PART XXI

AUDIT OF ACCOUNTS

Chapter 1

Appointment and change in the Auditors

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*e-Forms No.*
1.	224	Appointment and remuneration of auditors.	23B
2.	224A	Special Resolution required for appointing auditors in certain cases.	
3.	224(3) and (7)	Removal of auditors and appointment of another auditor.	24A
4.	226	Qualifications and Disqualifications of auditors.	
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1. Audit of accounts is compulsory for all types of companies

All the companies registered under the Companies Act, 1956, whether public or private and whether having a share capital or not, are required to maintain proper books of accounts under the provisions of section 209 of the Companies Act, 1956. Companies have also to get their Books of accounts audited as required under section 224 of the Act.

APPOINTMENT OF AUDITORS

Section 224 governs the aspects of appointment of auditors. The auditors are to be appointed normally by the company in an annual general meeting by passing an ordinary resolution. However, special resolution is required to be passed when section 224A comes into play. First auditors are to be appointed by the Board of directors within one month of the date of registration of the company.

A casual vacancy in the office of auditor can be filled up by the Board of directors but where the casual vacancy is caused by the resignation of auditor; such vacancy is to be filled up by the company in general meeting.

2. Appointment of first auditors

As per section 224(5), the first auditor or auditors of a company shall be appointed by the Board of directors within one month of the date of registration of the company; and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting. Following provisions are related to the matter: (Specimen of resolution of the Board has been given in Appendix 1)

(*i*) *Appointment of first auditors in general meeting*.—A company in general meeting may appoint the first auditor or auditors if the Board of directors fails to exercise its power of appointment of first auditors within one month of the date of incorporation of the company.

(*ii*) *Appointment of first auditors through Memorandum and Articles of Association*.—The Institute of Chartered Accountants of India has expressed its opinion *vide* Compendium of Opinion Volume No. 1 that the appointment of first auditors through the Memorandum and Articles of Association of the newly floated private company is not a valid appointment.

(*iii*) *Removal of first auditors*.—The company may, at a general meeting, remove first auditor(s) or all or any of such auditors and appoint in his or their places any other person or persons who have been nominated for appointment by any member of the company and of whose nomination notice has been given to the members of the company not less than fourteen days before the date of the meeting.

(*iv*) *Tenure of office of the first auditor*.—The first auditor(s) shall hold office until the conclusion of the first annual general meeting of the company and then be eligible for re-appointment.

3. Appointment of other than first auditors

Section 224(1) state that every company shall, at each annual general meeting, appoint an auditor or auditors to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting.

4. Appointment of auditor shall be an ordinary business

In terms of the provisions of section 173(l)(*a*)(*iv*) of the Act, the appointment of, and the fixing of the remuneration of the auditors shall be an ordinary business to be transacted at an annual general meeting of a company. Only an ordinary resolution is to be passed for this purpose except, in the circumstances stated u/s 224A requiring the passing of a special resolution.

5. Appointment of auditor by passing special resolution in certain cases

Section 224A stipulates that in case, if not less than 25% of the subscribed share capital of a company is held by specified institutions, whether singly or in any combination of others, appointment of auditors in such companies shall be made by a special resolution passed at the annual general meeting of the company.

Specified Institutions means:—

(*i*) a public financial institution or a Government Company or Central Government or any State Government, or

(*ii*) any financial or other institution established by any Provincial or State Act, in which a State Government holds not less than 51% of the subscribed share capital, or

(*iii*) a nationalised bank or an insurance company carrying on general insurance business.

The Department has clarified by Circular No. 2 of 1976, dated 5-6-1976 that the material date for determination of the 25% of the subscribed share capital of the company is held by specified institutions, whether singly or in any combination of others will be the date of the annual general meeting at which the special resolution is required to be passed. Generally, Articles of Association of companies provide for closure of the Register of members before annual general meeting during a period not exceeding thirty days at any one time, it is unlikely that the position regarding shareholding in the company will be different between the date or issue of notice and the date of the annual general meeting.

Therefore, in exceptional cases, where a change in the shareholding pattern in the company has taken place, between the date of issue of notice of the annual general meeting and the date of actual passing of the resolution regarding appointment of auditor, the company may either,—

(*i*) adjourn the meeting to another date, and later issue the required notice in accordance with law and thereafter pass the special resolution required to be passed u/s 224A of the Companies Act, 1956; or

(*ii*) omit or pass over the item on the agenda regarding appointment of auditor.

In the event of the company adopting the procedure at (*ii*) above, the situation would be then covered by section 224A(2) of the Act.

A question has been raised whether, it is only those shares in a company which are beneficially held by a nationalised bank that will be taken into account in calculating the 25% of the subscribed share capital of that company or even those shares of the company which having come into the custody of the nationalised bank as security for loans advanced to the constituents are got transferred by the nationalised bank in its name for making the security effective, will also be taken into account. It is clarified that irrespective of the circumstances in which a nationalised bank is holding shares if the name of the bank is entered in the Register of members of the company as holder of shares, such holding of shares will have to be taken into account, for the purposes of section 224A of the Companies Act, 1956. (The Department's Circular No. 18 of 1974, dated 12-12-1974)

The Department has issued a General Circular No. 14/2001 [No. 6/1/2001-CL.V], dated 16-7-2001 on provisions of section 224A of the Companies Act, 1956 that the Department of Company Affairs had recently received a reference regarding clarification in respect of section 224A of the Companies Act, 1956 which relates to appointment of auditor in certain cases with the approval of the company by special resolution. The clarification had been sought on sub-section (1) of that section which reads as under—

"224A(1) In the case of a company in which not less than 25% of the subscribed share capital is held, whether singly or in any combination, by—

(*a*) a public financial institution or a Government company or Central Government or any State Government, or

(*b*) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than 51% of the subscribed share capital, or

(*c*) a nationalised bank or an insurance company carrying on general insurance business, the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution."

The querist was of the opinion that three clauses (*a*) to (*c*) mentioned in sub-section (1) of that section [section 224A] should be treated as mutually exclusive. According to them, the aggregate holdings of the institutions grouped under either clause (*a*) or clause (*b*) or clause (*c*) of section 224A(1) are to be treated as mutually exclusive and are not to be aggregated with institutions covered by any other sub-clause, for determining the applicability of section 224A.

The Department has examined this matter in consultation with Department of Legal Affairs and Solicitor General of India and found that three sub-clauses (*a*) to (*c*) to sub-section (1) of section 224A are not mutually exclusive. The provisions of sub-section (1) of that section would, therefore, apply to all cases of shareholdings in any combination by any of the Institutions mentioned in the three clauses.

Where any company referred to in section 224(1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor has been appointed by the company at its annual general meeting and then Regional Director shall have powers under section 224(3) for appointment of auditors.

The company shall file e-Form 23 electronically alongwith certified copy of the special resolution and explanatory statement with the Registrar within 30 days of passing of resolution as per section.

6. Re-appointment of the retiring auditor(s)

As per section 224(2), a retiring auditor shall be re-appointed subject to the limit on maximum number of audits as stated u/s 224(1B). However, in the following cases, a retiring auditor shall not be re-appointed:—

(*i*) he is not qualified for re-appointment;

(*ii*) he has given the company a notice in writing of his unwillingness to be re-appointed;

(*iii*) a resolution has been passed at that meeting appointing somebody instead of him or providing expressly that he shall not be re-appointed; or

(*iv*) where notice has been given of an intended resolution to appoint some other person or persons in the place of a retiring auditor, and by reason of the death, incapacity or disqualification of that person or of all those persons as the case may be, the resolution cannot be proceeded with.

Further, the contents of Department's Circular No. 5/72, dated 21-2-1972 deserve special mention here. Accordingly, the appointment or reappointment of auditors at the annual general meeting is one of the items of ordinary business to be transacted at such a meeting. As provided by section 224(2) of the Act at any annual general meeting, a retiring auditor shall be re-appointed except, in four types of cases referred to therein. The expression shall be re-appointed, postulates some action on the part of the company resulting in the auditor getting re-appointed or automatically re-appointed at the annual general meeting.

It has been clarified that passing of the resolution for that purpose at the annual general meeting is essential for the re-appointment of the retiring auditor who is still qualified and willing to act. Till this is done, a retiring auditor cannot be said to have been re-appointed as contemplated by the section. In this view, it is not correct to say that in the absence of the resolution to the effect that the retiring auditors shall not be re-appointed; the retiring auditors shall stand re-appointed as auditors of the company.

7. Appointment of auditor is mandatory at each annual general meeting

The auditor(s) appointed at the last annual general meeting ceases to hold office at the conclusion of the next annual general meeting. Therefore, the auditor(s) must be appointed at each annual general meeting to hold office till the conclusion of the next annual general meeting. It has been held in the case of the *Institute of Chartered Accountants* v *Jnanendranath Saikia* (1955) 25 Comp Cas 53, 55 (Assam) that the appointment of auditor is mandatory in the annual general meeting for the ensuing year.

8. Intimation as to appointment

A company is required to give intimation of appointment to every auditor(s) so appointed within seven days of the appointment. The intimation may be given in form of a letter on the letter head of the company by a responsible officer of the company. (Specimen letter of intimation has been given in Appendix 2)

9. Written certificate from auditor regarding eligibility must be obtained before appointment of auditor at the annual general meeting by a public limited company

The company shall, before making any appointment or re-appointment of auditor(s) at any annual general meeting, obtain a written certificate to the effect that the appointment or re-appointment, if made, shall be in accordance with the limits specified in section 224(1B) of the Act. (Specimen of certificate from the auditors given in Appendix 3) A company or its Board of directors shall not appoint or re-appoint 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. [Section 224(1B)]. Following are the provisions as to "specified number of companies":—

(*a*) First proviso to section 224(1B) provides 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 full-time employment elsewhere.

(*b*) Second proviso to section 224(1B) provides that where any partner of the firm is also a partner of any office, 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.

(*c*) Third proviso to section 224(1B) provides that where any partner of a firm of auditors is also holding office, in his individual capacity, as the auditors 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.

(*d*) Fourth proviso to section 224(1B) provides that the provisions of this sub-section shall not apply, on and after the commencement of the Companies (Amendment) Act, 2000, to a private company.

(*e*) The expression 'specified number' means—

(*i*) 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;

(*ii*) 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.

In computing the specified 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 in computing the specified number as defined in *Explanation I* of section 224(1C).

The following types of companies shall be excluded from reckoning specified limits, in terms of share capital:—

(*a*) Guarantee companies
(Department's Letter No. 8/12/(224)/74-CL-V, dated 28-9-1974)

(*b*) Foreign companies
(Circular No. 21 of TSF No. 35/3/75-CL-III, dated 24-9-1975)

As mentioned above, as per the Companies (Amendment) Act, 2000 private companies will not be taken into account for counting the 20 number of companies audit as specified as per sub-section (1B) of section 224.

9.1. Branch audit of the Indian Companies and the audit of the Indian business accounts of the foreign companies are not counted for calculating the specified number

The Department is of the view that the branch auditor of the Indian companies appointed under section 228 of the Act audits the accounts of the particular branch only for which he is appointed and forwards his report to the auditor appointed u/s 224 of the Act and hence he cannot be equated with the company auditor appointed u/s 224 of the Act who has to report to the annual general meeting on the accounts of the company as a whole including the branches audited by a branch auditor. The words 'any part of which' appearing in *Explanation* II cannot have any reference to branch audit which as noted above does not fit into the context of section 224. The said words relate to the antecedent number and not 'companies' insofar as they are of any material significance to the context. Hence the branch audits are not to be included while calculating the specified number of 20 units.

As regards the audit of the accounts of foreign companies, such companies are outside the scope of section 224 since the definition of the company u/s 3 of the Companies Act, 1956 does not include a foreign company. Hence the audit of the accounts of foreign companies is also not to be included within the specified number of 20 as laid down under *Explanation* I to sub-section (1C) of section 224 of the Act. [Circular No. 21 of 1975, dated 24 September, 1975]

10. Obligation on the auditor to give intimation to the Registrar

Every auditor appointed under section 224(1) by a company in annual general meeting shall inform the Registrar in writing that he has accepted, or refused to accept the appointment. The information shall be given in e-Form 23B within a period of thirty days from the date of appointment. (Appendix 4)

It is worth noting here that only the auditors appointed under section 224(1) are obliged to give notice of their appointment to the Registrar in e-Form No. 23B. Therefore, first auditors appointed by the Board of directors of a company pursuant to section 224(5) are under no obligations to give notice of their appointment to the Registrar.

11. Appointment of auditor by the Central Government (Regional Director)

Section 224(3) provides that if no auditors are appointed or re-appointed at an annual general meeting of a company, the Central Government may appoint a person to fill the vacancy. Therefore, the power of the Central Government to appoint auditors becomes exercisable when no auditors are appointed or re-appointed at an annual general meeting of a company. The Company is required to give intimation electronically to the Regional Director (Powers of the Central Government were delegated to the Regional Director) *vide* Notification No. GSR 288(E) dated 31st May, 1991) in new e-Form 24A prescribed by Notification No. GSR 56(E) dated 10th Feb., 2006. (Appendix 5)

Obligation has been cast on the company that within seven days of the Central Government's power u/s 224(3) becoming exercisable, it shall give a notice of that fact to that Government; and if a company fails to give such notice, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Further, omission or failure to pass a special resolution at an annual general meeting for appointment of an auditor under section 224A has under mentioned two consequences:—

(*a*) it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting; and

(*b*) the power of the Central Government under section 224(3), to appoint auditors becomes exercisable.

Circular No. 5 of 1972, dated 21-2-1972 *inter alia* provides that the Government's power to appoint auditors under section 224(3) becomes available where at an annual general meeting no auditors are appointed or re-appointed. Where auditors are not appointed or re-appointed in accordance with the provisions of the Act including section 224(2), as read with sections 225 and 190, section 224(3) becomes attracted in the matter.

12. No fee is required to be paid for intimation under section 224(4)

The Department's Letter No. 35/16/69-CL-III, dated 1-11-1971 provides that in some field offices' fee is charged on notices under section 224(4) of the Companies Act, 1956, received from companies for appointment of auditors under section 224(3). The Board is of the view that notices under section 224(4) cannot be considered as applications within the purview of the Companies (Fees on Application) Rules and as such are not chargeable with the prescribed fees. On receipt of such notice in the prescribed e-Form 24A, it is the statutory duty of the Regional Directors to appoint auditors under section 224(3). No fee is chargeable on such notices for appointment of auditors under section 224(3).

Appointments of auditors are made for the period beginning from the conclusion of the annual general meeting until the conclusion of the next annual general meeting.

The Department *vide* Letter No. 35/13/74-CL-1H, dated 21-11-1974 clarified that it is only where an auditor is not appointed at an annual general meeting that the Central Government can exercise the powers under section 224(3). According to the provisions of section 224(1) of the Act, the auditors are appointed for the period beginning from the conclusion of the annual general meeting (in which they are appointed) until the conclusion of the next annual general meeting. The appointment of auditors is made in terms of this period and not for any financial year. The auditors shall audit all the accounts of the company, which are to be placed in the next annual general meeting. Thus, when the annual general meeting could not be held on 29-6-1974 the date for which it had been convened or on the adjourned date, the auditors who had audited the company's accounts for the year ended 31-12-1973 will continue to be the auditors till the conclusion of the next annual general meeting, whenever it may be possible to hold it, and shall be competent to audit all the subsequent accounts as authorised by the authorised controller which may be placed at such next annual general meeting.

CASUAL VACANCY

13. Meaning of casual vacancy in the office of auditor(s)

The expression 'casual vacancy' has not been defined in the Companies Act, 1956. Simply stated, a casual vacancy in the office of an auditor means a vacancy caused in the office of an auditor by his death, disqualification, resignation, etc. It has been held in the case of the *Institute of Chartered Accountants of India* v *Jnanendranath Saikia* (1955) 25 Comp Cas 53, 56 (Assam) that casual vacancy is not a vacancy created by any deliberate omission on the part of the company to appoint an auditor at its annual general meeting.

Section 224(6) governs this aspect and relevant provisions are stated hereunder:—

(*a*) The Board may fill any casual vacancy in the office of an auditor, but while any such vacancy continues, the remaining auditor or auditors, if any, may act.

(*b*) If any casual vacancy in the office of an auditor is caused by the resignation of an auditor, such vacancy shall only be filled by the company in general meeting.

(*c*) Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

14. Powers of the Board to fill up the casual vacancy only in case of death or disqualification of auditors

In terms of section 224(6)(*a*) where a casual vacancy arises in the auditors appointed by a company due to death or disqualification, the Board of directors may appoint another auditor.

15. Only members in general meeting may fill up the casual vacancy caused by resignation of auditors

Where the casual vacancy is caused by resignation of an auditor, the Board cannot fill up the casual vacancy but place the matter before the company in the extraordinary general meeting for appointing an auditor in respect of the casual vacancy. (Appendix 6)

16. Casual auditors shall hold office till the conclusion of the next annual general meeting

The auditor appointed in a casual vacancy shall hold office till the conclusion of the next annual general meeting. If a casual vacancy arises, the remaining auditors if any, will continue to Act.

APPOINTMENT OF OTHER THAN A RETIRING AUDITOR

A special notice of a resolution to be moved at an annual general meeting for appointing an auditor other than the retiring auditor or removing of an existing auditor is given to the company in the manner as prescribed under the Act. (Appendix 7)

17. Requirement of special notice to the company

Section 225(1) provides that special notice shall be to be given by a member and such special notice must comply with the requirements of section 190. Following two types of resolutions or notice may be given under section 225 of the Act:—

(*a*) resolution at an annual general meeting for appointment of a person other than a retiring auditor as auditor; (Appendix 8) and

(*b*) resolution at an annual general meeting providing expressly that retiring auditor shall not be re-appointed.

Special notice has to be given to the company at least fourteen days before the date of the meeting. The period of fourteen days is exclusive of both the day of meeting and the day of notice. Moreover, special notice has to be given fourteen days before the date of the original meeting and not adjourned meeting. Thus, special notice received after the adjournment of original meeting cannot be taken and acted upon by a company.

In the case of *Santosh Mani* v *New Delhi YMCA* (1995) 19 CLA 178 (Del), it was held that even though the resolution moved by a shareholder not to re-appoint a retiring auditor failed to comply with requirement of section 188, yet since it was passed in annual general meeting when notice of resolution was given by company to all members and was carried by a majority, the same could be implemented.

The Department's Circular No. 5 of 1972, dated 21-2-1972 *inter alia* states that in view of section 225 special notice shall be required for a resolution appointing as an auditor a person other than the retiring auditor. Non-compliance with the provisions of the said section would render such a resolution illegal and ineffective.

Section 190 which provide a resolution requiring special notice applies to special notice under section 225.

18. Intimation shall be given by the company to all members on receipt of notice or draft of resolution

The company shall on receipt of a notice or draft resolution from a member give intimation of the same to all the members immediately and where it is not possible to do so then the company shall give notice to the members by advertisement in the newspaper circulating in the place of its registered office, not less than seven days before the meeting.

19. Intimation shall be given by the company to the retiring auditor

On receipt of notice under section 225(1) of the Act, for the removal of a retiring auditor the company shall send a copy of the notice to the retiring auditor forthwith. The Department's Circular No. 2/81, dated 17-10-1981 states that in order to appoint a person other than the retiring auditor or to provide that the retiring auditor shall not be re-appointed; a special notice has to be given proposing that such a resolution would be moved at the next annual general meeting. On receipt of the special notice, the company should send a copy thereof to the retiring auditor. It is advisable to send the same by registered post with acknowledgement due. (Specimen of notice has been given in Appendix 9)

20. Circulation of the retiring auditors' representation to all the members

Where the retiring auditor makes a representation on the notice or resolution for their removal, the company shall circulate the same to all the members of the company, if it is possible to do so before the meeting. If it is not possible to circulate the representation to the members, the auditor may require the same to be read at the meeting, unless the Central Governmenton an application by the company or an aggrieved person orders that copies of the representation need not be sent to members nor read at the meeting.

Following are the other relevant provisions in this regard:—

(*i*) In case where the retiring auditor makes with respect thereto representations in writing to the company (not exceeding a reasonable length) and requests their notification to members of the company, the company shall do the following:—

(*a*) the company shall state the fact of the representations having been made, in any notice of the resolution given to members of the company;

(*b*) the company shall send a copy of the representations to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representations by the company;

(*c*) the company is not bound to send the copy of representations to members, if the representations are received by it too late to do so;

(*d*) if a copy of the representations is not sent as aforesaid because they were received too late or because of the company's default, the auditor may require that the representations shall be read out at the meeting. This right is in addition to the right of auditor to be heard orally at the meeting.

(*ii*) Section 225 applies to all companies, whether public or private.

