

Frequently Asked Questions on Appointment of Cost Auditor by Companies

Q.1 Has the Government prescribed a new procedure for appointment of cost auditor by the companies?

Ans. Yes. The procedure has been modified by the Cost Audit Branch of the Ministry of Corporate Affairs vide General Circular No. 15/2011 dated 11th April 2011. The revised procedure has been made effective from the financial year commencing on or after the 1st day of April, 2011.

Q.2 What is the difference between new and old procedures of Appointment of Cost Auditor by Companies?

Ans. The Company would be required to File Form 23C with the Central Government in the same manner as in the old procedure. However, under the present procedure, the prior approval would be deemed to have been granted if the Central Government does not raise any query within 30 days of filing of Form 23C.

In case the Central Government raises any query within the said period of 30 days, the company would be required to clarify the issues and re-submit the Form 23C. The period of 30 days, in this case, would run from the date of resubmission of Form 23C.

Q.3 Who can be appointed as a cost auditor?

Ans. A Cost Accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and including a Firm of Cost Accountants can be appointed by a Company as cost auditor. However, the cost accountant or partners of a firm of cost accountant should be in whole-time practice and not holding any other employment.

Q.4 Who is competent authority in companies to appoint cost auditor?

Ans. As per provisions of section 233B(2), the Board of Directors of a Company can appoint a cost auditor after obtaining prior approval of the Central Government.

Under the revised procedure, the first point of reference will be the Audit Committee to ensure that the cost auditor is free from any disqualification as specified under section 233B (5) read with section 224 and sub-section (3) or sub-section (4) of section 226 of the Companies Act, 1956. The Audit Committee should also ensure that the cost auditor is independent and is at arm's length relationship with the company. After ascertaining the eligibility, the Audit Committee will recommend to the Board of Directors for appointment of the Cost Auditor. [Draft model letter in this regard is given after FAQs at Annexure -1]

In those companies where constitution of an Audit Committee is not required by law, the functions of the "Audit Committee" as per the procedure will be discharged by the "Board of Directors".

Q.5 Is a cost auditor required to give any certificate in respect to his independence and arm's length relationship with the appointing company?

Ans. Yes, the cost auditor will be required to give a separate certificate to the audit committee in respect to his/its independence and arm's length relationship with the company. [Draft model letter in this regard is given after FAQs at Annexure-2]

Q.6 How many cost audits can be allotted in the name of one practicing cost accountant?

Ans. Section 224 (1B) stipulates "On and from the financial year next following the commencement of the Companies (Amendment) Act, 1974 (41 of 1974), no company or its Board of directors shall appoint or reappoint any person who is in full-time employment elsewhere or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of the specified number of companies or more than the specified number of companies:

Provided that in the case of a firm of auditors, "specified number of companies" shall be construed as the number of companies specified for every partner of the firm who is not in fulltime employment elsewhere:

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number, in the aggregate:

Provided also that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditor of one or more companies, the number of companies which may be taken into account in his case shall not exceed the specified number, in the aggregate.

Provided also that the provisions of this sub-section shall not apply, on and after commencement of the Companies (Amendment) Act, 2000, to a private company.

Explanation I: For the purposes of sub-sections (1B) and (1C), "specified number" means, -

(a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies;

(b) in any other case, twenty companies, out of which not more than ten shall

be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

Explanation II: In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.

Q.7 What procedure is required to be followed by a company in respect of appointment of cost auditor?

Ans. The Company is required to e-file its application with the Central Government on www.mca.gov.in portal, in the prescribed Form 23C within ninety (90) days from the date of commencement of each financial year, along with the prescribed fee as per the Companies (Fees on Application) Rules, 1999 as amended from time to time and other documents as per existing practice i.e.

- (i) certified copy of the Board Resolution proposing appointment of cost auditor; and
- (ii) copy of the certificate obtained from the cost auditor regarding compliance of section 224(1-B) of the Companies Act, 1956. [[Draft model letter in this regard is given after FAQs at Annexure -1](#)]

Q.8 What will happen if Central Government doesn't give its approval within 30 days of submission/ re-submission of the application?

Ans. After filing the online application by the Company, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty (30) days from the date of filing such application.

However, if within thirty(30) days from the date of filing such application, the Central Government directs the Company to re-submit the said application with such additional information or explanation, as may be specified in that direction, the period of thirty days for deemed approval of the Central Government will be counted from the date of re-submission of Form 23C by the Company.

Q.9 What other procedure a company is required to follow to formalize the appointment of a cost auditor?

Ans. After obtaining approval of the Central Government (deemed or otherwise), the Company will be required to issue a formal letter of appointment to the cost auditor.

Q. 10 What is the obligation of the cost auditor after receipt of formal appointment letter?

Ans. The Cost Auditor is required to inform the Central Government within thirty days of receipt of formal letter of appointment from the Company. Such intimation is required to be done in prescribed e-Form 23 D alongwith a copy

of such appointment.

