

# Update

## MCA's latest on Cost Audit Requirement and Cost Auditor Appointment

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## *Update*

The Ministry of Corporate Affairs (“MCA”) issued a new Order vide F. No. 52/26/CAB-2010<sup>1</sup> on November 06, 2012 (“Order”) on the issue of appointment of cost auditors in supersession of all its earlier orders on the same issue. This, however, should come as no surprise as MCA, in a way, has continued with its tradition of bringing consistent changes to the field of cost audit.

To elaborate, the following earlier orders shall no longer be in force and have been replaced with the Order:

1. Order dated May 02, 2011
2. Order dated May 03, 2011
3. Order dated June 30, 2011
4. Order dated January 24, 2012

### **Applicability of the new Order:**

The Order has laid down two sets of eligibility criteria for companies which will compulsorily require auditing of their cost accounting records. The first set of companies includes those as mentioned in Point A below. The other set of companies are those to which Companies (Cost Accounting Records) Rules, 2011<sup>2</sup> applies and which further fulfills the conditions specified in Point B below.

#### **Point A:**

1. Companies to whom Rules as given in Order<sup>3</sup> apply **AND** engaged in production, processing, manufacturing, or mining activities of the products/ services included in the Rules as given in the Order **OR**
2. Covered in the product or activity groups as specified in Table I in the Order **AND** aggregate value of net worth as on the last date of the immediately preceding financial year exceeds five crores rupees **OR**

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<sup>1</sup> [http://www.mca.gov.in/Ministry/mcaoffices/CAB\\_Order\\_06nov2012.pdf](http://www.mca.gov.in/Ministry/mcaoffices/CAB_Order_06nov2012.pdf)

<sup>2</sup> [http://www.mca.gov.in/Ministry/notification/pdf/Common\\_Record\\_Rules\\_03jun11.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Common_Record_Rules_03jun11.pdf)

<sup>3</sup> These industries are: a) Telecommunication; b) Petroleum; c) Electricity; d) Sugar; e) Fertilizer; f) Pharmaceutical

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3. The aggregate value of the turnover from the sale or supply of all the products or activities during the immediately preceding financial year exceeds twenty crores rupees **OR**
4. The company's equity or debt securities are either listed or in the process of being listed, in or outside India.

### **Point B:**

1. Companies to whom Cost Accounting Records, 2011 apply **AND** engaged in production, processing, manufacturing, or mining activities of the products/services in such product or activity groups as specified in Table II to the Order; **AND** wherein the aggregate value of the turnover made by the company from sale or supply of all the products or activities during the immediately preceding financial year exceeds one hundred crores rupees. **OR**
2. The company's equity or debt securities of the company are listed or are in the process of listing, whether in India or outside.

The companies to which the Order applies shall be required to get their cost accounts audited in respect of each financial year on or after January 01, 2013 by a cost auditor, being either a cost accountant or a firm of cost accountants, holding valid certificate of practice under the provisions of Cost and Works Accountant Act, 1959.

### **A few clarifications incorporated in the Order, *inter alia*:**

As the Tables, in which MCA has listed the nature of industries to which the Order apply, have been linked with the industry codes of the Central Excise Tariff Act, 1985 ("CETA"), it has been clarified that:

- a. Products or activity groups shall be covered by this Order irrespective of whether central excise duty is levied or not;
- b. In case of any Product or Activity Group where multiple units of measurement are in use for the products or activities covered therein, then the relevant

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Product or Activity Group shall be repeated against each unit of measurement separately.

- c. Wherever same CETA chapter headings have been shown against two or more Product or Activity Groups, the actual details shall be shown against the most appropriate Product or Activity Group.
- d. Where any of the activity/group not included in CETA but are covered by specific rules issued by MCA, cost auditing for them will be mandatory

### **Effect of the Order:**

Irrespective of whether the company was covered or not, either under the company specific cost audit orders issued prior to March 31, 2011 or under the industry specific cost audit orders issued after April 01, 2011 till date

- Company shall get its cost accounting records audited in respect of each of its financial year commencing on or after January 01, 2013

Companies which were covered under company specific orders dated May 02, 2011, June 30, 2011 and January 24, 2012

- Continue to comply with such orders upto the financial year commencing prior to January 01, 2013
- With Order for financial year commencing on or after January 01, 2013

### **Appointment of cost auditor: *Yet another revised procedure***

The MCA vide its General Circular No. 36/2012<sup>4</sup> (“**Circular 1**”) dated November 06, 2012 has set out new points to be kept in mind while appointing a cost auditor by companies. This is in continuation of the General Circular 15/2011 dated April 11, 2011 (“**Circular 2**”). Circular 1 is effective from the financial years commencing on or after January 1, 2013.

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<sup>4</sup> [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_36\\_2012.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_36_2012.pdf)

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The procedure for appointment of the cost auditor as prescribed by both the circulars is:

1. Eligible companies to e-file its application for appointing a cost auditor with the Central Government in the prescribed Form 23C within 90 days from the date of commencement of each financial year.
2. MCA to approve the application within 30 days of filing Form 23C, if no approval is received, then *deemed* approval for the appointment of cost auditor can be assumed by the company according to Circular 1.
3. Company to issue formal letter of appointment (approved by the Board) within 30 days from the date of approval of MCA.
4. Cost auditor to file Form 23D within 30 days of date of formal letter of appointment issued by the company.
5. In case of change of cost auditor because of some exigency:

**a. Caused by death of existing cost auditor**

Companies to file Form 23C within 90 days of the date of death without any additional fee<sup>5</sup>.

**b. Caused by some other reason**

Companies to file fresh Form 23C with applicable fee and additional fee, specifying the reason of change. In case of change due to resignation by the existing cost auditor, the application to be accompanied with such resignation letter. Circular 1 also lists out a few other cases of exigencies, which basically require that supporting documents should be attached to Form 23C to validate the same.

6. Circular 2 had made the Audit Committee responsible for ensuring proper diligence in the appointment of cost auditor. The provisions of Section 224 (1B)

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<sup>5</sup> Additional fee applicable as per Companies (Fees on Applications) Rules, 1999 and amendments made thereafter



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of the Companies Act, 1956 being also applicable to cost auditors, the Audit Committee was responsible for ensuring compliance with the same. In case of default, company, its every officer in default and the cost auditor (if he is guilty of offence) shall be punishable as per the provisions of the Companies Act, 1956.

7. Proper checks in the MCA21 system are going to be introduced to check the same while filing relevant Forms.

### **Our analysis**

The Order is more or less like a master circular which has brought all its earlier circulars at one place. However, this Order has specified some 155 group or activities to which the Order applies. The vast list of activities not only includes the industries covered by previous orders but has also brought a few more products or activity groups within the ambit of cost audit, which will prove as a major boost to the profession as well as to the issue of transparency and corporate governance. The Order is another welcome step of MCA towards investor awareness and making the data and information of companies more transparent to investors.