(*iii*) Department's clarifications on the wording of the resolution:

Circular No. 22 of 1976, dated 26-6-1976 provides that a point has been raised as to whether the words 'other than a retiring auditor' occurring in section 225(1) of the Companies Act, 1956, should be mentioned in the special notice under section 225(1) of the Act, while proposing a new person to be appointed as auditor and whether the words 'instead of him' should be mentioned in the resolution passed in the annual general meeting appointing a person other than a retiring auditor as an auditor of the company under section 224(2)(*c*) of the Companies Act, 1956. The issue has been examined in detail and this Department is of the view that the provisions of section 225(1) or 224(2)(*c*) do not require that the words 'other than a retiring auditor' or 'instead of him' should be specifically mentioned either in the special notice or in the resolution of the annual general meeting respectively. Since the re-appointment of the retiring auditor is not automatic and a specific resolution for the re-appointment of the retiring auditor is a must and in the absence of such a resolution the term of the retiring auditor shall automatically come to an end at the conclusion of the annual general meeting, these words have no specific meaning attached to them. These words are suggestive only to indicate a new person, and are not mandatory requirement of law requiring these words to be included in the special notice under section 225(1) or in the resolution passed under section 224(2)(*c*) of the Act. Thus, passing of a resolution in the annual general meeting appointing another person as an auditor of the company without mentioning the words 'instead of him' is quite sufficient and valid under section 224(2)(*c*) of the Act and similarly a special notice proposing to move a resolution to appoint a new person as an auditor of the company without mentioning the words 'in place of retiring auditor's is sufficient compliance under section 225(1) of the Act.

(*iv*) Any resolution requiring special notice must comply with the requirements of section 190. Contravention of the provision of section 225 would attract penalty to the company under section 629A.

(*v*) Acceptance of the position as auditor previously held by a retiring auditor without first communicating to the existing auditor shall be deemed to be guilty of professional misconduct as contemplated by clause (8) of the First Schedule to the Chartered Accountants Act, 1949. (Appendix 10)

REMOVAL OF AUDITORS

21. Board of directors has no power to remove an auditor

The Board of directors of a company has no powers to remove an auditor appointed by the company in general meeting. Accordingly, the said auditor can be removed only by the company in general meeting after receiving the previous approval of the Central Government. Powers has been delegated to the Regional Director *vide* Notification No. GSR 288(E), dated 31-5-1991.

22. Removal of auditor(s) at a general meeting with the prior approval of the Central Government

An auditor can be removed before expiry of his term only by the company in general meeting after obtaining the previous approval of the Central Government (Power has been delegated to the Regional Director).

23. Procedure for removal of auditors

The company shall take further action as prescribed in section 225 and make an application to the concerned Regional Director in e-Form 24A as prescribed by the Notification No. GSR 56(E) dated 10^{th} Feb., 2006 for his approval.

23.1. Person filing

Managing Director or Whole-time Director or Manager or Secretary.

23.2. Time limit

The application has to be filed for appointment within seven days of the annual general meeting and for removal before general meeting.

23.3. Guidelines

(*i*) The power of the Central Government to appoint auditors become exercisable when no auditors are appointed or re-appointed at an annual general meeting of a company.

(*ii*) Obligation has been cast on the company that within seven days of the Central Government power becomes exercisable; it shall give a notice of that fact to the Central Government in the prescribed e-Form 24A electronically.

(*iii*) The powers of the Central Government under section have been delegated to the Regional Directors of the Department of Company Affairs.

(*iv*) Reasons for not appointing any auditor at the annual general meeting and other relevant details should be furnished.

(*v*) Only the company in general meeting after obtaining the previous approval of the Central Government (Regional Director) can remove an auditor before expiry of his term.

(*vi*) The remuneration of auditors appointed by the Central Government may be fixed by the Central Government. But if the Central Government does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

(*vii*) The remuneration which has been fixed for an auditor is considered to be inclusive of all expenses allowable to him and consequently, he cannot claim any amount in addition to the fixed remuneration.

23.4. Consequences

Omission or failure to pass a special resolution at an annual general meeting for appointment of an auditor u/s 224A has under mentioned two consequences:

(*i*) It shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting;

(*ii*) The power of the Central Government under section 224(3) to appoint auditors becomes exercisable.

REMUNERATION OF AUDITORS

Section 224(8) discusses the manner of fixation of remuneration of auditors. Following are the provisions in this regard:

24. Remuneration of first auditors

The remuneration of the first auditors appointed by the Board may be fixed by the Board, if the Board does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The company in general meeting may appoint the first auditor or auditors if the Board fails to appoint first auditors within one month of the date of registration of the company. In such a case, the remuneration of first auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

25. Remuneration of other than first auditors

Appointment of an auditor at an annual general meeting is an ordinary business to be transacted thereat. The remuneration of auditors other than first auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

26. Remuneration of auditors appointed to fill up causal vacancy

The casual vacancy in the office of an auditor caused by any reason except, resignation can be filled up by the Board of directors and the remuneration of the auditor appointed to fill up causal vacancy may be fixed by the Board of directors. If the Board does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

The casual vacancy caused by resignation of an auditor may be filled up only by the company in general meeting and the remuneration of auditor so appointed shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

27. Remuneration of auditors appointed by the Central Government

The Central Government may appoint a person to fill the vacancy in case where no auditors are appointed or re-appointed at an annual general meeting. Further that when special resolution is not passed at an annual general meeting for appointment of auditor in that case it shall be deemed that no auditor or auditors has been appointed by the company at its annual general meeting and the powers of the Central Government under section 224(3) to appoint auditors becomes applicable.

The remuneration of auditors appointed by the Central Government may be fixed by the Central Government. But if the Central Government does not fix such remuneration then remuneration of auditors shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine.

28. Remuneration of auditor of the Government companies

Section 224(8)(*aa*) provides that in the case of an auditor appointed u/s 619 by the Comptroller and Auditor General of India, remuneration shall be fixed by the company in general meeting or in such manner as the company in general meeting may determine. (*See* Appendix 11)

29. Remuneration includes all expenses allowed by the company

For the purposes of section 224(8), any sums paid by the company in respect of the auditors' expenses shall be deemed to be included in the expression "remuneration".

The remuneration which has been fixed for an auditor is considered to be inclusive of all expenses allowable to him and consequently, he cannot claim any amount in addition to the fixed remuneration.

30. Internal auditor cannot be appointed as statutory auditor(s)

Circular No. 29 of 1976, dated 27-8-1976 addressed to all Chambers of Commerce states that the internal auditor is appointed by the management and hence is in the position of an employee, whereas the statutory auditor is appointed by the company in accordance with the provisions of section 224 and the auditor is required to perform the duties enjoined on him under section 227 of the said Act and the Rules/Orders issued thereunder. In this connection, refer to para 4(*vi*) of the Manufacturing and Other Companies (Auditor's Report) Order, 1975 (Now, 1988) in CSR No. 533(E), dated 7-11-1975 notified by Department in accordance with which the statutory auditor has to include in his report under section 227, whether there is adequate internal control procedure commensurate with the size of the company and the nature or its business for the purchase of stores, raw materials including components, plant and machinery, equipment and other assets and in the case of companies (having Rs. 25 lakhs or more paid-up share capital) whether there is any internal audit system commensurate with its size and nature of business. It is, therefore, obvious that if the statutory auditor of the company is also the internal auditor, it will not be possible for him to give an independent and objective report under section 227 read with the order under sub-section (4A) thereof. As such, in the opinion of the Department, a statutory auditor of a company cannot also be its internal auditor.

31. Statutory Auditor of a company cannot undertake work of writing books of account of the auditee company

An issue can be raised whether there could be any objection in case the statutory auditor of a company undertakes the work of writing the books of account and drawing up the final accounts for which he might receive some extra remuneration from the company over and above the fees payable to him as statutory auditor. The acceptance of the book keeping work of the above nature is likely to place the statutory auditor in a rather vulnerable position in the matter of free expression of his professional opinion as an auditor on the annual accounts of the company. Such a practice deserves to be discouraged.

POWERS AND DUTIES OF AUDITORS

32. Powers of auditors to access books of accounts and to require information and explanations

Following are the rights of an auditor as detailed under section 227(1) of the Companies Act, 1956:—

(*i*) Right of access at all times to the books and accounts and vouchers of the company, whether kept at the head office of the company or elsewhere.

(*ii*) Entitlement to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as an auditor.

Powers to receive all notices of general meetings and to attend it section 231 provides that auditor shall be furnished with copies of all notices of and other communications relating to any general meeting of the company which any member of the company is entitled to have sent to him. The auditor shall be entitled to attend any general meeting and to be heard at any general meeting which he attends on any part of the business which concerns him as an auditor.

Default in complying with the provisions of sections 225 to 231 makes the company and every officer of the company who is in default punishable with fine which may extend to Rs. 5,000.

33. Duties of auditors to enquire and make report

Sections 227(1A) and 227(4A) lay down certain important duties of the auditors of a company. The auditor has mandatory duties to inquire and report the following:—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures, and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and papers of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

The auditor shall make a report to the members of the company on the accounts examined by him, and on every balance sheet and profit and loss account and on every other document declared by Companies Act to be part of or annexed to the balance sheet or profit and loss account, which are laid before the company in general meeting during his tenure of office. The auditor has duty to state in his report that whether in his opinion and to the best of his information and according to the explanations given to him, the accounts give the information required by the Companies Act, 1956 in the manner so required and give true and fair view.

34. Duties towards comments on the compliance of the Accounting Standards

Section 227(2)(*d*) requires that the auditor to make comments whether, in his opinion, the profit and loss account and balance sheet complied with the Accounting Standards referred to in section 211(3C) of the Companies Act, 1956.

35. Duties to report certain matters in thick type or italics in the Auditors' Report

It is an obligation on the auditors to make comments in his report in thick type or in italics the observations or comments, which have any adverse effect on the functioning of the company. [Section 227(2)(*e*)]

36. Duties to report disqualification of directors in certain cases

It is an obligation on the auditors to make comments in his report whether any director is disqualified from being appointed as director under section 274(1)(*g*) of the Act.

The auditors are required to make independent investigation as to disqualification of directors if any. Before reporting a particular person is disqualified or not he must seek for the view and/or representation of the director concerned or any of the person as to whether he was a director of the defaulting company as mentioned in section 274. The auditors report really affects a particular persons right as his civil right or status is necessarily declared in negative way by the auditor by his fact finding, thus the rule of natural justice demand that before the person's right is affected he/she should be given an opportunity to explain his/her position. It has also been held that the auditor cannot submit a report on the basis of the statement supplied by the company alone and he has to examine and even he has to make independent inquiry about the collected materials from other sources. *Pawan Jain* v *Hindustan Club Ltd.* (2005) 62 SCL 610 (Cal) decided on 29.04.2005].

37. Duty to report regarding payment of Cess

As per the Companies (Second Amendment) Act, 2002, the Auditors are required to comment whether the cess payable under section 441A has been paid and if not the details of the amount of cess not paid. (Notification for implementation of section 441A is yet to be issued by the Central Government)

38. Duties to report for non reporting of the diversion of funds

The Reserve Bank of India has directed the banks to crack down on negligent auditors in case of falsification of accounts on the part of the borrower company, it has been also directed to the banks and financial institutions to lodge a formal complaint against the auditors with the Institute of Chartered Accountants of India, it is observed that auditors were negligent or deficient in conducting to enable the Institute to examine and fix accountability of the auditors.

39. Duties to verify accuracy of balance sheet

It is the duty of an auditor to verify not merely the arithmetical accuracy of the balance sheet but its substantial accuracy and to see that it includes the particulars required by the articles and the statute and contains a correct representation of the state of the company's affairs.

However, an auditor is not an insurer; he does not guarantee that the books do correctly show true position of company's affairs or he does not even guarantee that his balance sheet is accurate according to the books of the company

40. Liability in case of providing comfort to the company and its management by the auditors

The Expert Group of the Ministry of Company Affairs, will make random scrutiny of the balance sheet and profit and loss accounts submitted by the companies to the Registrar of companies to ensure, whether the auditors have given comfort to the company or its management this will reveal if the auditors report and notes accurately pointed out or not regarding departures from the statutory disclosures and other requirements pertaining to treatment of expenses for profitability calculation in their qualifications.

QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS

Section 226 of the Companies Act, 1956 contains provisions as regards qualifications and disqualifications of auditors. It applies to all types of companies, whether public or private and also to section 25 company and a Government Company.

41. Must be a Chartered Accountant for appointment as auditor

A person shall not be qualified for appointment as auditor of a company unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949.

42. A Chartered Accountant's firm may be appointed as auditor

A firm whereof all the partners are practicing chartered accountants in India are qualified for appointment as aforesaid, may be appointed by its firm name to be auditor of a company, in which case any partner so practising may act in the name of the firm.

In such case the appointment of a firm as auditors shall be made in the name of the firm whereas the appointment of a proprietary concern as auditor shall be made in the name of the individual *i.e.*, the proprietor. [*Vide* Circular No. 8/229/56-PR, dated 20-3-1957]

43. Certain category of persons not qualified for appointment as auditor

Section 226(3) states that none of the following persons shall be qualified for appointment as auditor of a company:—

(*a*) a body corporate;

(*b*) an officer or employee of the company;

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(*d*) a person who is indebted to the company for an amount exceeding one thousand rupees, or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding one thousand rupees;

(*e*) a person holding any security of that company after a period of one year from the date of commencement of the Companies (Amendment) Act, 2000 *i.e.* 13th December, 2000;

(*f*) For the purposes of section 226, "security" means an instrument, which carries voting rights;

(*g*) a person if he is, by virtue of section 226(3), disqualified for appointment as auditor of any other body corporate which is that company's subsidiary or holding company or subsidiary of that company's holding company. [Section 226(4)]

44. A Chartered Accountant working on retainership basis or on fixed periodical remuneration is disqualified for appointment as an auditor

Circular No. 8/1/57-PR, dated 11-7-1957 provides that the Government have examined the question whether on his engagement as the income-tax consultant of a company either on payment of *ad hoc* fee or fees plus retainer or on fixed periodical remuneration, then he will be regarded as an officer or employee of the company for the purpose of section 226(3)(*b*) of the Act, and consequently as being disqualified for appointment as an auditor of the company.

Test for conditions whether he is employed to be considered as an employee appear to be only a contract for employment and not a contract of professional services between the company and the chartered accountant. In *Dharangdhara Chemical Works* v *State of Saurashtra* 1975 SCA 216, the Supreme Court has laid down "that the *prima facie* test for determination of the relationship between master and servants is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing that work the servant is to do, but also the manner in which he shall do his work. The proper test is whether or not the hirer had authority to control the manner of execution of the act in question. Applying this test in any case, where the chartered accountant is consulted only professionally on income-tax matters by a company, he cannot be said to be an officer or employee of the company.

A chartered accountant's main business is to render professional service for reward like a lawyer or a doctor. Where such service is rendered professionally and not as an officer or employee of the company, a chartered accountant is not disqualified under section 226(3)(*b*) of the Companies Act, 1956.

45. Appointment of a relative of a director as an auditor should not be made

In the legal sense a relative of a director of a company is not disqualified for appointment as an auditor of the company. However, special resolution under section 314 shall be passed if the remuneration of auditor exceeds the limits specified in section 314.

However, the council of the Institute of Chartered Accountants of India has suggested that a chartered accountant shall not accept the audit of a company where he is relative of the company's managing director or whole-time director and he believes that he would not be in a position to express his independent opinion.

Section 297 stipulates requirement for obtaining of Board's sanction for certain contracts in which particular directors are interested, does not come into play where a relative of a director is appointed as an auditor of the company. [DCA Circular No. 13, dated 5-6-1975]

46. Deemed vacation of office of an auditor in case of disqualifications

According to section 226(5), if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sections 226(3) and 226(4), he shall be deemed to have vacated his office as such.

Appendix 1

Specimen of Board Resolution for appointment of the First Auditors

The Chairman informed that the first auditors of the company are to be appointed in the Board meeting within one month from the date of incorporation of the company. He informed that he had got consent of M/s V.K. Ladha & Associates, Chartered Accountants, for their appointment as the first auditors of the company. The Board considered and passed the following resolution unanimously:

> **RESOLVED THAT** pursuant to the provision of section 224 of the Companies Act, 1956, M/s V.K. Ladha & Associates, Chartered Accountants of Ujjain from whom certificate pursuant to section 224(1B) of the Companies Act has been received, be and are hereby appointed as the first auditors of the company to hold office until the conclusion of the first annual general meeting of the company at a remuneration to be determined by the Board of directors of the company.

Appendix 2

Specimen of Letter of Intimation to the Auditor for Appointment

To,
M/s V.K. Ladha & Associates
Chartered Accountants
Ujjain (MP)

Sub: **Appointment as the auditors of the company**

Dear Sir,

We are pleased to inform you that the Board of directors of the company at their first Board meeting held on 20th July, 2006 have appointed your firm as the Statutory Auditors of the company and to hold office upto the conclusion of the first annual general meeting of the company on such remuneration as may be decided by the Board.

You are requested to confirm your acceptance for our further needful.

Thanking you,
Yours faithfully,
For, **AFA LIMITED**

(ACME)
DIRECTOR
Encl.: Certified copy of the Resolution

Appendix 3

Specimen of Letter for eligibility u/s 224(1B) of the Companies Act

To
The Board of directors
AFA Ltd.
RATLAM (MP)

Dear Sir,

In reference to the discussion had with Shri AB, a member of the company, we would like to inform that pursuant to the provisions of section 224(1B) of the Companies Act, 1956, if the appointment made by the members at the annual meeting of the company, it shall be within the ceiling prescribed under the Companies Act, 1956.

Thanking you

Yours faithfully
For, V.K. LADHA & ASSOCIATES
CHARTERED ACCOUNTANTS
V.K. LADHA
PARTNER

Appendix 4

Specimen of e-Form 23B

Information by auditor to Registrar

[Pursuant to section 224(1A) of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*) *Corporate identity number (CIN) of company	xxxxxxxxxxxxxxxxxxxxx
(*b*) Global location number (GLN) of company	
2. (*a*) Name of company	TULSI AMRIT LIMITED
(*b*) Address of the registered office of the company	13D, INDUSTRIAL AREA, SANWER ROAD, SECTOR-3 INDORE (M.P.)
3. *Income-tax permanent account number (PAN) of Auditor	XXXXXXXX
4. *Name of auditor	J.P. SARAF
5. (*a*) *Name of the auditor's firm	J.P. SARAF & Co.
(*b*) *Address of the auditor Line I	408, 4TH FLOOR, SILVER ARK PLAZA
Line II	20A, NEW PALASIYA
*City	INDORE
*State	MADHYA PRADESH
Country	IN
*Pin code	452001

6. Date of annual general meeting in which auditor is appointed 30/09/2006 (DD/MM/YYYY)
7. *Date of receipt of intimation of appointment by the auditor 30/09/2006 (DD/MM/YYYY)
8. *Whether appointment was accepted ☑ Yes ○ No

Attachments

1.	Copy of the intimation received from the Company.	Attach	
2.	Optional attachment(s) - if any.		

Declaration

☑ I hereby declare that my appointment is within the limits specified in sub-section (1B) of section 224.
To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.
I am duly authorised to sign and submit this form.

To be digitally signed by Auditor J.P.SARAF

For office use only

This e-Form is hereby registered

Digital signature of the authorising officer

Appendix 5

Specimen of e-Form 24A for appointment/removal of Auditor

Form for filing application to the Central Government (Regional Director)

[Pursuant to sections 22, 25, 224(3), 224(7) and 297 of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*)*Corporate identity number (CIN) of company XXXXXXXXXXX
   (*b*) Global location number (GLN) of company
2. (*a*) Name of the company AAA FOODS LIMITED
   (*b*) Address of the registered office of the company 123, SATI DARWAJA, UJJAIN (M.P.) 456001
3. * Please indicate the purpose of the application
   ○ Approval for entering into contract under section 297
   ⊘ Appointment of auditors under section 224(3)
   ○ Issue of license under section 25
   √○ Removal of auditors under section 224(7)
   ○ Rectification of name
   ○ Others
4. If others, then specify
5. (*a*) CIN of company against which the application for rectification of name is being made
   (*b*) GLN of company against which the application for rectification of name is being made
6. Date of annual general meeting (AGM) 30/09/2006 (DD/MM/YYYY)
7. (*a*) Service request number of Form 23 Z 999999
   (*b*) Date of filing Form 23 15/10/2006 (DD/MM/YYYY)
   (*c*) Date of passing special or ordinary resolution 28/10/2006 (DD/MM/YYYY)
8. *Details of application

   Removal of the existing auditors M/s ABC & Co., Chartered Accountants, appointed at the annual general meeting held on 30/09/2006 and appointments of another auditors in its place.

