Central govt., inter alia, provides that the Authority (read NFRA) :

- Power to monitor and enforce compliance with accounting standards and auditing standards,
- Oversee the quality of service under sub-section (2) of section 132 or
- Undertake investigation of the auditors
- Exercising effective oversight of accounting functions performed by companies and auditing functions performed by auditors.
- It is also responsible for recommending accounting and auditing policies and standards in the country

### Entities Covered:

The NFRA will **regulate** accounting and audit standards and quality of service of auditors of the following class of companies and bodies corporate, namely:-

- (a) companies whose **securities are listed** on any stock exchange in India or outside India;
- (b) **unlisted public companies having paid-up capital of not less than rupees 500 crores or having annual turnover of not less than rupees 1000 crores** or having, in **aggregate, outstanding loans, debentures and deposits of not less than rupees 500 crores** as on the 31st March of immediately preceding financial year;
- (c) insurance / banking & companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force etc
- (d) any body corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the Authority by the Central Government in public interest; and
- (e) a body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d), if the income or networth of such subsidiary or associate company exceeds 20% of the consolidated income/ networth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d).

**Actions:** It can undertake investigations, and impose sanctions against defaulting auditors and audit firms in the form of monetary penalties and debarment from practice for up to 10 year.

### CONCLUSION:

So now we are aware of how important it is for an auditor to be hawkeyed in his audits and reporting and being responsible for all his works. At the same time one should understand that with increase in number of corporate frauds it is the duty of an auditor to safeguard the interests of all stakeholders. And most important stakeholder is he himself. Be it a corporate fraud or a banking fraud it is the auditor's name which is also bought to notice. Being auditor we should always protect our skin from any sort of manipulations.

All the agencies are watchdog of auditors. It is a notion that auditor is **ONLY** responsible for true and fair view of financial statements. But any misreporting or material non-compliance is not only his responsibility rather the onus of non-compliance should be on owners of companies at first place.

In case of theft or a Robbery, Cops does not detain and investigate the security guard/agency, but their objective is to catch hold of thieves. But Irony of Auditors is, In case of a fraud by an Organization, Auditors are detained and investigated at first place rather than the doers.

Till we wait for a paradigm shift in scenario where the requirements of all the authorities are aligned and bridged and the onus to clean the financials shifts to the company, we as an auditor should equip ourselves. Looking to the number of watchdogs over our report we should be more cautious in our audit and quality of our reporting. At the time of audit one of the most important thing a CA should remember is documentation. It is only those organized and complete working files that helps us to answer previous years assessments and appeals. The management of the company may change over years it is only the records that speaks for an investigations after decades. Overall an auditor should expect the changes in rules to bring down focus from negligence of auditors to conscious mistakes of the owners but one should always be equipped with our shield and conscious efforts should be made on quality performance of audit and documentation, knowing that all eyes are on auditor.



CA Ayushmi Khasgiwala

# BENAMI TRANSACTION (PROHIBITION) AMENDMENT ACT, 2016

CA Saloni Jindal



**INTRODUCTION :** The original Benami Act was introduced in 1988 for prevention of black money but due to some inherent limitations of the Act, it could not be implemented with full force, and therefore, an amendment was introduced in the year 2016 to ensure the successful enforcement of the Benami Act. An amendment was issued instead of a new Act because if a new Act were introduced then the benami transactions entered between 1988 to 2016 would get immunized as the law does not allow retrospective penalization. The aim of the Benami Transaction (Prohibition) Amendment Act, 2016 (hereinafter for the sake of brevity referred to as 'the Act') is to discourage and prohibit benami transactions. The main purpose behind this act is to nab those people with undisclosed money or assets by prohibiting the benami transactions and in turn, prevent tax evasion in the country.

## KEY DEFINITIONS UNDER THE ACT

### BENEFICIAL OWNER

A person/entity whose identity is known or not, for whose benefit the Benami property is held by a Benamidar is known to be a BENEFICIAL OWNER.