[Click here to download e-Form 23 D:](#)

<http://www.mca.gov.in/MCA21/dca/downloadeforms/eformTemplates/1101-Form23D.zip>

[Click here to download instruction for filling up Form 23D:](#)

http://www.mca.gov.in/MCA21/dca/downloadeforms/eformTemplates/1101-Form23D_help.zip

Q. 11 What disclosures are required to be made by a Company in respect of cost audit in its Annual Report?

Ans. The Company is required to disclose full particulars of the cost auditor along with the due date and actual date of filing of the Cost Audit Report by the cost auditor, in its Annual Report for each relevant financial year. Since the notification has made effective from April 1, 2011, companies under cost audit are required to furnish the details in its Annual Report from the financial year 2010-11.

Since the cost audit report of a particular financial year may not have been submitted before publication of the Annual Report, relevant details of due and actual date of filing for the last financial year and the due date of filing for the current year may be published in the Annual Report.

Q. 12 What are the penal provisions for non-compliance of any of the provisions of the Act regarding cost audit?

Ans. Non compliance by Companies

If a Company contravenes any provision of this circular, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of Section 209 of the Act shall be punishable as provided under sub-section (2) of Section 642 read with sub-section (5) and (7) of Section 209 and sub-section (11) of Section 233B of Companies Act, 1956.

Relevant provisions of Section 209 of the Companies Act, 1956 are as follows:

Sub- section (5) of Section 209 provides that if any of the persons referred to in sub-section (6) fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both:

Provided that in any proceedings against a person in respect of an offence under this section consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that a competent and reliable person was charged with the duty of seeking that those requirements were complied with and was in a position to discharge that duty:

Provided further that no person shall be sentenced to imprisonment for any such offence unless it was committed wilfully.

Sub- section (6) of Section 209 provides that the persons referred to in sub-section (5) are the following, namely:—

(a) where the company has a managing director or manager, such managing director or manager and all officers and other employees of the company; and

(d) where the company has neither a managing director nor manager, every director of the company;

Sub- section (7) of Section 209 provides that if any person, not being a person referred to in sub-section (6), having been charged by the managing director, manager or Board of directors, as the case may be, with the duty of seeing that the requirements of this section are complied with makes default in doing so, he shall, in respect of each offence, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both.

Relevant provision of Section 642 of the Companies Act 1956 is as under:

Sub-section (2) of Section 642 provides that any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues.

Non compliance by Cost Auditor

If default is made by the cost auditor in complying with the aforesaid provisions, he shall be punishable with fine, which may extend to five thousand rupees

DRAFT Letter

Annexure-1

Ref. No. _____

Date: _____

To

The Chairman
Audit Committee of Board of Directors
_____ Limited,

Dear Sir,

Sub: Cost Audit of XXX Limited for the year ending 31st March 201_ .

This has reference to my/our proposed appointment/reappointment as Cost Auditor of your company for the financial year ending on 31st March 201_ . I/We shall be happy to accept the appointment/ re-appointment as Cost Auditor of your Company, if so made by your Board of Directors.

We would like to inform you that we are free from any disqualifications as specified under Section 233B (5) read with Section 224 and sub-section (3) or sub-section (4) of Section 226 of the Companies Act, 1956.

We would like to further inform you that the appointment, if made, will be within the limits prescribed under Section 224(1B) read with sub-section (2) of Section 233B of the Companies Act, 1956.

We would also like to inform you that the Partners are holding Certificate of Practice issued by the Institute of Cost and Works Accountants of India and are in whole time practice. Our PAN No. is _____.

We request you to please send us the formal appointment letter as per clause (i) of General Circular No. 15/2011 [52/5/CAB-2011] dated April 11, 2011 issued by the Ministry of Corporate Affairs, Cost Audit Branch to enable us to do the needful at our end.

We would like draw your attention towards clause (k) of the above circular, wherein it is obligatory on the part of the Company to disclose full particulars of cost auditor, alongwith the due date and actual date of filing of the Cost Audit Report by the cost auditor, in your Annual Report for each relevant financial year.

Thanking you,

Yours faithfully,

(_____)

DRAFT Letter

Annexure-2

Ref. No. _____

Date: _____

To

The Chairman
Audit Committee of Board of Directors
_____ Limited,

Dear Sir,

Sub: Certificate of Independence – Cost Audit of your Company for the year ending 31st March 201_ reg.

With reference to para (e) of the General Circular No. 15/2011 dated 11.04.2011 issued by the Cost Audit Branch of the Ministry of Corporate Affairs, Government of India, we hereby certify that we are an independent firm of Cost Accountants and are at arm's length relationship with your Company.

Thanking you,

Yours faithfully,

(_____)