Attachments

1.	Memorandum of Association (MoA).		
2.	Articles of Association (AoA).		
3.	Declaration as per Annexure V of Companies Act, 1956		
4.	Future annual income and expenditure estimates.		
5.	Assets and liabilities statement with their estimated value as on seven days before Making the application.		
6.	Declaration by advocate of Supreme Court or High Court, attorney or pleader entitled to appear before a High Court, or a company secretary or chartered accountant in whole time practice that the MoA and AoA have been drawn in conformity with the provisions of the Act.		
7.	Details of the promoters and of the proposed directors of the company.		
8.	A list of the names, addresses, description and occupations of its directors and of its managers or secretary, if any, together with the names of companies, associations and other institutions, in which the directors of the applicant company are directors or hold responsible positions, if any with the descriptions of the positions so held.		
9.	If association is already in existence, then last two years' accounts, balance sheet and report on working of the association as submitted to the members of the association.		
10.	Statement of brief description of the work, if already done by the association and the work proposed to be done.		
11.	Statement of the grounds on which application is made.	Attach	
12.	If any of the above documents not in English or Hindi, then a translation of such document in English or Hindi.		
13.	Copy of agreement containing particulars of contract.		
14.	Copy of ordinary resolution.	Attach	
15.	Copy of Board resolution.		
16.	Optional attachment(s)- if any. (*a*) Copy of special notice under section 224(7) (*b*) Copy of the representation if any made by the statutory auditor (*c*) Copy of proceedings of the general meeting (*d*)Copy of the eligibility letter obtained from the proposed auditors.	Attach	

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete.

☑ I have been authorised by the Board of directors' resolution dated* 28/10/2006

(DD/MM/YYYY) to sign and submit this application.

☐ I am duly authorised to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company or applicant: AJAY BHARGAWA

For office use only

Digital signature of the authorising officer

This e-Form is hereby approved

This e-Form is hereby rejected

Annexure 2 to Appendix 5

Specimen of the Resolutions Passed by the Members

I. For appointment of Auditors at the Annual General Meeting

RESOLVED THAT M/s ABC & Co.. Chartered Accountants, the retiring Auditors be and are hereby reappointed as Auditors of the Company to hold office until the conclusion of the next Annual General Meeting and that they be paid a fee of Rs. 7,875 (Rs. Seven Thousand Eight Hundred Seventy-Five Only) for Auditing the Accounts of the Company plus out of Pocket Expenses incurred by them.

II. Ordinary Resolution passed at the EGM for removing existing auditors subject to approval of Regional Director

RESOLVED THAT pursuant to the provision of section 224(7) of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director), M/s ABC & Co., Chartered Accountants of Indore, who were appointed as the Auditors of the Company at the last Annual General Meeting to hold office up to the conclusion of the next Annual General Meeting of the Company, be and are hereby removed from such office of the Auditors, before the expiry of their term.

III. Ordinary Resolution passed at the EGM for appointing new auditors subject to approval of Regional Director

RESOLVED THAT pursuant to the provision of section 224, 224(1B) and 225 of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director) for the removal of the existing Auditors of the Company, M/s K. T. Jain & Co., Chartered Accountants of Indore, M/s Prabhat Jain & Associates, Chartered Accountants of Indore, be and are hereby appointed as the Auditors of the Company to hold office from the date of order of removal of the Auditors as approved by the Regional Director up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. 7,875 plus out of pocket expenses.

Annexure 3 to Appendix 5

Specimen of the Board Resolution for Authorizing to file Application

RESOLVED THAT an application in the prescribed e-Form 24A for approval for the removal of Auditor u/s 224(7) of the Companies Act, 1956 be made to the Regional Director, Ministry of Company Affairs, Western Region, Mumbai.

RESOLVED FURTHER THAT Shri DKJ, Director and/or Ms. AJ, Company Secretary of the Company be and is hereby authorised to sign the application on behalf of the Board and execute an affidavit verifying the contents of the application.

RESOLVED FURTHER THAT MS AJ, Company Secretary be and is hereby authorised to file the above said application with the Regional Director, Western Region, Department of Company Affairs and to appear before the Regional Director on behalf of the Company and to do all such acts, deeds and things as may be required in the matter and to give all details, statements as may be required by the Regional Director.

Annexure 4 to Appendix 5

Specimen of the Special Notice/Requisition Received from a member to call an EGM

From:

S.A. Patel
Member,
ABC Foods Ltd.
123 Sati Darwaja
Ujjain (M.P.)

To.

The Board of Directors,
ABC Foods Ltd.,
123, Sati Darwaja,
Ujjain (M.P.)

Sub: Requisition for calling an Extraordinary General Meeting u/s 169

Sir.

I, the under signed member of the Company holding 41.60% of the paid up share capital issued by the Company as set out in the Schedule hereto requires you in terms of section 169 of the Companies Act, 1956 and Article 64 of the Articles of Association of the Company to convene an Extra Ordinary General Meeting of the members of the Company, to transact the following businesses by Ordinary Resolution:

(1) REMOVAL OF AUDITORS

RESOLVED THAT pursuant to the provision of section 224(7) of the Companies Act. 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director), M/s ABC & Co., Chartered Accountants of Indore, who were appointed as the Auditors of the Company at the last Annual General Meeting to hold office up to the conclusion of the next Annual General Meeting of the Company be and are hereby removed from such office of the Auditors, before the expiry of their term.

(2) APPOINTMENT OF NEW AUDITORS:

RESOLVED THAT pursuant to the provision of sections 224, 224(18) and 225 of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director) for the removal of M/s ABC & Co., Chartered Accountants, the existing Auditors of the Company, M/s Prabhat Jain & Associates,. Chartered Accountants of Indore be and are hereby appointed as the Auditors of the Company to hold office from the date of Order of Removal of the Auditors as approved by the Regional Director up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. 7,875 plus of out of pocket expenses.

Name of the requisitionist: S.A.Patel

L. F. No.: 002
Shares held: 1,25,100
% Holding: 41.60%
Signature
PLACE: UJJAIN
DATED:

Annexure 5 to Appendix 5

Specimen of the Minutes of the Extraordinary General Meeting

PRESENT:
Shri S. Patel Chairman
Shri S.T. Patel Member
Shri N. Patel Member
Shri C. Patel Member
Smt. L.B. Patel Member
Smt. G.N. Patel Member
Smt. J.S. Patel Member

1. CHAIRMAN

Shri S. Patel, Director took the Chair for the Meeting.

2. QUORUM

After ascertaining that the requisite quorum for the meeting was present, the Chairman declared the meeting to be duly constituted and commenced the proceedings of the meeting.

3. NOTICE OF THE MEETING

The Chairman informed the Members that the Extraordinary General Meeting has been called on requisition and the notice of the Extraordinary General Meeting together with the Explanatory Statement under section 173(2) of the Companies Act, 1956 was read out by the Chairman.

SPECIAL BUSINESS

Item No.1: Removal of Auditors of the Company

The Chairman informed the members that the Extraordinary General meeting has been called on requisition to consider the resolution of a member proposing the removal of the existing auditors of the Company.

Shri S.A. Patel, Member proposed the following resolution for the approval of the members as an Ordinary Resolution.

> **RESOLVED THAT** pursuant to the provision of section 224(7) of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director), M/s ABC & Co., Chartered Accountants of Indore, who were appointed as the Auditors of the Company at the last Annual General Meeting to hold office up to the conclusion of the next Annual General Meeting of the Company, be and are hereby removed from such office of the Auditors, before the expiry of their term.

Shri N. Patel, Member seconded the resolution.

On being put to vote, the resolution was carried unanimously.

Item No. 2: Appointment of M/s Prabhat Jain & Associates, Chartered Accountants as Auditors of the Company:

Shri S.A. Patel, Member proposed the following resolution for the approval of the members as an Ordinary Resolution.

> **RESOLVED THAT** pursuant to the provision of sections 224, 224(1B) and 225 of the Companies Act, 1956 and subject to the approval of the Central Government (Powers delegated to the Regional Director) for the removal of M/s ABC & Co., Chartered Accountants, the existing Auditors of the Company, M/s Prabhat Jain & Associates, Chartered Accountants of Indore be and are hereby appointed as the Auditors of the Company to hold office from the date of order of removal of the Auditors as approved by the Regional Director up to the conclusion of the next Annual General Meeting of the Company on a remuneration of Rs. 7,875 plus out of pocket expenses.

Shri C. Patel, Member seconded the resolution.

On being put to vote, the resolution was carried unanimously.

There being no other business, the meeting concluded with a vote of thanks to the Chair.

Annexure 6 to Appendix 5

Specimen of Eligibility Certificate of Proposed Auditors u/s 224(1B)

Prabhat Jain & Associates,
Chartered Accountants
lInd Floor, Dawa Bazar,
Indore (M.P.)

To,
The Board of Directors,
ABC Foods Pvt. Ltd.,
Indore.

Reg.: Appointment as Statutory Auditor of your Company "Consent and Eligibility"

Dear Sir,

With reference our discussion and your offer for our appointment as the Statutory Auditors of your Company, we do hereby declare and confirm that we are duly qualified and eligible for this appointment as per the provisions of section 224(1B) and 226(1) of the Companies Act, 1956.

Thanking you

Yours Sincerely

For, Prabhat Jain & Associates
Chartered Accountants
Prabhat Jain
(Proprietor)

Appendix 6

Specimen of General meeting resolution for filing the casual vacancy caused by resignation of the auditors

The Chairman took the matter for appointment of M/s Bhorkar & Kulkarni, Chartered Accountants, Indore, in place of M/s Maheshwari & Gupta, Chartered accountant, the retiring Auditors who have expressed their unwillingness for re-appointment and who has to vacate their office at the conclusion of this Meeting.

The Chairman informed that the Company has obtained an eligibility letter from M/s Bhorkar & Kulkarni in terms of section 224(1B) of the Companies Act, 1956 and proposed the resolution for approval of the members:

> **RESOLVED THAT** M/s Bhorkar & Kulkarni, Chartered Accountants of Indore, be and are appointed as the Auditors of the Company, in place of M/s Maheshwari & Gupta, Chartered Accountants, to hold the office of Auditors from the date of this Meeting to the conclusion of the next Annual General Meeting of the Company on such remuneration and out of pocket expenses as may be decided by the Board.

Explanatory Statement

M/s Maheshwari & Gupta, Chartered Accountants, the existing Auditors of the Company has resigned from the office of Auditor of the Company, therefore creating casual vacancy in the office of Auditors. The Company has received a notice from member alongwith a letter u/s 224 of the Companies Act, 1956 informing the eligibility signifying his intention to appoint M/s Bhorkar & Kulkarni, Chartered Accountants, to fill the casual vacancy.

In terms of the provision of section 225 of the Companies Act, the appointment of Auditors in place of existing Auditors of the Company requires the approval of General Meeting by way of Ordinary resolution.

Therefore, the Board recommend to pass necessary resolution by way of ordinary resolution to appoint M/s Bhorkar & Kulkarni, Chartered Accountants, as the casual Auditors of the Company in place of M/s Maheshwari & Gupta, Chartered Accountants to hold office of the Auditors of the Company till the conclusion of the next Annual General Meeting on the remuneration as may be fixed by the Board.

A copy of the resignation tendered by the Auditors and eligibility letter as referred elsewhere are available for inspection of the members till the date of the meeting during business hours.

None of the director of the Company is concerned or interested in the proposed resolution.

Appendix 7

Specimen of special notice for appointment of auditors other than the retiring auditors

From …………. (Member) Dated 7th September, 2006

To

The Board of directors

AFA Ltd.

RATLAM (MP)

Sub: **Notice under section 225(1) of the Companies Act, 1956 for appointment of auditors M/s. N.V.N. & Co., Chartered Accountants, in place of M/s S.M.J. & Co.**

Dear Sir/s

This has in reference to your notice, dated 2nd September, 2006 for the 11th Annual General Meeting of the Company to be held on 29th September, 2006.

I, would like to inform that I have …….. Equity Shares of the company constituting …… % of the total paid up capital of the company and in reference to the provisions of section 225(1) read with the provisions of section 190 of the Companies Act, 1956, I hereby give a notice that M/s. N.V.N. & Co., Chartered Accountants of Ratlam be appointed in place of M/s. S.M.J. & Co., Chartered Accountants, the retiring auditors of the company.

I hereby submit a draft of the resolution for approval at the annual general meeting to be held on 29th September, 2006.

You are requested to please do the needful as per provisions of the Companies Act, 1956.

Thanking you

Yours faithfully

(……………..)

Members, L.F. No. ………

Encl.: 1. Draft of the resolution

2. Eligibility letter given by M/s. N.V.N. & Co., Chartered Accountants.

Appendix 8

Specimen of the resolution to be submitted by member's alongwith the notice

RESOLVED THAT M/s N.V.N. & Co., Chartered Accountants of Ratlam be and is hereby appointed as the auditors of the company in place of the retiring auditors M/s. S.M.J. & Company, Chartered Accountants to hold the office of the auditors till the conclusion of the next annual general meeting on such remuneration as may be determined by the Board of directors of the company.

Appendix 9

Specimen of letter for notice to the retiring auditor by the company

10th September, 2006

To,

M/s ABCD & Co.
Chartered Accountants
Indore (MP)

Sub: Notice under section 225(1) of the Companies Act, 1956 received from a member for appointment of auditors M/s. N.V.N. & Co., Chartered Accountants, Ratlam in place of retiring auditors.

Dear Sir/s

Kindly find enclosed a copy of the notice received from ………. a member of the company under section 225(1) read with the provisions of section 190 of the Companies Act, 1956 regarding notice for appointment of M/s XYZ & Co., Chartered Accountants of Ratlam in place of retiring auditors.

In terms of the provisions of section 225(2) of the Companies Act, 1956, we hereby submit a copy of the notice for your kind information.

Kindly acknowledge the receipt of letter for our reference and record.

Thanking you,

Yours faithfully
For, AFA Ltd.
DIRECTOR

Encl.: a/a

Appendix 10

Specimen of intimation letter by the new auditors to the existing auditors for appointment and seeking their no objection letter

5th October, 2006

To,

M/s ABCD & Co.
Chartered Accountants
Indore (MP)

Sub: Appointment as the auditors of M/s AFA Ltd.

Dear Sir,

We would like to inform that we have received a letter from AFA Ltd. informing that the company at their annual general meeting held on 29th September, 2006 has appointed our firm as the Statutory Auditors of the company.

Being the retiring auditors, kindly give us your no objection letter to accept the assignment by us. In case if you have any observation or reservation, please inform us accordingly.

Thanking you,

Yours faithfully
For, XYZ & CO.
CHARTERED ACCOUNTANTS
PROPRIETOR

Appendix 11

Specimen of resolution for fixing remuneration of Auditor of Government Company

RESOLVED THAT pursuant to the requirement of sub-section 8(*aa*) to section 224 of the Companies Act, 1956, the Board of Directors of the Company be and are hereby authorized to fix the remuneration and other terms and conditions, including reimbursement of out of pocket expenses in connection with the audit work, to the Statutory Auditors as appointed by the Comptroller and Auditor-General of India for the year 2005-2006.

Explanatory Statement to the above Resolution

As per section 619 of the Companies Act, 1956, the Statutory Auditors of a Government Company are appointed by the Comptroller and Auditor General of India (C&AG). The sub-section 8(*aa*) to section 224 of the Companies Act, 1956 requires that the remuneration of an auditor appointed under section 619 of the Companies Act, 1956 shall be fixed by the Company in general meeting or in such manner as the Company in general meeting may determine.

The Statutory Auditors for the Company for the financial year 2005-2006 is yet to be appointed by the C&AG.

Necessary resolution has been placed before the members for authorizing the Board of Directors to fix up the remuneration and reimbursement of other out of pocket expenses to the Statutory Auditors of the Company for the financial year 2005-2006, as and when the appointment is made by the C&AG. None of the Directors is interested in the resolution. Directors recommend the resolution as proposed in the Notice for Member's approval.

Chapter 2

Cost Audit

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*e-Form Nos.*
1.	209(1)(*d*)	Certain companies to maintain cost records on requirement by the Central Government.	
2.	233B	Audit of Cost Accounts.	23C

1. Requirement to maintain cost records

Section 209(1)(*d*) states that if the company pertains to any class of companies engaged in production, processing, manufacturing or mining activities and the class of companies is required by the Central Government to include such particulars in the Books of accounts shall keep at its registered office proper Books of accounts with respect to utilisation of material or labour or to other items of cost as may be prescribed by the Central Government to include such particulars in the Books of accounts.

2. Requirement for audit of cost accounts in certain cases

Section 233B concerns itself with the audit of cost accounts. Accordingly, the Central 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 Accountant within the meaning of the Cost and Works Accountants Act, 1959.

However, if the Central Government is of the opinion that sufficient number of qualified cost accountants are not available for conducting the cost audit, the Central Government may, by gazette notification direct that for such period as may be specified in the said notification, such chartered accountants may also conduct the audit of cost accounts of companies and thereupon a chartered accountant may be appointed to audit the cost accounts of the company.

APPOINTMENT OF COST AUDITOR

3. Compulsory requirement for certain class of companies to maintain cost records

Pursuant to section 209 of the Act, the Central Government has power to prescribe that any class of companies specified by the Government shall keep books of accounts relating to utilisation of material or labour or to other items of cost as may be prescribed.

The company shall keep at its registered office proper books of account including cost records. The Central Government has prescribed Rules for maintenance of cost records in respect of certain types of industries. (A list of the Industries and its products covered has been given in Appendix 2).

4. Order by the Central Government to direct for cost audit

The Central Government may, by order, direct that an audit of cost accounts of a company shall be conducted in such manner as may be specified in the order by an auditor who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959.

5. Appointment of cost auditors shall be made with the previous approval of the Central Government

On receipt of an order from the Central Government, the cost auditor shall be appointed by the Board of directors of a company in accordance with the provisions of section 224(1B) with the previous approval of the Central Government. [Section 233B(2)]

6. The Board shall obtain a certificate of eligibility from the cost auditor

Before the appointment of cost auditor is made by the Board, a written certificate shall be obtained from the auditor proposed to be so appointed to the effect that the appointment, if made, will be in accordance with the provisions of sub-section (1B) of section 224.

7. Application for approval of the Central Government

For process for approval for appointment of the cost auditors, the Board of directors shall suggest a name of cost auditor for the approval of the Central Government and also shall fix his remuneration. The company shall make an application to the Central Government electronically in e-Form 23C. (Appendix 1)

8. Central Government has powers to notify for cost audit by Chartered Accountants

If the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959 are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette, direct that for such period as may be specified in the said notification, such chartered accountant within the meaning of the Chartered Accountants Act, 1949, as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a chartered accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company. [Proviso to section 233B(1)]

9. Cost audit shall be in addition to the statutory audit

The cost audit conducted by cost auditor under section 233B shall be in addition to an audit conducted by statutory auditor appointed under section 224. [Section 233B(3)]

10. Obligation on a company to provide facilities for conducting cost audit

Upon receipt of an order for cost audit under section 233B(1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company. [Section 233B(6)]

11. Cost auditor shall have same powers and duties as of the statutory auditors

A cost auditor shall have the same powers and duties in relation to the cost audit conducted by him under section 233B as the statutory auditor of a company. [Section 233B(4)]

12. Report by cost auditor to the Central Government

The cost auditor shall make his report to the Central Government in such form and within such time as may be prescribed and shall also at the same time forward a copy of the report to the company. [Section 233B(4)]

13. Duty of the company to furnish the Central Government, explanation in case of qualification made in his report by the Cost Auditors

The company shall, within thirty days from the date of receipt of a copy of the report under section 233B(4) of the Act, furnish the Central Government with full information and explanation on every reservation or qualification contained in such report. [Section 233B(7)]

The Central Government shall have powers to call for such further information and explanations and thereupon the company shall furnish the same within such time as may be specified by the Central Government.

14. Central Government may direct for circulation of the cost audit report to the members

The Central Government may direct the company whose cost accounts have been audited to circulate to its members alongwith the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf. [Section 233B(10)]

15. Persons not to be appointed as the Cost Auditor [Section 233B(5)]

Following persons cannot be appointed as an auditor for conducting the audit of the cost accounts of a company:—

(*i*) A person referred to in sections 226(3) and 226(4) shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(*ii*) A person appointed under section 224 as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(*iii*) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (*a*) or clause (*b*) of section 233B(5), he shall on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

16. Penalty

If default is made in complying with the provisions of section 233B, the company shall be liable to be punished with fine which may extend to fifty thousand rupees and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to fifty thousand rupees, or with both. [Section 233B(11)]

17. Cost auditor will not be appointed as internal auditor of a company

Circular No. 1/83, dated 20-1-1983 states that a question has now been raised whether a cost auditor of a company can also be its internal auditor, which has been carefully examined in this Department. Since the cost auditor is required to comment on the scope and performance of internal auditor as per the provisions of the Cost Audit (Reports) Rules, 1968, it would tend to militate against proper and dispassionate discharge of the duties of the cost auditor if he was also the internal auditor of the company for the same period for which he is conducting the cost audit. The Department is, therefore, of the view that the cost auditor should not also be the internal auditor of a company for the period for which he is conducting the cost audit.