### BENAMI PROPERTY

Any property which is the subject matter of **Benami transaction** is held to be benami property. It includes any kind of movable, immovable, tangible, intangible, corporeal, or incorporeal property, and includes any right or interest or legal documents evidencing title to/interest in any property.

### BENAMIDAR

Any person/entity or fictitious person in whose name the Benami Property is transferred or held, and includes a person who lends his name for holding the property. The term fictitious person includes any non-existent person/entity.

### WHAT IS A BENAMI TRANSACTION?

The law states the following as a benami transaction:

1. A transaction or an arrangement:
  - a. where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and
  - b. the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

2. a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or
3. a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership
4. a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

### EXCEPTIONS TO ABOVE RULE:

If a karta or a member of HUF holds property, and property is held for his benefit or benefit of member of HUF & consideration paid from known source.

Property held by a person in Fiduciary capacity (i.e. trustee, executor, partner, agent etc.) for the benefit of other person.

Property held by Individual in name of Spouse or Child & consideration paid from known source.

Property held by individual in joint names of self & brother/sister/lineal ascendant or descendant

### PROHIBITIONS UNDER THE ACT

The Act prohibits the filing of a suit, or raising of defence, by the actual owner, on the ground that the person holding the property is a Benamidar. Benami Law takes away the rights of the actual owner, however, does not take the rights of the third party. The Act further prohibits resale of the benami property from the benamidar to the beneficial owner and where the benamidar re-transfers the property to the beneficial owner, then the transaction for such re-transfer shall be deemed to be null & void.



Where any person enters into a benami transaction, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction and once proven guilty, shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five percent of the fair market value of the property. Further, the Benami Property shall be liable to be confiscated, and all rights in the property would vest with the Central Government.

Any person who is required to furnish information under this Act, if knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to five years and shall also be liable to fine which may extend to ten percent of the fair market value of the property.

#### **ROLE OF AUTHORITIES IN INVESTIGATION**

First step of the investigation is taken by the Initiating Officer (hereinafter referred to as "IO")- If IO has a reason to believe that any person is Benamidar, he shall send a show cause notice to the Benamidar and if identity of the beneficial owner is known, then the notice shall also be sent to the Beneficial Owner.

If IO considers it appropriate and as a protective measure, he can attach the concerned property for not more than 90 days from issue of notice, subject to prior permission of the approving authority. Further, if the officer has reasons to believe, he can extend the period of attachment after obtaining prior approval from the authority.

The Adjudicating Authority will examine all documents and evidences relating to the matter and shall issue notice within 30 days from the date of reference received. If the property is owned jointly by one or more persons, then the adjudicating authority will serve notices to each of owners.

After taking into account all material facts and evidences the concerned person(s) is given reasonable opportunity of being heard, and after that, the adjudicating authority shall make an order, either :

- holding the property as Benami property and confiscating the property, or
- not holding it as Benami and revoking the attachment order.

The Amended act has also established an Appellate Tribunal for hearing appeals against the order of adjudicating authority.

#### **POINTS TO PONDER UPON**

The Legislature, keeping commercial practicality in mind, excluded transactions undertaken under Power of Attorney. By virtue of the explanation, transactions allowing possession of any property to be taken, or retained in part performance of a contract as referred in section 53A of the Transfer of Property Act, 1882, would not be considered 'Benami'.

A literal interpretation of Benami Law would suggest that purchase of a property with financial assistance from a third party, are part of the 'Benami Transaction', as the consideration has flowed from a third party, and the property held in the name of another. But as held by court, in such transactions, one may need to check the actual intent of the transaction, i.e. whether entered to defeat the provisions of law or evade payments to creditors or statutory dues. When a property is purchased with financial assistance, the lender is only interested in the repayment of his loan along with interest, and he has no beneficial interest in the property. At the same time, the buyer, who borrows the loan is not holding the property, for immediate or future benefit for the lender, so the transaction is not 'Benami'.