18. Disclosure of full details in the Cost Audit Report

Circular No. 3/83, dated 18-3-1983 states that the duties of the cost accountants appointed to conduct an audit of cost accounts of the company flow directly from the above provisions and as such they should in strict compliance therewith ensure that full and complete details in respect of the cost accounts of the company are furnished in their reports. Any request that certain details may not be disclosed in the report (on any ground whatsoever) should be discouraged as such non-disclosure will be inconsistent with the object and purpose of the Cost Audit Report Rules and the requirements thereunder. The cost auditors should if necessary, bring such instances to the notice of the Government by a specific note in their reports.

19. Submission of the soft copy of the Cost Audit Reports under section 233B of the Companies Act, 1956

The Department of Company Affairs has issued a Circular No. 52/22/CAB-2000 dated 26th November, 2002 which states:—

1. Para 4 of the Cost Audit Report Rules, 2001 provides that every Cost Auditor, who conducts an audit of the cost accounting records of the company, shall submit the report (a hard copy and a soft copy) along with auditor's observations and suggestions, Annexure and proforma to the Central Government in the prescribed form.
2. In order to have uniformity in the matter of submission of the Cost Audit Reports by the Cost Auditors and for the sake of convenience of management of data contained in these reports, the soft copy of the report shall henceforth, be submitted in non re-writable CD-ROM containing two files/parts.
3. Part-1 of the soft copy of the Cost Audit Report (including annexure and proforma) shall be in PDF/Adobe Acrobat version 4.0 or above or as an alternative, in Microsoft Office XLS format. The entire Cost Audit Report shall be in one form only and shall not be in combination of both.
4. Part-II of the soft copy shall consist of Para 4 to Para 28 of the Annexure to the Cost Audit Report in worksheet form of Microsoft Office Excel or compatible format. These para should strictly conform to the format prescribed in the Cost Audit Report Rules, 2001 and no reference whatsoever indicating the identify/location of the unit or the company should find a place in the soft copy.

The Central Government has notified the Companies (Cost Audit) Rules by Notification No. GSR 148(E) dated 8th March 2006 and has also prescribed new e-Form I for the Cost Audit Report, which shall be filed by the Company electronically to the Central Government. (Appendix 3)

20. Participation of Cost Auditor in the meetings of Audit Committee constituted under section 292A of the Companies Act, 1956 – clarification reg.

The Department of Company Affairs has issued a Circular No. 5/21/2001-C.L.V 52/323/CAB-87, dated 9th January, 2003 which states:—

1. The Department has examined whether the cost auditor appointed u/s 233B of the Companies Act, 1956, could or should be invited to the audit committee constituted in compliance with section 292A. It was clarified *vide* Circular No. 6/2001, dated 20-8-2001 that the cost auditor, wherever appointed, shall also attend and participate at the meetings of the audit committee, but shall not have the right to vote.
2. It has been mentioned in the circular that the presence of cost auditor in such committees will ensure overall cost management besides proper pricing of inter-unit/inter-company transfer and valuation of inventories. The intent of the Department was to impress upon the need for the presence of 'cost auditor' in audit committee meetings, as an auditor, but not as a member. The legislative intention is to constitute audit committees only from directors. As such the usage of these phrases should not be construed to mean that cost auditors are to be members of audit committees.

3. Sub-section 5 of section 292A provides that the auditors, internal auditors, if any, and the directors, incharge of finance, shall attend and participate at the meetings of audit committees without voting rights. The intention of providing for attending the meetings by auditors and internal auditors is to give an opportunity to the audit committee to hear their views. The cost auditor in his capacity as internal auditor can similarly participate in the meetings of the audit committee.
4. However, it has come to the notice of the Department that an interpretation is being made that cost auditor can be a member of audit committee. It is reiterated that the cost auditor cannot become a member of audit committee and wherever appointed, can only attend and participate in the meeting without voting rights. Any other interpretation will be outside the purview of section 292A and incorrect.

Appendix 1

Specimen of e-Form 23C

Form of application to the Central Government for appointment of cost auditor

[Pursuant to section 233B(2) of Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*)*Corporate identity number (CIN) of company	XXXXXXXXXXXX
(*b*) Global location number (GLN) of company	
2. (*a*) Name of the company	SF (INDIA) LIMITED
(*b*) Address of the registered office or of the principal place of business in India of the company	7, NIRAJ INDUSTRIAL ESTATE, OFF MAHAKALI CAVES ROAD, ANDHERI(E) MUMBAI 400096
3. *Paid up capital (in Rs.)	56200000

4. * Proposal for which government's approval is sought indicating the product for which cost audit is ordered

FORMULATION ACTIVITIES FOR DRUGS

5. (*a*) *Number of the Central Government's order directing cost audit	XXXXXXXX
(*b*) *Date of the Central Government's order directing cost audit	XX.XX.XXXX (DD/MM/YYYY)
6. (*a*) *Income-tax permanent account number (PAN) of cost auditor	XXXXXXXX

(*b*) *Name of cost auditor or firm who is proposed to be appointed

ABC & CO., COST ACCOUNTANTS

(*i*) *Address	Line I	1234, M.G.Road,
	Line II	
(*ii*) *City		INDORE
(*iii*) *State		MADHYA PRADESH
(*iv*) Country		IN
(*v*) *Pin code		452001

(*d*) (*i*) *Whether the proposed cost auditor is a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959) ☑ Yes ○ No

(*ii*) *Whether he has a certificate of practice ☑ Yes ○ No (*e*) The associateship or fellowship number of the cost accountant | A/CWA012

7. *Whether the cost auditor is subject to any disqualification under section 233B(5) of the Companies Act, 1956 ○ Yes ○ No ✓

8. (*a*) *Proposed remuneration of the cost auditor (in Rs.) | 25000

(*b*) Any other remuneration detail | 0

9. The financial year to be covered by the cost auditor

(*a*) *From (DD/MM/YYYY) | 01/04/2005 | (DD/MM/YYYY)

(*b*) *To (DD/MM/YYYY) | 31/03/2006 | (DD/MM/YYYY)

10. Date of the meeting of the Board of Director proposing the name of the cost auditor | 31/03/2006 | (DD/MM/YYYY)

11. Name and address of previous auditor

ABC & CO.,
COST ACCOUNTANTS
1234, M.G.ROAD, INDORE (M.P.)

12. If there is any change in the auditor, the reasons there for may be stated | No

Attachments

1.	Copy of the order passed by the Central Government directing the Company for the cost audit	Attach	
2.	*Copy of the Board resolution of the company sanctioning the proposal for which the Government approval has been sought.	Attach	
3.	*Copy of the certificate obtained from cost auditor regarding compliance of the section 224(1B) of the Companies Act, 1956	Attach	
4.	Optional attachment(s)- if any.		

Declaration

To the best of my knowledge and belief, the information given in the application and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated* | 31/03/2006 | (DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company (in case of Indian company) or an authorised representative (in case of a foreign company)

VKB

For office use only

Digital signature of the authorising officer

This e-form is hereby approved

This e-Form is hereby rejected

Annexure 1 to Appendix 1

Specimen of Board Resolution for appointment of Cost Auditor

RESOLVED THAT pursuant to the provisions of section 233B of the Companies Act 1956 and the Central Government's order, directing the audit of Company's Cost accounts relating to 2005-06 for the year ended 31st March, 2006, M/s ABC & Co, Cost Accountants be and are hereby appointed the cost auditors of the Company at a remuneration of Rs 25,000.

RESOLVED FURTHER THAT an application be made in Form 23C to the Central Government and that Mr, VKB, the Managing Director of the Company be and is hereby authorised to submit the application to Central Government, obtain the certificate under section 233B from the proposed appointee and to comply with all other formalities in this regard.

Annexure 2 to Appendix 1

Specimen of Certificate from Cost Auditor regarding Compliance of section 224(1B)

To

The Board of Directors
S F (India) Ltd.
Mumbai

Dear Sir,

In reference to the discussion had with Shri MPK, we would like to inform that pursuant to the provisions of section 224(1B) of the Companies Act, 1956, if the appointment made by the Central Government for the audit of the Cost Accounts of the Company, it shall be within the ceiling prescribed under the Companies Act, 1956.

Thanking you

Yours faithfully

For, ABC & Co.
COST ACCOUNTANTS
ABC
PARTNER

Appendix 2

List of Industries and Products covered under section 209(1)(*d*) of the Companies Act, 1956

Sl. No.	Type of Industry	Products Covered
1.	Cement	Cement, Clinker
2.	Cycles	Cycles including components thereof
3.	Caustic Soda	Caustic Soda in all forms
4.	Tyres & Tubes	Rubber Tyres & Tubes for all types of vehicles
5.	Air Conditioners	Air Conditioning System or device
6.	Refrigerators	Refrigerators
7.	Batteries	Batteries of all types
8.	Dry Cell Batteries	All types of Dry Cell Batteries & components thereof
9.	Electric Lamps	All types of Electric Lamps
10.	Electric Fans	All types of Electric Fans
11.	Electric Motors	All types of Electric Motors
12.	Motor Vehicles	All types of Motor Vehicles
13.	Aluminium	All Extraction, Extrusion
14.	Vanaspati	Refined vegetable oils
15.	Bulk Drugs	Bulk Drugs including intermediates if bulk drugs
16.	Sugar	Sugar and Khandsari

Sl. No.	Type of Industry	Products Covered
17.	Industrial Alcohol	Absolute, Rectified, Denatured and Power Alcohol
18.	Jute Goods	Jute Goods containing not less than 50% by weight of goods
19.	Paper	Paper used for printing, writing and wraping, news print, exercise books
20.	Rayon	VSF in all forms, filament yarn, Rayon Film, etc.
21.	Dyes	Acid Dyes and other dyes
22.	Soda Ash	Soda Ash in all forms
23.	Polyester	Polyester fibre, Filament Yam, Chips, Fabric, etc.
24.	Nylon	Nylon Chip, Fibre, Filament Yarn, Fabrics, etc.
25.	Textiles	All types of Textile products
26.	Sulphuric Acid	Sulphuric Acid in all various grades
27.	Steel Tubes & Pipes	Steel Tubes & Pipes (including stainless steel)
28.	Engineering	Power Driven Pumps, Diesel Engines, Power Transformer, Electric Generator, Machine Tools, Internal Combustion Engines.
29.	Electric Cables & Conductors	Power Cables, Telecommunication Cables, etc.
30.	Bearings	Bearings of various types and sizes
31.	Milk Food	Any type of Milk Food including milk powder, desi ghee, etc.
32.	Chemicals	
33.	Formulations	All Formulations under any system of medicine
34.	Steel Plant	Steel and Steel Products
35.	Insecticides	Various types of Insecticides, etc.
36.	Fertilizers	Straight N, P, K, NP, NPK, fortified, Micro-nutrients Fertilizer
37.	Soaps & Detergents	All types of Soaps and Detergents (whether in the form of cake, powder or liquid)
38.	Cosmetics & Toiletries	Powders, Creams, Toothpastes, Tooth powders, Mouth Wash, Shaving Creams, Soap, Foam, After Shave, Shampoos, Hair Oils, Room Fresheners, Deodorants, Surfactants, Hair Dyes, etc.
39.	Footwear	Shoes, Chappals, Sandles, Slippers, Play Shoes & Moccasins
40.	Shaving Systems	Shaving Blades, Razors including any part or components thereof and other shaving instrument
41.	Industrial Gases	Oxygen, Nitrogen, Hydrogen, Argon, Helium, Acetylene, CO_2, N_20
42.	Mining & Mettalurgy	Mining & Mettalurgy of various metals
43.	Electronic Products	All consumer Electronic Products, Computers, etc.

Appendix 3

Specimen of e-Form I for Filing Cost Audit Report and other Documents with the Central Government

[Pursuant to section 233B(4), 600(3)(*b*) of the Companies Act, 1956
and rule 2(*c*) and rule 4 of the Cost Audit (Report) Rules, 2001]

Note: All fields marked in * are to be mandatorily filled.

I. General information of the company

1. (*a*) *Corporate identity number (CIN) or foreign company registration number of the company — xxxxxxxxxxxxxxxxx

   (*b*) Global location number (GLN) of company

2. (*a*) Name of the company — SF INDIA LIMITED

(*b*) Address of the registered office or the principal place of business in India of the company — 7, NIRAJ INDUSTRIAL ESTATE, OFF MAHAKALI CAVES ROAD ANDHERI (E), MUMBAI 400093

3. Cost audit report (CAR) pertains to:

(*a*) *Name of the industry — PHARMACEUTICAL INDUSTRY

(*b*) *Product or activities — PHARMULATION OF DRUGS

(*c*) Central excise tariff chapter heading — 8300.00.12

(*d*) *Name and location of the unit

(*e*) *State where unit is located — MADHYA PRADESH

(*f*) *Financial year From 01/04/2005 (DD/MM/YYYY) To 31/03/2006 (DD/MM/YYYY)

4. *Location of other sites manufacturing or producing or processing or mining the product or carrying out the activity under reference (refer CAR Annexure 1.5)
NIL

5. (*a*) *Income-tax permanent account number of cost auditor

(*b*) *Name of the cost auditor or firm — SANDEEP BOTHRA

(*c*) *Membership number of cost auditor — CWA 12345

6. *Cost audit order number XXXXX dated 20/03/2006 (DD/MM/YYYY)

7. *Service request number (SRN) of relevant Form 23C seeking approval of appointment of the cost auditor Z99999 dated 25/3/2006 (DD/MM/YYYYY)

8. *Whether the cost audit report has been qualified or contains adverse remarks □ Yes □ No

9. *Whether there is any transaction with the related parties during the period to which the cost audit report pertains □ Yes □ No

II.* Quantitative information (for the product or activity under reference)

Unit of measurement (UOM) Number

S. No.	*Particulars*	*CAR annexure reference*	*Current year*	*Previous year*
1.	Total available capacity	4.3	5,00,000	3,00,000
2.	Total production quantity	4.5	40,00,000	35,00,000
3.	Capacity utilisation percentage	4.7	80	70
4.	Total Available quantity	4.9	45,00,000	38,00,000
5.	Quantity captively consumed	4.10	0	0
6.	Quantity sold (domestic)	4.11 (a + b)	30,00,000	25,00,000
7.	Quantity sold (exports)	4.11(c + d + e)	12,00,000	8,00,000
8.	Closing stock (finished goods)	4.12	3,00,000	5,00,000

III. Export commitments (amount in Rs. Thousands) - [As per cost auditor's certificate Para 3(*g*)]

A. Export commitments NIL

B. Actual export towards export commitment N.A.

IV.* Standard and actual consumption per unit (for the product or activity under reference)

S. No.	Particulars	Unit (specify)	Standard (Quantity/unit)	Actuals (Quantity/unit)	
Current year	Previous year				
	Consumption of input materials per unit [Annexure 5(B)] – Specify details of major input materials, components				
1.					
2.					
3.					
4.					
5.					
	Consumption of power, fuel and utilities per unit [Annexure 7(B)]				
1.					
2.					
3.					
4.					
5.					

V. *Key information from Cost Audit Report (for the product or activity under Reference)

S. No.	Particulars	CAR annexure reference	Unit (specify)	Current year	Previous year
1.	Total employee costs	8B.6	Rs. In thousands		
2.	Total repair and maintenance	9.5	Rs. In thousands		
3.	Depreciation absorbed	10.5	Rs. In thousands		
4.	Total overheads	12 (1 to 4)	Rs. In thousands		
5.	Total research and development expenses	13.5	Rs. In thousands		
6.	Total royalty and technical know-how charges	14.5	Rs. In thousands		
7.	Total Quality control expenses	15.6	Rs. In thousands		
8.	Total pollution control expenses	16.6	Rs. In thousands		
9.	Total abnormal non-recurring costs	17	Rs. In thousands		
10.	Total closing stock	18. (A). e2	Rs. In thousands		
11.	Total value of non-moving stock	18. (A). e3	Rs. In thousands		
12.	Non-moving stock to closing stock	18. (A). e4	Percentage		
13.	Total written off stock	18. (B). 5	Rs. In thousands		
14.	Total value of inventory as per cost accounts	19.(A).10	Rs. In thousands		
15.	Total value of inventory as per financial accounts	19.(A).11	Rs. In thousands		

S. No.	*Particulars*	*CAR annexure reference*	*Unit (specify)*	*Current year*	*Previous year*
16.	Estimated demand of the product in the country	22.2			
17.	Total production in the country	22.3			
18.	Quantities imported in the country	22.4			
19.	Percentage share of the company in total inland production	22.6	Percentage		
20.	Net sales (excluding excise duty)	23.3	Rs. In thousands		
21.	Adjustments in stocks	23.4	Rs. In thousands		
22.	Cost of bought out materials and services	23.5	Rs. In thousands		
23.	Value added	23.6	Rs. In thousands		
24.	Capital employed (for the product)	24.1	Rs. In thousands		
25.	Net worth (for the product)	24.2	Rs. In thousands		
26.	Profit or Loss for the product	24.3	Rs. In thousands		
27.	Operating expenses as a percentage of net sales (for the product)		Percentage		
(*a*)	Material cost	24.5a	Percentage		
(*b*)	Factory overheads	24.5b	Percentage		
(*c*)	Royalty on production	24.5c	Percentage		
(*d*)	Salaries and wages	24.5d	Percentage		
(*e*)	Research and development expenses	24.5e	Percentage		
(*f*)	Quality control	24.5f	Percentage		
(*g*)	Administrative overheads	24.5g	Percentage		
(*h*)	Selling and distribution	24.5h	Percentage		
(*i*)	Interest	24.5i	Percentage		
28.	Profit and Loss as a percentage of capital employed	24.6	Percentage		
29.	Profit and Loss as a percentage of net worth	24.7	Percentage		
30.	Profit and Loss as a percentage of net sales	24.8	Percentage		
31.	Value addition as a percentage of net sales	24.10	Percentage		
32.	Excise duty (ED) payable	27.D.1	Rs. In thousands		

S. No.	*Particulars*	*CAR annexure reference*	*Unit (specify)*	*Current year*	*Previous year*
33.	ED paid though cenvat - inputs	27.D.2.a	Rs. In thousands		
34.	ED paid though cenvat - capital goods	27.D.2.b	Rs. In thousands		
35.	Personal Ledger Account (PLA)	27.D.2.c	Rs. In thousands		
36.	Total	27.D.2	Rs. In thousands		

VI. * Margin per unit of output (for the product or activity under reference) – Annexure 21

S. No.	Particulars	Current year Cost of sales (Rs./unit)	Current year Sales realization (Rs./unit)	Current year Margin (Rs./unit)	Previous year Cost of sales (Rs./unit)	Previous year Sales realization (Rs./unit)	Previous year Margin (Rs./unit)

Purchased goods Yes No If yes, specify

details of major products

1.

2.

Loan license basis Yes No If yes, specify

details of major products

1.

2.

Own manufactured Yes No If yes, specify

details of major products

1.

2.

3.

4.

5.

Attachment

1. Cost Audit Report as per the Cost Audit (Report) Rules, 2001 Attach

Declaration

To the best of our knowledge and belief, the information given in the form and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated * 31/05/2006 (DD/MM/YYYY) to sign and submit this form

To be digitally signed by

Managing director or director or manager or secretary of the company (in case of Indian company)

or

An authorised representative (In case of a foreign company)

Director of the company

Cost auditor

For office use only

This e-Form is hereby registered

Digital signature of the authorizing officer

Appendix 4

Cost Audit (Report) Rules, 2001

[As amended by the Cost Audit (Report) (Amendment) Rules, 2006]

[Notification No. GSR 924 (E), dated 27-12-2001]

In exercise of the powers conferred by sub-section (4) of section 233B, read with sub-section (1) of section 227 and clause (*b*) of sub-section (1) of section 642 of the Companies Act, 1956 (1) of 1956), and in supersession of the Cost Audit (Report) Rules, 1996, except as respect things done or omitted to be done, before such supersession, the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Cost Audit Report Rules, 2001.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "Cost Auditor" means an auditor directed to conduct an audit under sub-section (1) of section 233B of the Act;

(*c*) "Form" means the Form of the Cost Audit Report and includes auditor's observations and suggestions, Annexure and Proforma to the Cost Audit Report;

(*d*) "Report" means Cost Audit Report duly audited and signed by the Cost Auditor in the prescribed form of Cost Audit Report;

(*e*) "Product under reference" means the product or activity to which the Report relates;

(*f*) All other words and expressions used in these rules but not defined, and defined in the Act and rules made under clause (*d*) of sub-section (1) of section 209 of the Act shall have the same meanings as assigned to them in the Act or rules, as the case may be.

3. Application.—These rules shall apply to every company in respect of which an audit of the cost accounting records has been ordered by the Central Government under sub-section (1) of section 233B of the Act. The Cost Audit Report submitted on or after 1st October, 2002, irrespective of the financial year of the company to which it relates shall be in the form prescribed under these rules.

4. Form of the Report.—(1) Every Cost Auditor, who conducts an audit of the cost accounting records of the company shall submit the report (a hard copy and a soft copy) along with auditor's observations and suggestions, Annexure and Proforma to the Central Government in the prescribed form and at the same time forward a copy of the report to the company.

(2) Every Cost Auditor, who submits a report under sub-rule (1), shall also give clarifications, if any required by the Central Government on the Cost Audit Report submitted by him, within thirty days of the receipt of the communication addressed to him calling for such clarifications.

(3) The Forms prescribed in these rules may be filed through electronic media or through any other computer readable media as referred under section 610A of the Companies Act, 1956 (1 of 1956).

(4) The electronic-form shall be authenticated by the authorised signatories using digital signatures, as defined under the Information Technology Act, 2000 (21 of 2000).

(5) The Forms prescribed in these rules when filed in physical form, may be authenticated by authorised signatory by affixing his signature manually.

5. Time-limit for submission of Report.—The Cost Auditor shall forward his report referred to in sub-rule (1) of rule 4 to the Central Government and to the concerned company within one hundred and eighty days from the close of the company's financial year to which the report relates.

6. Cost Auditor to be furnished with the cost accounting records, etc.—Without prejudice to the powers and duties the Cost Auditor shall have under sub-section (4) of section 233B of the Act, the company and every officer thereof, including the persons referred to in sub-section (6) of section 209 of the Act, shall make available to the Cost Auditor within one hundred and thirty-five days from the close of the financial year of the company, such cost accounting records, cost statements, other books and documents, Annexure and Proforma to the Report, duly completed, as would be required for conducting the cost audit, and shall render necessary assistance to the Cost Auditor so as to enable him to complete the cost audit and submit his report within the time limit specified in rule 5.

7. Authentication of Annexure to the Cost Audit Report.—The Annexure and Proforma prescribed with the Cost Audit Report shall be approved by the Board of Directors before submitting the same to the Central Government by the Cost Auditor. The Annexure and Proforma, duly audited by the Cost Auditor, shall also be signed by the Company Secretary and at least one Director on behalf of the company. In the absence of Company Secretary in the company, the same shall be signed by at least two Directors.

8. Penalties.—(1) If default is made by the Cost Auditor in complying with the provisions of rule 4 or rule 5, he shall be punishable with fine, which may extend to five thousand rupees.

(2) If the company contravens the provisions of rule 6 or rule 7, the company and every officer thereof who is in default, including the persons referred to in sub-rule (6) of section 209 of the Act, shall, subject to the provisions of section 233B of the Act, 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 day during which such contravention continues.

9. Saving of action taken or that may be taken for contravention of Cost Audit (Report) Rules, 1996.— It is hereby clarified that the supersession of the Cost Audit (Report) Rules, 1996, shall not in any way affect—

(*i*) any right, obligation or liability acquired, accrued or incurred thereunder;

(*ii*) any penalty, forfeiture or punishment incurred in respect of any contravention committed thereunder;

(*iii*) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and; any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if those rules had not been superseded.

FORM

Form for filing cost audit report and other documents with the Central Government

[Pursuant to sections 233B(4), 600(3)(*b*) of the Companies Act, 1956 and rules 2(*c*) and 4 of the Cost Audit (Report) Rules, 2001]

Note.—All fields marked in * are to be mandatorily filled.

I. General information of the company

1.	(*a*) *Corporate identity number (CIN) or foreign company registration of the company		
	(*b*) Global location number (GLN) of company		
2.	(*a*) Name of the company		
	(*b*) Address of the registered office or the principal place of business in India of the company		
3.	Cost audit report (CAR) pertains to:		
	(*a*) *Name of the industry		
	(*b*) *Product or activities		
	(*c*) Central excise tariff chapter heading		
	(*d*) *Name and location of the unit		
	(*e*) *State whether unit is located		
		From (DD/MM/YYYY)	To (DD/MM/YYYY)

4. *Location of other sites manufacturing or producing or processing or mining the product or carrying out activity under reference (refer CAR Annexure 1.5)

5. (*a*) * Name of the cost auditor or firm

(*b*) *Membership number of cost auditor

6. *Cost audit order number Dated (DD/MM/YYYY)

7. *Service request number (SRN) of relevant Form 23C dated (DD/MM/YYYYY) seeking approval of appointment of the cost auditor

8. *Whether the cost audit report has been qualified or contains adverse remarks □ Yes □ No

9. *Whether there is any transaction with the related parties during the period to which the cost audit report pertains □ Yes □ No

II. *Quantitative information (for the product or activity under reference)

Unit of measurement (UOM) Number

S. No.	*Particulars*	*CAR annexure reference*	*Current year*	*Previous year*
1.	Total available capacity	4.3		
2.	Total production quantity	4.5		
3.	Capacity utilisation percentage	4.7		
4.	Total available quantity	4.9		
5.	Quantity captively consumed	4.10		
6.	Quantity sold (domestic)	4.11 (a + b)		
7.	Quantity sold (exports)	4.11(c + d + e)		
8.	Closing stock (finished goods)	4.12		

III. Export commitments (amount in Rs. Thousands) — [As per cost auditor's certificate Para 3(*g*)]

A. Export commitments

B. Actual export towards export commitment

IV. *Standard and actual consumption per unit (for the product or activity under reference)

S. No.	Particulars	Unit (specify)	Standard (Quantity/unit)	Actuals (Quantity/unit)	
Current year	Previous year				
	Consumption of input materials per unit [Annexure 5(B)] – Specify details of major input materials, components				
1.					
2.					
3.					
4.					
5.					
	Consumption of power, fuel and utilities per unit [Annexure 7(B)]				
1.					
2.					
3.					
4.					
5.					

V. *Key information from Cost Audit Report (for the product or activity under Reference)

S. No.	*Particulars*	*CAR annexure reference*	*Unit (specify)*	*Current year*	*Previous year*
1.	Total employee costs	8B.6	Rs. In thousands		
2.	Total repair and maintenance	9.5	Rs. In thousands		
3.	Depreciation absorbed	10.5	Rs. In thousands		
4.	Total overheads	12 (1 to 4)	Rs. In thousands		
5.	Total research and development expenses	13.5	Rs. In thousands		
6.	Total royalty and technical know how charges	14.5	Rs. In thousands		
7.	Total Quality control expenses	15.6	Rs. In thousands		
8.	Total pollution control expenses	16.6	Rs. In thousands		
9.	Total abnormal non-recurring costs	17	Rs. In thousands		
10.	Total closing stock	18. (A). e2	Rs. In thousands		
11.	Total value of non-moving stock	18. (A). e3	Rs. In thousands		
12.	Non-moving stock to closing stock	18. (A). e4	Percentage		
13.	Total written off stock	18. (B). 5	Rs. In thousands		
14.	Total value of inventory as per cost accounts	19.(A).10	Rs. In thousands		
15.	Total value of inventory as per financial accounts	19.(A).11	Rs. In thousands		
16.	Estimated demand of the product in the country	22.2			
17.	Total production in the country	22.3			
18.	Quantities imported in the country	22.4			
19.	Percentage share of the company in total inland production	22.6	Percentage		
20.	Net sales (excluding excise duty)	23.3	Rs. In thousands		
21.	Adjustments in stocks	23.4	Rs. In thousands		
22.	Cost of bought out materials and services	23.5	Rs. In thousands		
23.	Value added	23.6	Rs. In thousands		
24.	Capital employed (for the product)	24.1	Rs. In thousands		
25.	Net worth (for the product)	24.2	Rs. In thousands		
26.	Profit or Loss for the product	24.3	Rs. In thousands		

S. No.	*Particulars*	*CAR annexure reference*	*Unit (specify)*	*Current year*	*Previous year*
27.	Operating expenses as a percen-tage of net sales (for the product)		Percentage		
(a)	Material cost	24.5a	Percentage		
(b)	Factory overheads	24.5b	Percentage		
(c)	Royalty on production	24.5c	Percentage		
(d)	Salaries and wages	24.5d	Percentage		
(e)	Research and development expenses	24.5e	Percentage		
(f)	Quality control	24.5f	Percentage		
(g)	Administrative overheads	24.5g	Percentage		
(h)	Selling and distribution	24.5h	Percentage		
(i)	Interest	24.5i	Percentage		
28.	Profit and Loss as a percent-tage of capital employed	24.6	Percentage		
29.	Profit and Loss as a percentage of net worth	24.7	Percentage		
30.	Profit and Loss as a percentage of net sales	24.8	Percentage		
31.	Value addition as a percentage of net sales	24.10	Percentage		
32.	Excise duty (ED) payable	27.D.1	Rs. In thousands		
33.	ED paid though cenvat - inputs	27.D.2.a	Rs. In thousands		
34.	ED paid though cenvat - capital goods	27.D.2.b	Rs. In thousands		
35.	Personal Ledger Account (PLA)	27.D.2.c	Rs. In thousands		
36.	Total	27.D.2	Rs. In thousands		

VI. * Margin per unit of output (for the product or activity under reference) – Annexure 21

S. No.	*Particulars*	*Current year*			*Previous year*		
Cost of sales (Rs./unit)	*Sales realization (Rs./unit)*	*Margin (Rs./unit)*	*Cost of sales (Rs./unit)*	*Sales realization (Rs./unit)*	*Margin (Rs./unit)*		
	Purchased goods Yes No details of major products				If yes, specify		
1.							
2.							
	Loan license basis Yes No details of major products				If yes, specify		
1.							
2.							

	Own manufactured details of major products	Yes		No		If yes, specify	
1.							
2.							
3.							
4.							
5.							

Attachment

1.	Cost Audit Report	Attach

Declaration

To the best of my knowledge and belief, the information given in this form and its attachments is correct and complete.

I have been authorised by the board of directors' resolution dated * (DD/MM/YYYY) to sign and submit this form

To be digitally signed by

Managing director or director or manager or secretary of the company (in case of Indian company) or an authorised representative (In case of a foreign company)

Director of the company

Cost auditor

For office use only

This e-Form is hereby registered

Digital signature of the authorizing officer

[Form II — The Cost Audit Report]

[*See* rule 2(*c*) and rule 4]

I/We, ... having been appointed as Cost Auditor(s) under section 233B of the Companies Act, 1956 (1 of 1956) of .... (mention name of the company) having its registered office at .... (mention registered office address of the company) (hereinafter referred to as the company), have examined the books of account prescribed under clause (*d*) of sub-section (1) of section 209 of the said Act, and other relevant records in respect of the unit .... (mention name and location of the unit) for the period/year .... (mention the financial year) relating to .... (mention name of the product or activity) maintained by the company and report, in addition to my/our comments in para 3 relating to auditor's observations and suggestions, that—

1. (i) I/we have/have not obtained all the information and explanations, which to the best of my/our knowledge and belief were necessary for the purpose of this audit;

(*ii*) proper cost accounting records, as prescribed under clause (*d*) of sub-section (1) of section 209 of the Companies Act, 1956, have/have not been kept by the company;

(*iii*) proper returns adequate for the purpose of my/our Cost Audit have/have not been received from the branches not visited by me/us;

(*iv*) the said books and records give/do not give the information required by the Companies Act, 1956 in the manner so required;

(*v*) the cost statements in respect of product or activity under reference as specified in the Annexures/ Proforma of Schedule I, Schedule II or Schedule III of the concerned Cost Accounting Records(** ....)Rules duly audited by me/us are kept in the company.

2. In my/our opinion, the company's cost accounting records have/have not been properly kept so as to give a true and fair view of the cost of production, cost of sales and margin of the product under reference as prescribed under the rules.

3. Based on my/our examination of the records of the company subject to the aforesaid qualifications, if any, I/We give my/our observations and suggestions on the following—

   (a) the adequacy or otherwise of the cost accounting system including inventory valuation in vogue in the company and suggestions for the improvement thereof. The Cost Auditor shall also indicate the persistent deficiencies in the system, pointed out in earlier reports but not rectified;

   (b) the adequacy or otherwise of the budgetary control system, if any, in vogue in the company;

   (c) matters which appear to him to be clearly wrong in principle of apparently unjustifiable;

   (d) cases, where price charged for related party transactions as defined in the respective Cost Accounting Records Rules is different from normal price, impact of such lower/higher price on margin of the product under reference shall be specified;

   (e) areas where the company is incurring losses or where there is considerable decline in profitability, the cost auditor should comment on the reasons thereof including indicative break-even point. The Cost Auditor shall also comment on the default, if any on the payments due to the Government, financial institutions and banks, penal interest levied thereon and its impact on the cost of sales and profitability;

   (f) steps required to strengthen the company under the competitive environment especially with regard to need for protection from cheaper imports, if any;

   (g) export commitments of the company *vis-a-vis* actual exports for the year under review. Also comment on comparative profitability and pricing policy of the company for domestic and export sales. Give impact of exports benefits/incentives offered by the Government on export profitability;

   (h) the scope and performance of internal audit of cost records, if any, and comment on its adequacy or otherwise.

4. The Cost Auditor shall suggest measures for making further improvements in the performance in respect of cost control and cost reduction.

5. The Cost Auditor may also give his other observations and suggestions, if any, relevant to the cost auditor.

Dated this .... date of .... 200 .... at .... (mention name of place of signing this report).

....

Signature & Seal of the Cost Auditor(s)

Membership Number

Notes.—(1) Delete words not applicable.

(2) ** Specify the title of the concerned Cost Accounting Records Rules made under clause (*d*) of sub-section (1) of section 209 of the Companies Act, 1956 which are applicable to the product or activity of the company.

(3) If as a result of the examination of the books of account, the Cost Auditor desires to point out any material deficiency or give a qualified report, he shall indicate the same against the relevant paras (*i*) to (*vi*) only in the prescribed form of the Cost Audit Report giving details of discrepancies he has come across.

(4) The report, suggestions, observations and conclusions given by the Cost Auditor under this paragraph shall be based on verified data, reference to which shall be made here and shall, wherever practicable, be included after the company has been afforded an opportunity to comment on them.

Annexure to the Cost Audit Report

[*See* rule 2(*c*) and rule 4]

1. General

(1) (*a*) Name and address of the registered office of the company whose accounts are audited.

(*b*) Name and address of the place where the cost accounting records are maintained viz. registered office, head office or factory.

(2) Name of the product and location of the unit to which the Annexure pertains.

(3) The Company's financial year to which the Cost Audit Report relates.

(4) Date of first commencement of commercial production of the product under reference.

(5) Location of other sites manufacturing or producing or processing or mining the product or carrying out the activity under reference.

(6) Name and address of the Cost Auditor.

(7) Membership number of the Cost Accountant. In case of firm of Cost Accountants, name and membership number of all the partners.

(8) Reference number and date of Government Order under which the Audit is conducted.

(9) Reference number and date of the Government letter approving the appointment of the Cost Auditor.

(10) Date of Board of Directors' meeting wherein the Annexure and Proforma to the cost auditor report were approved.

(11) The number of Audit Committee meetings held by the company, and attended by the Cost Auditor during the year under reference.

(12) Name, qualification and designation of the officer heading the cost accounting section or department of the company.

(13) In case of loan license/job work arrangement by the company, mention the name of the third party and location of the factory, where the product has been produced/manufactured.

(14) If there is any foreign technical collaboration for the product under reference, the following details shall be given:

(a) name and address of the foreign collaborators;

(b) main terms of agreement;

(c) amount of royalty, lump sum payment, technical aid fee payable and the basis of calculating the same;

(d) whether the technical collaborator has contributed to the share capital. If so, the paid up share capital so held.

(15) If the company is engaged in other activities besides the manufacture of the product under reference, the following details in respect of each such product or activity shall be given:

(*a*) list of the products or activities;

(*b*) list of the products or activities for which Cost Accounting Records Rules have been prescribed under section 209(1)(*d*) of the Act;

(*c*) whether Cost Audit Order has been issued by the Government in respect of any of the products or activities. If so, number and date of the order.

(16) A printed copy of the Annual Report, containing audited Profit and Loss Account, Balance Sheet and Auditor's Report in respect of the company's financial year for which the report is rendered, shall be enclosed with the Cost Audit Report.

2. Cost accounting system

(1) Briefly describe the cost accounting system existing in the company, keeping in view the requirements of the Cost Accounting Records Rules applicable to the class of companies manufacturing the product under reference and also its adequacy or otherwise to determine correctly the cost of production, cost of sales, sales realisation and margin of the product under reference.

(2) Briefly specify the changes, if any, made in the costing system; basis of inventory valuation; method of overhead allocation; apportionment to cost centres/departments and final absorption to the product under reference, etc., during the current financial year as compared to the previous financial year.

3. Process of manufacture

A brief note regarding the process of manufacture along with flow chart covering production, utility and service department of the product.

4. Quantitative details

Particulars	*Current Year*	*1st previous year*	*2nd previous year*
1. Installed capacity*			
2. Capacity enhanced during the year by leasing arrangement, etc.			
3. Total available capacity			
4. Production during the year: (*a*) self-manufactured (*b*) third party on job work, etc. (*c*) loan license basis			
5. Total production quantity			
6. Production as per Excise Records			
7. Capacity utilisation percentage			
8. Opening stock (finished quantity)			
9. Total available quantity			
10. Quantity captively consumed			
11. Quantity sold: (*a*) domestic at controlled price (*b*) domestic at market price (*c*) export under advance license (*d*) export under other obligation (*e*) export at market price (*f*) Total			
12. Closing stock (finished quantity)			

Notes.—

1. It should be clarified whether the installed capacity is on single shift or multiple shift basis.

2. In order to have a meaningful comparisons of production and installed capacity, wherever necessary these details should also be expressed in appropriate units, e.g. standard hours or equipment/plant/vessel occupancy hours crushing hours spindle/loom shifts, equivalent production, production in terms of standard hours, etc.

5(A). Major input materials/components consumed

Particulars	Current year			Two previous years separately		
	Quantity	Rate	Amount	Quantity	Rate	Amount
1. Indigenous: (a) (specify) (b) (c) 2. Self-manufactured: (a) (specify) (b) (c) 3. Imported: (a) (specify) (b) (c) 4. Total						

Note.—Details should be furnished in respect of major input materials each constituting at least 2% of the total raw material cost.

5(B). Standard/Actual consumption of input materials per unit

Particulars	Units	Standard	Actuals		
			Current year	First previous year	Second previous year
1. (specify 2. 3.					

Note.—Details should be furnished in respect of major input materials each constituting at least 2% of the total raw material cost for each major type/variety/size, etc. of product under reference.

6. Break-up of cost of input materials imported during the year

Particulars	Current year	First previous year	Second previous year
1. FOB Price in foreign currency/rupees 2. Insurance and freight 3. Customs duty 4. Clearing charges 5. Inland freight 6. Other expenses 7. Total			

Note.—Details should be furnished in respect of major input materials each constituting at least 2% of the total material cost.

7(A). Power, fuel and utilities

Particulars	Current year			Two previous years separately		
	Quantity	Rate	Amount	Quantity	Rate	Amount
1. Indigenous (purchased): (a) (specify) (b) (c) 2. Self-generated/produced: (a) (specify) (b) (c) 3. Imported: (a) (specify) (b) (c) 4. Total						

Note.—Details should be furnished in respect of major items each constituting at least 2 per cent of the total raw material cost.

7(B). Standard/actual consumption of power, fuel and utilities in terms of quantity per unit of production:

Particulars	Units	Standard	Actuals		
			Current year	First previous year	Second previous year
1. (specify 2. 3.					

Note.— Details should be furnished in respect of each major type/variety/size, etc. of product under reference.