The burden of proving a Benami Transaction, always rests on the person alleging the transaction. The Benami Law stipulates that the authorities have to discharge the burden by adducing evidence to prove guilt. The allegations based on presumption without proof does not take the shape of evidence. It is a settled law that suspicion, no matter however strong it is, cannot be considered as an evidence.

#### **INTERPLAY BETWEEN THE INCOME TAX ACT, 1961 AND THE BENAMI TRANSACTION (PROHIBITION) ACT, 2016**

The Benami Law seeks a mechanism to attach and confiscate Benami Property; while the Income Tax Act, 1961 contains no provisions to deal with Benami

Property. Section 115BBE r.w.s. 68 to 69D of the I.T. Act, deals with the cash credit, undisclosed income, or expenditure. The provisions apply when the person is found to be the owner of any property and the same is not recorded in the books **of accounts of the person**. The inquiries under the I.T. Act primarily focus on the source of investment, while the Benami character is only incidental and subsidiary. When the source of investment or cash credit is unexplained, and the tax department can trace the source to some other person, only then the proceedings under Benami Law can be initiated.

The income tax department plays a vital role in implementing this Act in our country. It has recently warned public to not enter into benami transactions and have cautioned them that violation of this new law will invite criminal proceedings and rigorous imprisonment upto 7 years. Further, the IT department has launched **New Benami Transactions Informants Reward Scheme, 2018** under which a person will be rewarded Rs.1 Crore for sharing information about the benami transaction in a prescribed manner to the Joint or Additional Commissioners of Benami Prohibition Units. The identity of the whistle-blower will be kept safe and would not be disclosed by the Government. This scheme is launched with the objective to encourage people to contribute in the efforts of the income tax department and to help them make India corruption free country. Recently, CBDT has also launched an e-portal facilitating disclosure of information relating to benami transactions.

#### CONCLUSION :

As Benami law infringes a right of the property holder, the procedure laid down must be strictly followed. In case of ambiguity, the authorities may hold the provisions in favour of the concerned person(s). Every transaction, entered in the name of another, cannot be visited with the taint of 'Benami'. It is relevant to check whether the transaction falls within the saving clause, explanation or was entered to defeat the provision of law, creditors, or statutory dues. The concerned person(s) should provide evidence that satisfies the authorities beyond any doubt, as the determination of a Benami Transaction would depend upon the evidence.



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*Indore*

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NOTIFICATION

No.1-CA(42)/71:- In pursuance of Regulation 136(1) of the Chartered Accountants Regulations, 1964, the Council of the Institute of Chartered Accountants of India is pleased to notify the setting up of Branches of the Central India Regional Council, in the following cities with effect from 18th August, 1971.

CENTRAL INDIA REGIONAL COUNCIL

1. Indore. ✓
2. Jamshedpur.

These Branches shall be respectively known as:-

1. Indore Branch of the Central India Regional Council.
2. Jamshedpur Branch of the Central India Regional Council.
3. As prescribed under Regulation 136(2) these Branches shall function subject to the control, supervision and direction of the Council through the Regional Council and shall carry out such directions as may from time to time be issued by the Council.

( C.BALAKRISHNAN )  
SECRETARY.

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4. The Secretary to the Government of India, Ministry of Company Affairs, Company Law Board, Shastri Bhawan, Dr. Prasad Road, New Delhi.
5. The Chief Secretary to the Government of Madhya Pradesh with reference to the letter No.S(III)/L/15/57-PA dated 1958 of the Department of Parliamentary Affairs, Government of India for publication in the official State Gazette. 2-6
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*N. Subramanian*  
( N. Subramanian )

**Letter of  
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# BLOOD DONATION DRIVE AT INDORE BRANCH AND MANAS BHAVAN PREMISES



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