8. Salaries and wages:

Particulars	Current year	First previous year	Second previous year
A. Quantitative Details: 1. Direct Workers: (a) Average number during the year (b) Man-days available (c) Man-days actually worked for: (i) own production (ii) job work (d) Reason-wise analysis of idle man-days [(a) - (b)] (i) absenteeism (ii) shortage of raw materials (iii) power shortage/failures (iv) Others (specify)			

Particulars	Current year	First previous year	Second previous year
2. Indirect Workers:			
(a) Average number during the year			
(b) Man-days available			
(c) Mandays actually worked for:			
(i) own production			
(ii) job work			
(d) Reason-wise analysis of idle man-days [(a) - (b)]			
(i) absenteeism			
(ii) shortage of raw materials			
(iii) power shortage/failures			
(iv) others (specify)			
B. Cost Detail			
1. Direct labour cost on production			
2. Indirect employee costs on production			
3. Employee costs on administration			
4. Employee costs on selling and distribution			
5. Other employees costs, if any (specify)			
6. Total employee costs			
7. (a) Payments under any VRS			
(b) Amount provided during the year			

9. Repairs and maintenance

Particulars	Current year	First previous year	Second previous year
1. Land and Building			
2. Plant and machinery			
3. Staff quarters and colony			
4. Others (to be specified asset category-wise)			
5. Total amount			
6. Amount capitalised/deferred during the year			
7. Net amount (5 - 6)			
8. Deferred amount of earlier years, if any			
9. Total amount provided in the cost records (7 + 8)			

10. Fixed assets register and depreciation

Particulars	Current year	First previous year	Second previous year
1. Whether fixed assets register maintained cost centre-wise			
2. Method of providing depreciation			
3. Amount of depreciation under section 205(2) of the Companies Act, 1956 or any other relevant Act, as the case may be			

Particulars	Current year	First previous year	Second previous year
4. Amount of depreciation provided in the financial records 5. Amount of depreciation absorbed in the cost records* 6. Shortfall/Excess, if any (3 and 5)			

Note.—*The impact of re-valuation of assets, if any, shall not be included.

11. Gross Block, Depreciation and Lease Rent

Particulars	Gross block	Depreciation	Lease rent paid, if any	Total (b + c)	First previous year	Second previous year
	a	b	c	d		
Name of major cost centres/ products: (a) (specify) (b) Total						

Note.—Excluding gross block of assets given on lease, if any.

12. Overheads

	Current year		Two previous years separately	
Particulars	for the product under reference	for factory as a whole	for the product under referencer	For factory as a whole
1. Factory Overheads (a) (specify) (b) 2. Administration OHs (a) (specify) (b) 3. Selling Overheads (a) (specify) (b) 4. Distribution OHs (a) (specify) (b)				

Note.—The break-up under each head should be furnished in respect of major items constituting at least 80% of the overhead cost under each head.

13. Research and development expenses

Particulars	Current year	First previous year	Second previous year
1. Process development and improvement			
2. Existing product development			
3. New product development			
4. Others, if any			
5. Total amount			
6. Amount capitalised/deferred during the year			
7. Net amount (5 - 6)			
8. Deferred amount of earlier years, if any			
9. Total amount provided in the cost records (7 + 8)			
10. Amount paid to related parties			

14. Royalty and technical know-how charges

Particulars	Current year	First previous year	Second previous year
1. Royalty on production/Sales			
2. Lump sum payment of royalty, if any			
3. Technical know-how charges			
4. Others, if any			
5. Total amount			
6. Amount capitalised/deferred during the year			
7. Net amount (5 - 6)			
8. Deferred amount of earlier years, if any			
9. Amount provided in the financial accounts (7 + 8)			
10. Amount absorbed in the cost records			
11. Shortfall/Excess, if any			
12. Amount paid to related parties			

Note.—The details should be furnished in respect of each agreement separately.

15. Quality control expenses

Particulars	Current year	First previous year	Second previous year
1. ISO number, if any			
2. Name of certifying agency			
3. Salaries and Wages			
4. Other direct expenses			
5. Others, if any (specify)			
6. Total amount			

16. Pollution control expenses

Particulars	Current year	First previous year	Second previous year
1. Effluent treatment 2. Control of air pollution 3. Control of ash pound/ash mound 4. Penalty, if any 5. Others, if any 6. Total amount			

17. Abnormal non-recurring costs

Particulars	Current year	First previous year	Second previous year
1. (specify) 2. 3. Total			

18(A). Non-moving Stock (at the end of the year)

Particulars	Current year	First previous year	Second previous year
a1. Total direct material consumption a2. Closing stock of direct material a3. Value of non-moving stock a4. Percentage of a3 to a2 b1. Total indirect material consumption b2. Closing stock of indirect material b3. Value of non-moving stock b4. Percentage of b3 to b2 c1. Work-in-progress c2. Closing stock c3. Value of non-moving stock c4. Percentage of c3 to c2 d1. Finished Goods d2. Closing stock d3. Value of non-moving stock d4. Percentage of d3 to d2 e1. Total: e2. Closing stock e3. Value of non-moving stock e4. Percentage of e3 to e2			

18(B). Written off stock (during the year)

Particulars	Current year	First previous year	Second previous year
1. Direct Materials (Raw Material and Components, etc)			
2. Indirect Materials			
3. WIP			
4. Finished Goods			
5. Total			

19. (A) Inventory valuation (at the end of the year)

Particulars	Basis of valuation	Current year			Previous year		
		Quantity (unit)	Rate (Rs.)	Amount (Rs.)	Quantity (unit)	Rate (Rs.)	Amount (Rs.)
1. Input materials:							
(i) Purchased							
— Indigenous							
— Imported							
(ii) Self-manufactured							
2. Chemicals, additives and consumables							
3. Stores and spares							
4. Packing materials							
5. Tools and implements and Jigs, Dies and Fixtures							
6. Work-in-progress:							
(i) material cost							
(ii) conversion cost (details to be given)							
7. Finished goods:							
(i) unpacked							
(ii) packed							
8. Scrap/wastage							
9. Others, if any							
10. Total value of inventory as per cost accounts							
11. Total value as per financial accounts							
12. Reasons for major differences, if any							

Notes.—(1) In respect of item at Sr. Nos. 1 and 6 details be furnished in respect of each major input material constituting at least 2% of the total material cost.

(2) In respect of items at Sr. Nos. 2 to 5, total amount be given without any quantitative details.

(3) Give in brief the method of inventory valuation system indicating the elements of cost included therein and the extent thereof.

(4) Capital work-in-progress to be shown separately.

19. (B) Physical verification of inventory

Sl. No.	Particulars	Periodicity of verification	Shortage value (Rs.)	Excess value (Rs.)	Net (Rs.)
1.	Raw material				
2.	Chemicals, additives, consumables, etc.				
3.	Stores and Spares				
4.	Packing Materials				
5.	Tools and Implements				
6.	WIP				
7.	Finished Goods				
8.	Scrap, Wastage				
9.	Total				

20. Sales of the product under reference

Particulars	Current year			Two previous years separately		
	Quantity	Rate	Amount	Quantity	Rate	Amount
1. Purchased goods:						
(a) (specify)						
(b)						
2. Loan license basis:						
(a) (specify)						
(b)						
3. Own manufactured:						
(a) (specify)						
(b)						
4. Total sales						

Notes.—(1) Above details shall be furnished for major product groups/varieties.

(2) Separate details shall be furnished for indigenous sales and export sales.

21. Margin per unit of output

Particulars	Current year			Two previous years separately		
	Cost of sales	Sales realization	Margin	Cost of sales	Sales realization	Margin
1. Purchased goods:						
(a) (specify)						
(b)						
(c)						
2. Loan license basis:						
(a) (specify)						
(b)						
(c)						
3. Own manufactured						
(a) (specify)						
(b)						
(c)						

Notes.—(1) Above details shall be furnished for major product groups/varieties.

(2) Separate details shall be furnished for margin on indigenous sales and export sales. Where the product (such as sugar, bulk drugs, formulations, etc.) is sold at different prices in accordance with government policy, sales realisation and margin on such product at different prices shall be shown separately alongwith quantity and value.

22. Competitive margin against imports

Particulars	Current year	First previous year	Second previous year
1. Name of product			
2. Estimated demand of the product in the country*			
3. Total production in the country*			
4. Quantities imported in the country**			
5. Total production by the company			
6. % age share of the company in total inland production (item 5/item 3)			
7. (a) Cost of production per Unit (Inland sale)			
(b) Cost of Sale per Unit (Inland sale)			
(c) Cost of production per Unit (Export sale)			
(d) Cost of Sale per Unit (Export sale)			
8. Quantity of the product imported by the company**			
9. FOB value of quantity imported by the company**			
10. Weighted average FOB rate for quantities imported by the company (item 9/item 8)**			
11. FOB value of quantity imported in the country**			
12. Weighted average FOB rate of quantities imported in the country (item 11/item 4)**			
13. Competitive margin [Item 12 less item 7(A)]**			
14. Major exporting countries (other than those listed in item 4 above)			
15. (A) Total import duty paid by the company (net of CENVAT)			
(B) Weighted average rate of import duty paid by the company (net of CENVAT) (item 15(A)/item 8)			
16. Bound rate of duty under WTO agreement.			

Notes.—

(1) *Indicate the source of information.

(2) ** Country-wise details should be furnished in respect of major countries covering at least 80% of the total and balance should be shown under the head "Others".

23. Value addition and distribution of earnings

Particulars	Current year	First previous year	Second previous year
A. Value Addition (for the product under reference):			
1. Gross sales (excluding returns)			

Particulars	Current year	First previous year	Second previous year
2. *Less*: Excise duty, etc. 3. Net sales 4. Adjustments in stocks 5. *Less*: Cost of bought out materials 6. Value added 7. Add: Income from any other sources 8. Earnings for distribution B. Distribution of earnings to: 1. Employees as salaries and wages, retirement benefits, etc. 2. Shareholders as dividend 3. Retained funds as depreciation, etc. 4. Government as taxes (specify) 5. Others, if any (specify) 6. Total			

24. Financial position and ratio analysis

Sl. No.	Particulars	Current year			Two previous years separately		
		Product under reference	Factory as a whole	Company as a whole	Product under reference	Factory as a whole	Company as a whole
1.	Capital employed						
2.	Net Worth						
3.	Profit						
4.	Net Sales						
5.	Operating expenses as a percentage of Net Sales: (a) Material cost (b) Factory overheads (c) Royalty on production, if any (d) Salaries and wages (e) Research and development expenses (f) Quality control (g) Administrative overheads (h) Selling and distribution (i) Interest						
6.	Profit as %age of capital employed						

Sl. No.	Particulars	Current year			Two previous years separately		
		Product under reference	Factory as a whole	Company as a whole	Product under reference	Factory as a whole	Company as a whole
7.	Profit as %age of net worth						
8.	Profits as %age of net sales						
9.	Profit as %age of value addition						
10.	Value addition as a %age of Net Sales						
11.	Current assets to current liabilities						
12.	Net working capital in terms of number of months of cost of sales excl. depreciation						
13.	Debt-equity ratio						
14.	Raw materials stock in terms of number of months of consumption						
15.	Stores and spares stock in terms of number of months of consumption						
16.	Work-in-progress stock in terms of number of months of cost of production						
17.	Finished goods stock in terms of number of months of cost of sales.						

Notes.—(1) Figures given for the company as a whole against serial numbers 1, 2, 3 and 4 shall be duly reconciled with the financial accounts of the company.

(2) The figures given for the product against serial numbers 1, 2, 4 and 5 shall be duly reconciled with the cost accounts of the company.

(3) Figures given for the factory as a whole against serial numbers 1, 3 and 4 shall be duly reconciled with the financial accounts of the company.

25. Capitalisation of revenue expenditure

Particulars	Current year	First previous year	Second previous year
1. Raw Materials: (a) Purchased — Indigenous — Imported (b) Self manufactured			

Particulars	Current year	First previous year	Second previous year
2. Direct wages and salaries 3. Consumable stores 4. Repairs and maintenance 5. Depreciation 6. Factory overheads 7. Administration overheads 8. Other expenses (specify) 9. Total 10. Capitalisation — Excisable value 11. Capitalisation — Non-excisable value			

26. Related party transactions

Briefly describe the transfer pricing policy, followed by the company in respect of "related party relationship" as defined in the relevant cost accounting records rules made under clause (d) of sub-section (1) of section 209 of the Act. The following particulars may be furnished with regard to related party transactions.

Particulars of related party	Product/activity	Quantity	Rate	Amount	Normal Price
1. 2. 3. 4. etc.					

Note.—Details should be furnished for sale and purchase transactions separately.

27. Central Excise reconciliation for the product under Reference

Particulars	Chapter heading —	Chapter heading —	Chapter heading —
A. Quantitative Details: 1. Opening Stock 2. Add: Production 3. Less: Closing Stock 4. Total Sales/Clearances	Unit	Unit	Unit

Particulars	Assessable value (Rs.)	Rate of duty	Amount of duty (Rs.)
B. Details of Clearances 1. Total Clearances (Chapter heading-wise 2. Less: Duty Free Clearances (factory) 3. Excisable Clearances (factory) 4. Penalty/Fine/Interest payable if any 5. Total Duty Payable (total 3 & 4)			

Particulars	Inputes	Capital goods	Total
C. Summary of Cenvat Credit			
1. Opening Balance			
2. Add: Availed during the year			
3. Add: Refunds received during the year			
4. *Less*: Closing Balance as per Excise Records			
5. Total Cenvat credit utilised during the year (1 + 2 + 3 - 4)			
6. Closing Balance as per Annual Accounts			
7. Difference between 4 - 6			
8. (State amount and reasons for Difference)			

Particulars	Amount (Rs.)
D. Reconciliation of Duty paid	
1. Excise Duty payment as per 'B'	
2. Total Excise Duty paid through	
(a) Cenvat Account - (Inputs)	
(b) Cenvat Account - (Capital Goods)	
(c) PLA	
Total (a + b + c)	
3. Difference between (1 - 2)	
4. (State amount and reasons for difference)	
5. Excise Duty as per RT - 12	
6. Difference between (2 - 5)	
7. (State amount and reasons for difference)	
E. Reconciliation of Duty paid and recovered:	
1. Excise Duty paid as per P & L A/c	
2. Excise Duty Recovered as per P & L A/c	
3. Difference between duty paid and recovered	
4. (State amount and reasons for difference)	
F. Reconciliation of Turnover	
1. Turnover as per RT 12	
2. Turnover as per Annual Accounts (Net off Duties & Taxes)	
3. Difference between (1 - 2)	
4. (State amount and reasons for difference)	

28. Profit Reconciliation

Particulars	Current year	First previous year	Second previous year
1. Profit or Loss as per cost accounting records			
2. *Add*: Incomes not considered in cost accounts:			
(a) (specify)			
(b)			
(c)			

Particulars	Current year	First previous year	Second previous year
3. *Less*: Expenses not considered in cost accounts:			
(a) (specify)			
(b)			
(c)			
4. *Add*: Over-valuation of closing stock in financial accounts			
5. *Add*: Under-valuation of opening stock in financial accounts			
6. *Less*: Under-valuation of closing stock in financial accounts			
7. *Less*: Over-valuation of opening stock in financial accounts			
8. Adjustment for others, if any (specify)			
9. Profit or Loss as per financial accounts			

Explanation.—For the purpose of these rules:—

(*a*) "Capital Employed" means average of fixed assets at net book values (excluding intangible assets effect of revaluation of fixed assets, capital works-in-progress) and current assets minus current liabilities and provisions existing at the beginning and close of the financial year.

(*b*) "Net Worth" means share capital plus reserves and surplus (excluding revaluation reserve) less accumulated losses and intangible assets.

(*c*) "Profit" means operating profit after providing for depreciation and all other expenses except interest on borrowings including debentures but before providing for taxes on income.

(*d*) "Net Sales" means sales excluding sales returns excise duties, sales tax, octroi, other local taxes and expenses refundable/recoverable from buyers/customers.

(*e*) "Value Addition" means the difference between the net output value (net sales adjusted for work-in-progress and finished goods stock) and cost of bought out materials and services for the product under reference.

(*f*) "Non-Moving Stocks" means value of raw materials and components finished and semi-finished which have not moved for more than twelve months. The period shall be twenty-four months in case of consumable stores and spare used in workshop, tool rooms or repairs and maintenance.

(*g*) "Normal Price" means price charged for comparable and similar products in the ordinary course of trade and commerce where the price charged is the sole consideration of sale and such sale is not made to a related party.

Notes.—

(1) If there is any change in the share capital due to merger, acquisition, buy back of shares, bonus issue, etc. during the year under reporting, special mention may be made with the reasons therefor.

(2) The profit arrived at for the factory, company and the product shall not include interest and dividend received on investments outside the business, capital gains, and any other income which is neither normal nor of recurring nature. The profit so arrived shall be the normal operating profit earned during the current financial period of the company.

(3) Wherever, there is any significant variation in the current year's figure over the previous year's figure, reasons thereof shall be given.

(4) If the company has more than one factory producing the product under reference, separate details shall be indicated in the prescribed annexures in respect of each factory.

(5) If the factory is engaged in the production of the product under reference and any other activities, separate details shall be indicated in the prescribed annexure for the factory as a whole and for the product under reference.

(6) Figures shall be given for the year under audit and for the two preceding years in respect of paragraphs 4 to 26.

Signature Name Cost Auditor Seal Date	Signature Name Company Secretary Stamp Date	Signature Name Director Stamp Date

Proforma

Name of the company:

Name and address of the factory:

Name of the product:

Statement showing the cost of production, cost of sales, sales realisation and margin in respect of the product(s) under reference produced during the year/period:

A. Quantitative Information

Sl. No.	Particulars	(unit of measurement to be specified)	
		Current year	Previous year
1.	(i) Installed capacity		
	(ii) Capacity enhanced during the year by leasing arrangement, etc.		
2.	Actual production/output		
	(i) Self		
	(ii) third parties, if any,		
3.	Production as percentage of installed capacity		
4.	Captive consumption, if any		
5.	Quantity sold		
	(a) Domestic		
	(b) Export		
6.	Closing Stock (finished goods)		
7.	Opening Stock (finished goods)		

B. Cost Information

Sl. No.	Particulars	Quantity	Rate per unit	Amount	Cost per unit	
		Unit	(Rs.)	(Rs.)	Current year (Rs.)	Previous year (Rs.)
1.	Material consumed: (item-wise covering at least 80% of items by value) 1. Purchased (a) Indigenous (specify) (b) Imported (specify) 2. Self-manufactured (specify)					
2.	Process chemicals (specify)					

Sl. No.	Particulars	Quantity	Rate per unit	Amount	Cost per unit	
		Unit	(Rs.)	(Rs.)	Current year (Rs.)	Previous year (Rs.)
3.	Utilities 1. Purchased (a) Indigenous (specify) (b) Imported (specify) 2. Self-manufactured (specify)					
4.	Direct wages and salaries					
5.	Consumable stores and spares					
6.	Depreciation					
7.	Lease rent, if any					
8.	Repairs and maintenance: (a) Building (b) Plant and Machinery (c) Others, if any					
9.	Other works overhead					
10.	Total Works Overhead (2 to 9)					
11.	Royalty, if any					
12.	Technical assistance/know-how fee					
13.	Research and development					
14	Quality control					
15.	Administrative overhead (relating to production activities) (a) Salaries and wages (b) Others (specify) (c) Total (a + b)					
16.	Total (1 + 10 to 15)					
17.	Adjustment for variances (where standard costing system is followed)					
18.	Add: Opening Stock Less: Closing Stock (Work-in-progress)					
19.	Less: Credits (from wastage and by-products)/Recoveries, if any					
20.	Packing cost Primary (a) Materials (b) Others (c) Total					
21.	Cost of production (16 to 20)					
22.	Finished Goods purchased, if any					
23.	Opening Stock Closing Stock (finished products)					

Sl. No.	Particulars	Quantity	Rate per unit	Amount	Cost per unit	
		Unit	(Rs.)	(Rs.)	Current year (Rs.)	Previous year (Rs.)
24.	Total (21 + 22 + 23)					
25.	Quantity and cost transferred for: (i) Captive consumption, if any (ii) Sales (iii) other, if any					
26.	Packing cost secondary (a) Materials (b) Others (c) Total					
27.	Other expenses: (a) Administrative overheads (others) (b) Others (specify)					
28.	Selling and distribution expenses: (a) Sales and wages (b) Freight and transport charges (c) Commission to selling agents (d) Advertisement expenses (e) Royalty on sales, if any (f) Warranty expenses after adjusting income from chargeable services (g) Others (h) Total (a to g)					
29.	Interest and finance charges: (a) for manufacturing activity (b) others (c) total					
30.	Total cost of sales (excluding excise duty) of packed quantity sold (24 to 29)					
31.	Sales realization *Less*: Excise duty and other statutory levies					
32.	Net sales realization					
33.	Margin (32-30)					
34.	*Add*: export benefits and incentives, if any					
35.	Total margin (including export benefits)					
36.	Ex-factory price (excluding sales tax etc.)					
37.	Maximum retail price (excluding sales tax etc.)					

Sl. No.	Particulars	Quantity	Rate per unit	Amount	Cost per unit	
		Unit	(Rs.)	(Rs.)	Current year (Rs.)	Previous year (Rs.)
38.	Maximum retail price, if any, prescribed by the Government/statutory/regulatory body etc.					

Notes.—1. Separate proforma shall be prepared for each type/variety/description of product(s) under reference.

2. Separate proforma shall be prepared for the quantity used for the quantity used for captive consumption, quantity sold within the country and the quantity exported. Expenses incurred on export and the incentive earned thereon shall be indicated in the proforma applicable for the quantity produced and exported.

3. Separate proforma shall be prepared for any related party/inter-unit transfer of inter-mediate/finished product(s) under reference.

4. The administrative overheads shall be included in the cost of production only to the extent they contribute in putting the goods produced tot heir present location and condition. The balance of administrative overheads, if any, shall be included in the cost of goods sold. The proforma may be amended accordingly, if required.

5. The proforma may be suitably modified to cover the special features, if any, of the product under reference on the basis of proforma prescribed for working out cost of sales, margin, etc., of the said product in the relevant Cost Accounting Records Rules.

6. Indicate whether the prices of the product under reference are ex-factory prices, F.O.R. prices, door delivery prices or any other terms. In the case of ex-factory prices, whether cost of dispatch packing materials, freight, insurance and delivery charges are recoverable from the customer separately.

Signature Name Cost Auditor Seal Date	Signature Name Company Secretary Stamp Date	Signature Name Director Stamp Date

Appendix 5

Specimen of Board resolutions

I. For appointment of Cost Auditor

RESOLVED THAT pursuant to the provisions of section 233B of the Companies Act 1956 and the Central Government's order, directing the audit of Company's Cost accounts relating to _______ for the year ended _______, M/s XYZ & Co, Cost Accountants be and are hereby appointed the cost auditors of the Company at a remuneration of Rs. 5,000.

RESOLVED FURTHER THAT an application be made in Form 23C to the Central Government and that Ms DS, Company Secretary be and is hereby authorised to submit the application to Central Government, obtain the certificate under section 233B from the proposed appointee and to comply with all other formalities in this regard.

II. For submission of cost audit report to the Central Government

RESOLVED THAT the report of the Cost Auditors for the financial year 2005-06, placed before the meeting and initialed by the Chairman for the purpose of identification, be and is hereby recorded.

RESOLVED FURTHER THAT the report together with detailed reply of the Company, be forwarded to the Central Government and that Ms. DS, Company Secretary be and is hereby authorised to forward the report to Central Government and comply with all other formalities in this regard.

Chapter 3

Auditor's Report

Synopsis

Important Provisions at a Glance

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	227(1A)	Comments to be included in the Auditor's Report.	
2.	229	Signature on the Auditor's Report, etc.	
3.	CARO	Companies (Auditor's Report) Order, 2003.	

1. Auditor has to compulsorily inquire and comment in his Report

Section 227(1A) requires auditor to inquire and report on the following matters:

Contents of auditor's report are discussed below:—

(*a*) whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interests of the company or its members;

(*b*) whether transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company;

(*c*) where the company is not an investment company within the meaning of section 372 or a banking company, whether so much of the assets of the company as consist of shares, debentures, and other securities have been sold at a price less than that at which they were purchased by the company;

(*d*) whether the loans and advances made by the company have been shown as deposits;

(*e*) whether personal expenses have been charged to revenue account;

(*f*) where it is stated in the books and papers of the company that any securities have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading.

2. Auditor shall report whether the accounts give a true and fair view

The auditor has an obligation towards the members of the company to make a report to them on the accounts examined by him, and on every balance sheet and profit and loss account, which are placed before the company in annual general meeting during his tenure of office. The auditor has to state whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give the information required by this Act in the manner so required and give a true and fair view:—

(*i*) in the case of the balance sheet, of the state of the company's affairs as at the end of its financial year; and

(*ii*) in the case of the profit and loss account, of the profit or loss for its financial year.

The auditor's report shall also state:—

(*a*) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of his audit;

(*b*) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books, and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(*c*) whether the report on the accounts of any branch office audited under section 228 by a person other than the company's auditor has been forwarded to him as required by section 228(3)(*c*) and how he has dealt with the same in preparing the auditor's report;

(*d*) whether the company's balance sheet and profit and loss account dealt with by the report are in agreement with the books of account and returns;

(*e*) whether, in his opinion, the profit and loss account and balance sheet comply with the accounting standards referred to in section 211(3C);

(*f*) in thick type or in italics the observations or comments of the auditors which have any adverse effect on the functioning of the company;

(*g*) whether any director is disqualified from being appointed or re-appointed as director under clause (*g*) of sub-section (1) of section 274;

(*h*) whether the cess payable under section 441A has been paid and if not, the details of amount of cess not so paid;

Moreover, where matters as stated in (*a*)(*b*) and further in (*a*) to (*e*) are answered in negative or with qualification, the auditor's report shall state the reasons for the answer.

3. Requirement to give comments in the Auditors Report as per the Companies (Disqualification of Directors under section 274(1)(*g*) of the Companies Act, 1956) Rules, 2003

As per the Companies (Disqualification of Directors under section 274(1)(*g*) of the Companies Act, 1956) Rules, 2003 it is provided in rule 4 that:—

(*a*) it shall be the duty of the statutory auditor of the appointing company as well as the disqualifying company, as required under section 227(3)(*f*), to report to the members of the company whether any director is disqualified from being appointed or re-appointed as director under section 274(1)(*g*) and to furnish each year as to whether on the basis of his examination of the books and records of the company, any director of the company is disqualified for appointment or re-appointment as a director or not.

(*b*) it shall be the duty of the statutory auditors of the disqualifying company as required in section 227(3)(*f*) to report to the members of the company whether any director in the company has been disqualified during the year from being appointed or re-appointed as director in another company under section 274(1)(*g*) of the Act.

4. Auditors are required to make independent investigations as to disqualification of director u/s 274(1)(*g*)

It was held in the case of *Pawan Jain* v *Hindustan Club Ltd*. (2005) 62 SCL 610 (CAL) that from a careful perusal of section 227, which provides for the power and duties of the auditors, it appears that the auditor cannot submit a report on the basis of the statement supplied by the company alone. He has to examine and even he has to make an independent enquiry about the collected materials from other sources to submit a report regarding clause (*f*) of sub-section (3) about the disqualification of the directors under section 274(1)(*g*). Before reporting a particular person as being disqualified, an auditor must seek for the views and/or representations of the director concerned or any person as to whether he was a director of the defaulting company as mentioned in section 274. Auditor's report really affects a particular persons right as his civil rights or status is necessarily declared in a negative way by the auditor by his fact finding. The rules of natural justice demand that before a person's right is affected, he/she should be given opportunity to explain his or her position.

5. Obligation on the Auditors to comment on the compliance of the Accounting Standards, in the case of failure, the Auditor has to face the consequences

The Department has issued a Press Note No. 7/99, dated 23-7-1999 which states that the provisions of section 227 of the Companies Act, 1956 have been amended with effect from 31-10-1998, with an obligation on the part of the auditors of the companies to include a para in their report under section 227 of the Act to the members of the company, stating whether in their opinion the Profit and Loss Account and the balance sheet comply with accounting standards referred to in sub-section (3C) of section 211. It has, however, been observed from the published balance sheet of a number of companies as at 31-3-1999 that such a certification by the auditors is missing in their reports. It further states that auditors of the companies are, therefore, advised to ensure that such a clause is added to their reports to the members failing which this Department will be constrained to take penal action against the auditors as well as refer the matter to the ICAI for initiating disciplinary proceedings against them.

6. Signature on the Auditor's Report, etc.

Only the person appointed as auditor of the company, or where a firm is so appointed in pursuance of the proviso to sub-section (1) of section 226, only a partner in the firm practising in India, may sign the Auditor's Report, or sign or authenticate any other document of the company required by law to be signed or authenticated by the auditor. [Section 229]

COMPANIES (AUDITOR'S REPORT) ORDER, 2003

The Auditor's Report shall include a statement on the matters specified in Companies (Auditor's Report) Order, 2003 (CARO).

The Central Government has issued on 12th June, 2003, Companies (Auditor's Report) Order, 2003 effective from 1st July, 2003 which has superceded the earlier Manufacturing and Other Companies (Auditor's Report) Order, 1988. The Central Government *vide* Notification dated 25th November, 2004 has also made certain amendments in the CARO. (The text of the amended order is given in Appendix 1)

7. Applicability

Earlier, companies were categorised as (*a*) Manufacturing, mining, processing, (*b*) Supplying & rendering of service, (*c*) Trading, and (*d*) Financing, Investment, Chit Fund Nidhi, Mutual Benefit Societies. Now, this classification/categorisation is done away with, implying that the order is applicable to all types of companies irrespective of the nature of business unless otherwise specifically continued to be exempted such as (1) Banking Company, (2) Insurance Company, (3) section 25 Company.

In addition to the three types of companies, the Central Government has also liberalized the norms for exemptions for small private limited companies *vide* Notification, dated 25th November, 2004.

Now a small private limited company shall be exempted from the provisions of CARO, if it fulfills all the following conditions:—

1. Paid-up capital and reserves shall not exceed Rs.50 Lakh,
2. Outstanding loans from Bank/Financial Institution shall not exceed Rs.25 Lakhs, and
3. Turnover shall not exceed Rs.5.00 Crore.

8. Definitions

Para 2 of CARO contains definitions. One new definition that "the Act means the Companies Act 1956" is inserted in clause (*a*) as a result of which, the clause codes of all other definitions (retained from MAOCARO) simply jump to next letter.

However, the definitions borrowed from MAOCARO in respect of 1. Chit fund company, Nidhi company, or mutual benefit society, 2. Finance company. 3. Investment company, 4. Manufacturing company, 5. Mining company, 6. Processing company, 7. Service company and 8. Trading company are now redundant in view of deletion of categorisation of companies in Para No.4 in respect of items to be reported and in view of the auditors' requirement to report on all topics of Para No. 4 unless any topic is not specifically applicable to any company. The Central Government has omitted all definitions for defining companies relating to finance company, investment company, manufacturing company, mining company, processing company, service company and trading company as covered in original CARO has been deleted by Notification, dated 25th November, 2004.

9. Effect of the CARO on the Auditor's Report

(*i*) Revaluation of fixed assets and treatment of the same in the books of accounts is deleted from Auditor's Report leaving the management with the choice of playing tricks which may lead to certain scams. Hence it is suggested to restore the topic in CARO.

One new topic that the disposal of substantial part of fixed assets and its impact on "going concern" is to be reported. But what is "substantial part" is not defined in the order. Even if 25% of fixed assets is treated as substantial portion, the management may dispose off 20% of fixed assets each year and thus total assets can be disposed off within 5 years without attracting auditor's comment. Hence, it is suggested to prescribe lower limits (say 5%) beyond which the auditor has to comment.

(*ii*) So far as the inventory is concerned, the new requirement of the auditor is to comment as to the maintenance of proper records. But the term "proper records" is not defined.

One drafting change is substitution of the word "inventory" for the term(s) "finished goods, stores, spare parts and raw materials".

But, unfortunately, the requirement of auditor to comment on (*a*) the fairness of the valuation of inventory(stock) in line with Accounting Standards, (*b*) change, if any, of the method of valuation as compared to valuation in previous year, and (*c*) the impact of such change on financial statements are deleted from the auditor's scope under CARO. This deletion facilitates window dressing or otherwise as the management wishes. As the valuation of inventory has lot of impact on presentation of financial statements, it is advisable to restore the topic in Auditor's report.

(*iii*) In respect of inter corporate loans/advances, while MAOCARO covered not only the parties in respect of whose transactions, the register under section 301 of the Act is to be maintained but also those under same management as defined under section 370(1B) of the Act, the CARO excludes the latter part [Section 370(1B)] perhaps keeping in view of the Companies (Amendment) Act, 1999.

Earlier there was specific clause (*i.e*. No. ix under MAOCARO) requiring the Auditor to comment as to whether the borrowers are regular in (re)payment of principal and interest and, if not, whether reasonable steps were taken for the recovery of the same.

It implied that tile Auditor was required to comment on loans/advances not only between the parties covered under sections 301 and 370(1B) but also between the auditee company and others. But the relevant clause is now included in CARO as sub-clause (*c*) and (*d*) to main clause (*iii*) whereby it may be inferred that the auditor's scope is restricted to loans/advances between section 301 parties.

The overdue amount (both principal and interest) below Rs. 1 lakh in respect of each party is excluded from auditor's scope (earlier there was no monetary limit). In respect of "reasonable steps", taken by the management, the auditor's scope is enhanced not only in respect of "recovery" but also of "payment" of the outstanding loan dues.

(*iv*) As regards internal control, auditor's duty continues not to cover the internal control in respect of availing/rendering of services and in respect of disposal of fixed assets. In the present days, of emergence/growth of service sector, lack of auditor's comment on the fairness of internal control in respect of availing/rendering services is not a healthy sign. Even the manufacturing companies may, as a part of their business, render/avail services. Unless the auditor is required to comment on the internal control in respect of services and disposal of fixed assets, scrupulous managerial persons may mis-utilise the corporate funds.

(*v*) In respect of transactions between parties in respect of which the register under section 301 of the Act is to be maintained, there is one good amendment. Earlier the auditors were not required to verify the correctness of the entries in the said register. Hence, the auditors used to call for the register and review the transactions already entered by the management without reviewing the correctness of entries. Whereas under the CARO, the auditor will be required to review the overall transactions, identify whether any contracts or arrangements which should have been entered but not done in the register under section 301. The minimum monetary limit is enhanced from Rs. 50,000 to Rs. 5.00 Lakh in respect of each party and in any financial year. Thus, contracts or arrangements below Rs. 5.00 Lakh are excluded from the purview of auditor.

(*vi*) In respect of Public Deposits, the scope of auditor is increased to comment on compliance of not only RBl's guidelines and the provisions of section 58A of the Act (including rules) but also of the provisions of section 58M of the Act (including the rules) and the orders of Company Law Board or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal. This enhancement a step towards good corporate governance and investor protection. [*However, the term "Company Law Board" has changed to 'National Company Law Tribunal' in view of the Companies* (*Second Amendment*) *Act, 2002, necessary notification for enforcement of the National Company Law Tribunal is yet to be issued by the Central Government*].

(*vii*) Regarding the comment on the existence of internal audit system commensurate with the size and nature of the company, the minimum turnover limit is enhanced from Rs. 2.00 Crore to Rs. 5.00 Crore. Moreover earlier the company's paid-up capital alone (minimum Rs.25 Lakh) was prescribed, whereas now the limit is enhanced to Rs. 50 Lakh but not only paid-up capital but also reserves are also to be taken into consideration for computing this limit. (Moreover, it may please be noted that reserves is not prefixed by any word of nature. Hence, all types of reserves whether free or specific are to be taken while computing the limits).

(*viii*) Requirement of auditor in respect of cost records remains virtually un-altered.

(*ix*) In respect of statutory dues while the first line requires the auditor to report as to whether the company is regular in depositing undisputed statutory dues, the latter part requires the auditor to quantify the arrears of statutory dues as on the Balance Sheet date of which are outstanding for more than six months.

This clause may not serve the real objective. For example, if the company pays once in a year on 30th March of each year the statutory payments that fall due during the second half of preceding year and the first half of the year under audit, the auditor may report that the company is not regular in depositing the statutory dues but there is no dues outstanding for more than six months. Thus the said clause does not reflect the exact default.

There were some instances where the companies, in order to show good book profits, have written simple letters to statutory authorities (without filing any valid appeal, etc. in appropriate forum/tribunal) and convinced the auditor that they are disputed liabilities and hence need not be provided for in the books of account. This lacuna is now removed by insertion of explanation to the effect that a mere representation to the Department (statutory authority) shall not constitute dispute.

(*x*) Clause (*xx*) of para 4 of MAOCARO required the auditor to report whether the company is a Sick Industrial Company (SIC) within the meaning of clause (0) of sub-section (l) of section 3 of Sick Industrial Companies (Special Provisions) Act, 1985.

As per sub section (46M) of section 2 of the Companies Act, 1956 inserted vide Companies (Second Amendment) Act, 2002 the definition of SIC has undergone changes and that SICA, 1985 has been repealed and BIFR is abolished. (necessary notification for implementation of the provisions are yet to be issued by the Central Government).

Further, as per the "Statement on Qualifications in Auditor's Report" issued by the Institute of Chartered Accountants of India, the Auditors are required to quantify not only the effect of the qualifications on individual items of financial statements but also their overall impact on profit/loss and slate of affairs.

(*xi*) A new clause is inserted requiring the Auditor to comment whether the company has defaulted in repayment of dues to Banks/Financial Institutions/Debenture holders and if so, to report the period and amount of default.

(*xii*) This clause requires the auditor to point out on the maintenance of adequate records/documents where the company has granted loans/advances on the basis of security by way of pledge of shares, debentures and other securities. This clause does not require the auditor to point out the reasonability (or otherwise) of the security or personal guarantee or by way of pledge of other movable/immovable properties. It is advisable to amend CARO to enhance the auditor's scope in order to remove these defects.

(*xiii*) While the main clause (*xiii*) of CARO directly corresponds to clause (D) iii of para 4 of MAOCARO, four sub-clauses have been newly inserted to make the Audit report more effective.

However, instead of restricting the scope to chit fund companies alone (in respect of compliance of special statute, if applicable), it is advisable to require the auditor to comment on the compliance of special statute wherever applicable to any type of company.

Sub clause (*c*) requires the auditor to highlight whether or not the company "has" adequate procedures.

(*xiv*) This clause of CARO corresponds to earlier clause D(*iv*) of MAOCARO. There is no change.

(*xv*) A new provision under this clause (xv) is inserted requiring the auditor to report whether the company has given any guarantee for loans taken by others from Banks/Financial Institutions and whether the terms of such guarantee are prejudicial to the interest of the company. This is a welcome measure.

(*xvi & xvii*) Under these new clauses, the auditor is required to comment whether term loans were applied for the purpose for .which the loans were obtained and whether the funds raised on short term basis have been used for long term investment and if so, to indicate the nature and amount.

(*xviii & xix*) These two new clauses dealing with preferential allotment of shares to parties covered under section 301 and creation of securities in respect of debentures are investor-friendly.

(*xxi*) One more new clause requiring the auditor to highlight fraud on or by the company, is also a welcome measure. In this connection, reference may be invited to SAP-4 issued by ICAI, wherein some types of intentional misrepresentations of financial information are given as examples. These are not exhaustive. There are some more varieties of frauds such as (1) hiking abnormally the prices payable for materials/services (for this the auditor shall be required to compare on random basis, the prices agreed for materials/services during previous year and current year) and (2) impersonation of payees i.e. submission of invoices/bills of parties who are not existing and/or who have not supplied/rendered materials/services and releasing the payments in the name of others but recording as if paid to parties named on bills/invoices (for this, the auditor shall be required to insist for confirmation of balances in respect of regular parties and taking confirmation from Bankers in respect of occasional payees as to the names of the actual payees on test check basis wherever values are material).

10. Obligation to report the breach of law

The Companies Act lays down detailed provisions regarding various matters and casts an obligation upon officers and directors of the company to carry out the requirements of the law. Generally speaking, it is the duty of the directors and the management to ensure that the provisions of the Companies Act have been complied with. However, where there is contravention of legal requirement by a company, which has a bearing on the accounts and transactions of the company, the auditor would in the normal course of his inquiry become aware of them and it would need to be brought to the notice of the shareholders. The auditor should, however, not merely state the facts, leaving it to be inferred that a contravention of legal requirements has taken place, but he should clearly point out that in his opinion a contravention of the law has occurred. If any loans are given in contravention of section 295 of the Act, the auditor should report the matter irrespective of the fact that the concerned loans have been repaid after the balance-sheet date.

Similarly, the amount of the loan or its materiality would not be a relevant consideration as far as obligation cast on the auditor to report the matter to the shareholders is concerned. Where contracts between a company and its director or relative, etc. to which provisions of section 297 of the Act are applicable come to the notice of the auditor, he should see that the provisions of the said section have been complied with and enquire whether the company has observed the terms and conditions stipulated by the Central Government in its approval. Similar views have been expressed by ICAI in another statement issued by them, which are as follows:

> "In some cases the auditor's objection may be of such a nature that it is his duty to bring it to the attention of shareholders, *e.g.*, where there is a breach of law. It would not be sufficient in that case to merely state the facts leaving it to be inferred there from that a contravention of legal requirements has arisen. It is auditor's duty not only to state the facts, which give rise to the legal contravention, but also to point out that, in his opinion, a contravention of the law has occurred. For example, if a company has not separately invested the provident fund moneys of its employees, it would not be sufficient for the auditor in his report merely to state this fact. He should go further and point out that the facts as stated constitute, in his opinion, a contravention of the requirements of section 418 of the Companies Act."

Where a company contributes any amount directly or indirectly to any political party and the auditor is satisfied that political contribution has been made in excess of the limit prescribed in section 293A, he should qualify his audit report, mentioning the excess amount involved, if ascertainable. Where such contributions made by the company are within the limit but the facts regarding such contributions are not properly disclosed, the auditor should qualify his report and state the relevant facts. Where he is in doubt about the applicability of section 293A, he should disclose this fact in his report.

An auditor's duty as such is to examine and report on the accounts of the company in accordance with the requirements of section 227. The auditor therefore has no specific duty to make any special enquiry to unearth cases of unauthorised political contributions if they are not readily apparent from the examination of the accounts made in the normal course of the audit. If any unauthorised political contribution (or such contribution in excess of the permissible limit, as the case may be) has been skillfully concealed by a company or it has not come to the notice of the auditor in the normal course of his audit, an auditor would be responsible only to the extent it can be established that in the conduct of the audit he acted without reasonable care and skill.

11. Views of the Department

(1) According to a Press release, dated 18th June 1962, the Department has impressed upon the Chartered Accountants, acting as statutory auditors of companies, through the ICAI, that it was their duty to comment on all such material violations of the law or sound accounting practice as might reasonably be expected to affect directly or indirectly the fortunes of the company's accounts.

(2) "The requirements of the Act are that the auditors should specifically certify whether the published accounts give a 'true and fair' view of the company's state of affairs and of the profit and loss for the financial year (as compared with the requirements of certification as true and correct under the 1913 Act). *Prima facie* this requirement has imposed an obligation on the auditors to make observations in respect of matters, which were not previously commented upon in the auditors certificate under the Companies Act, 1913. An examination of the company accounts duly audited by the auditors, and filed by the companies disclose that there is as yet no adequate realisation of this obligation by a majority of the auditors. In a large number of cases, it has been observed that the auditors have given clean certificate on the company accounts audited by them without looking into matters which were clearly relevant to a 'true and fair view' of the affairs of the companies concerned. In this connection, some of the auditors have contended legalistically and on the basis of an unduly narrow interpretation of the letter of section 227 of the Act, that the certificate is required to be based only on the result of the scrutiny of the books of account maintained by a company under the provisions of section 209 of the Act, and that the auditors are not required to report to the shareholders of the company, the infringements of the provisions of the Companies Act or those of the other important laws, much less to draw their attention to inadequate provision of depreciation, to under

or over valuation of current assets like stock-in-trade, to improper allocation of reserves, to improper classification of debts and loans, etc., although these defects may come to their notice in course of their carrying out the audit of the companies concerned. Such omissions are not, however, in accordance with the best traditions of audit practice and in the view of the Department of Company Law Administration it would not be a proper discharge of their responsibilities if auditors were not to disclose the above irregularities in their reports. For, it would be difficult to hold that an audit report which ignores such important matters, as must necessarily have a close bearing on the fortunes of a company could give a true and fair view of its affairs. On the contrary, the clear certificates issued by auditors in such cases would tend to mislead the shareholders as well as the general public who might have to deal with the companies concerned."

Appendix 1

Text of Companies (Auditor's Report) Order, 2003

[*Notification GSR No. 480*(*E*) [*F. No. 2/28/2002-CL.V*], *dated 12-6-2003*]

In exercise of the powers conferred by sub-section (4A) of section 227 of the Companies Act, 1956 (1 of 1956), read with the Notification of the Government of India in the Department of Company Affairs, Number GSR 443(E), dated 18th October, 1972, as amended from time to time and in supersession of order number GSR 909(E), dated 7th September, 1988, published in the Gazette of India, part II, section 3, sub-section (*i*), except as respects things done or omitted to be done before the supersession, and after consultation with the Institute of Chartered Accountants of India [constituted under the Chartered Accountants Act, 1949 (38 of 1949)], in regard to class of companies to which this order applies and other ancillary matters, the Central Government hereby makes the following Order, namely:—

1. Short title, application and commencement.—(1) This order may be called the Companies (Auditor's Report) Order, 2003.

(2) It shall apply to every company including a foreign company as defined in section 591 of the Act, except the following:—

(*i*) a Banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(*ii*) an insurance company as defined in clause (21) of section 2 of the Act;

(*iii*) a company licensed to operate under section 25 of the Act; and

[1][(*iv*) a private limited company with a paid up capital and reserves not more than rupees fifty lakh and which does not have loan outstanding exceeding rupees twenty-five lakh from any bank or financial institution and does not have a turnover exceeding rupees five crore at any point of time during the financial year.]

(3) It shall come into force on the 1st day of July, 2003.

2. Definitions.—In this Order, unless the context otherwise requires,—

(*a*) "Act" means the Companies Act, 1956 (1 of 1956);

(*b*) "chit fund company", "nidhi company" or "mutual benefit company" means a company engaged in the business of managing, conducting or supervising as a foreman or agent of any transaction or arrangement by which it enters into an agreement with a number of subscribers that every one of them shall subscribe to a certain sum of instalments for a definite period and that each subscriber, in his turn, as determined by lot or by auction or by tender or in such other manner as may be provided for in the agreement, shall be entitled to a prize amount, and includes companies whose principal business is accepting fixed deposits from, and lending money to, members.

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1 Substituted by Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004 for the following:

"(*iv*) a private limited company with a paid up capital and reserves not more than fifty lakh rupees and has not accepted any public deposit and does not have loan outstanding ten lakh rupees or more from any bank or financial institution and does not have a turnover exceeding five crore rupees."

[1][* * *]

3. Auditor's report to contain matters specified in paragraphs 4 and 5.—Every report made by the auditor under section 227 of the Act, on the accounts of every company examined by him to which this Order applies for every financial year ending on any day on or after the commencement of this Order, shall contain the matters specified in paragraphs 4 and 5.

4. Matters to be included in the auditor's report.—The auditor's report on the account of a company to which this Order applies shall include a statement on the following matters, namely:—

(*i*) (*a*) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets;

(*b*) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account;

(*c*) if a substantial part of fixed assets have been disposed off during the year, whether it has affected the going concern;

(*ii*) (*a*) whether physical verification of inventory has been conducted at reasonable intervals by the management;

(*b*) are the procedures of physical verification of inventory followed by the management reasonable and adequate in relation to the size of the company and the nature of its business. If not, the inadequacies in such procedures should be reported;

(*c*) whether the company is maintaining proper records of inventory and whether any material discrepancies were noticed on physical verification and if so, whether the same have been properly dealt with in the books of account;

[2][(*iii*) (*a*) has the company granted any loans, secured or unsecured to companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and amount involved in the transactions; and

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1 Clauses (*c*) to (*i*) omitted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004. Prior to omission, they read as under:

"(*c*) "finance company" means a company engaged in the business of financing, whether by making loans or advances or otherwise, of any industry, commerce or agriculture and includes any company engaged in the business of hire-purchase, lease financing and financing of housing;

(*d*) "investment company" means a company engaged in the business of acquisition and holding of, or dealing in, shares, stocks, bonds, debentures, debenture stocks, including securities issued by the Central or any State Government or by any local authority, or in other marketable securities of a like nature;

(*e*) "manufacturing company" means a company engaged in any manufacturing process as defined in the Factories Act, 1948 (63 of 1948);

(*f*) "mining company" means a company owning a mine, and includes a company which carries on the business of a mine either as a lessee or occupier thereof;

(*g*) "processing company" means a company engaged in the business of processing materials with a view to their use, a sale, delivery or disposal;

(*h*) "service company" means a company engaged in the business of supplying, providing, maintaining and operating any services, facilities, conveniences, bureaux and the like for the benefit of others;

(*i*) "trading company" means a company engaged in the business of buying and selling goods."

2 Substituted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f.25-11-2004 for the following:

"(*iii*) (*a*) has the company either granted or taken any loans, secured or unsecured to/from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and amount involved in the transactions;

(*b*) whether the rate of interest and other terms and conditions of loans given or taken by the company, secured or unsecured, are prima facie prejudicial to the interest of the company;

(*c*) whether payment of the principal amount and interest are also regular;

(*d*) if overdue amount is more than one lakh, whether reasonable steps have been taken by the company for recovery/payment of the principal and interest;"

(*b*) whether the rate of interest and other terms and conditions of loans given by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and

(*c*) whether receipt of the principal amount and interest are also regular; and

(*d*) if overdue amount is more than rupees one lakh, whether reasonable steps have been taken by the company for recovery of the principal and interest;

(*e*) has the company taken any loans, secured or unsecured from companies, firms or other parties covered in the register maintained under section 301 of the Act. If so, give the number of parties and the amount involved in the transactions; and

(*f*) whether the rate of interest and other terms and conditions of loans taken by the company, secured or unsecured, are prima facie prejudicial to the interest of the company; and

(*g*) whether payment of the principal amount and interest are also regular;]

[1][(*iv*) is there an adequate internal control system commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods and service. Whether there is a continuing failure to correct major weaknesses in internal control system;]

[2][(*v*) (*a*) whether the particulars of contracts or arrangements referred to in section 301 of the Act have been entered in the register required to be maintained under that section; and

(*b*) whether transactions made in pursuance of such contracts or arrangements have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time;]

(This information is required only in case of transactions exceeding the value of five lakh rupees in respect of any party and in any one financial year).

(*vi*) in case the company has accepted deposits from the public, whether the directives issued by the Reserve Bank of India and the provisions of [3][sections 58A, 58AA or any other relevant provisions of the Act] and the rules framed thereunder, where applicable, have been complied with. If not, the nature of contraventions should be stated. If an order has been passed by Company Law Board [4][or National Company Law Tribunal or Reserve Bank of India or any Court or any other Tribunal] whether the same has been complied with or not?

(*vii*) in the case of listed companies and/or other companies having a paid-up capital and reserves exceeding Rs. 50 lakhs as at the commencement of the financial year concerned, or having an average annual turnover exceeding five crore rupees for a period of three consecutive financial years immediately preceding the financial year concerned, whether the company has an internal audit system commensurate with its size and nature of its business;

(*viii*) where maintenance of cost records has been prescribed by the Central Government under clause (*d*) of sub-section (1) of section 209 of the Act, whether such accounts and records have been made and maintained;

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1 Substituted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004 for the following:

"(*iv*) is there an adequate internal control procedure commensurate with the size of the company and the nature of its business, for the purchase of inventory and fixed assets and for the sale of goods. Whether there is a continuing failure to correct major weaknesses in internal control;"

2 Substituted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004 for the following:

"(*a*) whether transactions that need to be entered into a register in pursuance of section 301 of the Act have been so entered;

(*b*) whether each of these transactions have been made at prices which are reasonable having regard to the prevailing market prices at the relevant time;"

3 Substituted for the words "sections 58A and 58AA of the Act" by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

4 Inserted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

(*ix*) (*a*) is the company regular in depositing undisputed statutory dues including Provident Fund, Investor Education and Protection Fund, Employees' State Insurance, Income-tax, Sales-tax, Wealth Tax, [1][Service Tax,] Custom Duty, Excise Duty, cess and any other statutory dues with the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as at the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated by the auditor.

[2][(*b*) in case dues of Income-tax/Sales-tax/Wealth-tax/Service tax/Customs duty/Excise duty/cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned.]

(A mere representation to the Department shall not constitute the dispute).

(*x*) whether in case of a company which has been registered for a period not less than five years, its accumulated losses at the end of the financial year are not less than fifty per cent of its net worth and whether it has incurred cash losses in such financial year and [3][in the immediately preceding financial year];

(*xi*) whether the company has defaulted in repayment of dues to a financial institution or bank or debenture holders? If yes, the period and amount of default to be reported;

(*xii*) whether adequate documents and records are maintained in cases where the company has granted loans and advances on the basis of security by way of pledge of shares, debentures and other securities. If not, the deficiencies to be pointed out.

(*xiii*) whether the provisions of any special statute applicable to chit fund have been duly complied with? In respect of nidhi/mutual benefit fund/societies:—

(*a*) whether the net-owned funds to deposit liability ratio is more than 1:20 as on the date of balance sheet;

(*b*) whether the company has complied with the prudential norms on income recognition and provisioning against sub-standard/[4][doubtful]/loss assets;

(*c*) whether the company has adequate procedures for appraisal of credit proposals/requests, assessment of credit needs and repayment capacity of the borrowers;

(*d*) whether the repayment schedule of various loans granted by the nidhi is based on the repayment capacity of the borrower [5][* * *];

(*xiv*) if the company is dealing or trading in shares, securities, debentures and other investments, whether proper records have been maintained of the transactions and contracts and whether timely entries have been made therein; also whether the shares, securities, debentures and other [6][investments] have been held by the company, in its own name except to the extent of the exemption, if any, granted under section 49 of the Act;

(*xv*) whether the company has given any guarantee for loans taken by others from bank or financial institutions, the terms and conditions whereof are prejudicial to the interest of the company;

(*xvi*) whether term loans were applied for the purpose for which the loans were obtained;

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1 Inserted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

2 Substituted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004 for the following:

"(*b*) in case dues of sales tax/income-tax/custom tax/wealth-tax/excise duty/cess have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending may please be mentioned."

3 Substituted for "in the financial year immediately preceding such financial year also" by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

4 Substituted for "default" by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

5 The words "and would be conducive to recovery of the loan amount" omitted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

6 Substituted for "securities" by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

(*xvii*) whether the funds raised on short-term basis have been used for long-term investment [1][* * *]; If yes, the nature and amount is to be indicated;

(*xviii*) whether the company has made any preferential allotment of shares to parties and companies covered in the Register maintained under section 301 of the Act and if so whether the price at which shares have been issued is prejudicial to the interest of the company;

(*xix*) whether [2][security or charge has] been created in respect of debentures issued?

(*xx*) whether the management has disclosed on the end use of money raised by public issues and the same has been verified;

(*xxi*) whether any fraud on or by the company has been noticed or reported during the year If yes, the nature and the amount involved is to be indicated.

5. Reasons to be stated for unfavourable or qualified answers.—Where, in the auditor's report, the answer to any of the questions referred to in paragraph 4 is unfavourable or qualified, the auditor's report shall also state the reasons for such unfavourable or qualified answer, as the case may be. Where the auditor is unable to express any opinion in answer to a particular question, his report shall indicate such fact together with the reasons why it is not possible for him to give an answer to such question.

Companies (Auditor's Report) Order, 2003 — Clarification

The Department of Company Affairs has issued a Circular No. 32/2003, dated 10th November, 2003 which has directed ass Regional Directors and Registrar of Companies that:

"1. As you are aware, *vide* Notification Number GSR 480(E), dated 12th June, 2003, Government have issued the Companies (Auditor's Report) Order, 2003 [Order] which came into force on 1st July, 2003. The new Order replaces the Manufacturing and Other Companies (Auditor's Report) Order, 1988 (MAOCARO) issued *vide* Notification No: GSR 909(E) dated 7th September, 1988.

2. Subsequently the Government have received representations stating the difficulty in complying with the new Order at short notice, in view of the absence of a Guidance Note from the Institute of Chartered Accountants of India, and in view of the need for maintaining records of a company in a manner that will ensure the compliance of the Order, Government have given consideration to the difficulty expressed. It has been decided that it is not possible, at this point of time, to review the Order, or postpone the effective date as issued, for accounts prepared in respect of financial year ending on the 1st July, 2003 or thereafter.

3. However, keeping in view the difficulties of the companies as well as the professionals involved, it has also been decided that while companies to whom the Order is applicable, should make serious efforts to comply with the new Order from the effective date, cases of non compliance for accounts pertaining to financial year which closed on 31st December, 2003 or earlier, Government would take a lenient view provided the accounts at least carry MAOCARO Report, if required.

4. However, accounts in respect of financial years ending on 1st January, 2004 or thereafter, will have to strictly follow CARO, 2003. Companies and professionals who do not comply with the Order will be liable for action as per law".

1 The words "and *vice versa*" omitted by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

2 Substituted for "securities have" by the Companies (Auditor's Report) (Amendment) Order, 2004, w.e.f. 25-11-2004.

Chapter 4

Branch Audit

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	2(9)	Definition of Branch Office.	
2.	228	Audit of accounts of Branch Office.	
3.		The Companies (Branch Audit Exemption) Rules, 1961.	

1. Meaning of "Branch Office"

Section 2(9) of the Companies Act, 1956 defines the expression "Branch office" and accordingly, "Branch Office" in relation to a company means—

(*a*) any establishment described as a branch by the company; or

(*b*) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company; or

(*c*) any establishment engaged in any production, processing or manufacture,

but does not include any establishment specified in any order made by the Central Government under section 8.

Vide Circular F. No. 8/16(1)/61-PR, the term "branch office" includes any establishment engaged in any production, processing or manufacture. Branch Office of a company registered under the Companies Act, 1956 may be located in India or elsewhere.

2. Power of the Central Government to declare an establishment not to be a branch office

The Central Government may, by order, declare that in the case of any company, any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the company, or any establishment engaged in any production, processing or manufacture, shall not be treated as a branch office of the company for all or any of the purposes of the Companies Act, 1956. [Section 8]

3. Appointment of auditor for branch office in India

Where a company has a branch office, the accounts of that office shall be audited by the company's auditor appointed under section 224 or by a person qualified for appointment as auditor of the company under section 226.

4. Appointment of auditor of branch office situated outside India

In case a company has a branch office and branch office is situated outside India, the accounts of such office shall be audited by any of the following persons:—

(*a*) company's auditor, or

(*b*) a person qualified for appointment as auditor of the company under section 226, or

(*c*) an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of the country.

5. Right of company's auditor in relation to branch audit

Where the accounts of any branch office are audited by a person other than the company's auditor, the company's auditor—

(*a*) shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as auditor; and

(*b*) shall have a right of access at all times to the books and accounts and vouchers of the company maintained at the branch office.

6. Members in general meeting may appoint separate branch auditor

Where a company in general meeting decides to have the accounts of a branch office audited otherwise than by the company's auditor, the company in that meeting shall for the audit of those accounts appoint a person qualified for appointment as auditor of the company under section 226, or where the branch office is situated in a country outside India, a person who is either qualified as aforesaid or an accountant duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country, or authorise the Board of directors to appoint such a person in consultation with the company's auditor. [Section 228(3)(*a*)] (*See* Appendix 1)

7. Branch auditor shall have the same powers and duties as the company's auditor

The person appointed as branch auditor shall have the same powers and duties in respect of audit of the accounts of the branch office as the company's auditor has in respect of the same. [Section 228(3)(*b*)]

8. Books of accounts of branch office

An enquiry was made as to the true meaning of the word "accounts" in terms of section 228(3)(*c*) of the Companies Act, read with rule 6(*a*) of the Companies (Branch Audit Exemption) Rules, read with section 209. It was felt that the accounts maintained in the branch office would necessarily depend largely on the type of business or activity carried in the branch, and no principles of universal applicability could obviously be laid down. However, it was pointed out that the auditor concerned must satisfy himself that proper books of account under section 209 were being maintained at the branch. It was also felt that the formal audit certificate in respect of the audit of the branch office account should be worded, where a branch was run as an independent unit carrying on manufacturing business or trading activities in the same form as visualised in sections 227(2) and (3) as if the branch itself were a separate company. In respect of branches where only a certain type of activity was carried on *e.g.*, sales depot, or purchase depot, the form of the audit certificate prescribed in sections 227(2) and (3) of the Act would have to be modified or adopted to suit the type of activity carried on at the branch, the books of account maintained there and the nature of returns sent from the branch to the registered office of the company. It was felt that, in any case, two requirements in addition to the other requirements of section 227 that might be applicable to any particular branch would have to be complied with, namely the auditor should certify that:—

(*i*) proper books of account have been kept at the branch;

(*ii*) that the accounts of returns of the branch show a true and fair view of the working of the branch.

9. Report of branch auditor

The branch auditor shall prepare a report on the accounts of the branch office examined by him and forward the same to the company's auditor, who shall, while preparing the auditor's report, deal with the same in such manner, as he considers necessary. [Section 228(3)(*c*)]

Vide Circular No. 10(l)-CL-VI/6l, dated 27-4-1961, the branch/internal auditor shall forward his report on the accounts of the branch direct to the statutory auditor. If the statutory auditor required any explanation/comments from the management in regard to the branch audit report, he would no doubt do so before making the observations in his audit report. There would, however, be no administrative objection to a copy of the branch audit report being sent to the Board of directors simultaneously with the direct transmission of the original branch audit report to the statutory auditor.

10. Remuneration of branch auditor

The branch auditor shall receive such remuneration and shall hold his appointment subject to such terms and conditions as may be fixed either by the company in general meeting or by the Board of directors of so authorised by the company in general meeting. [Section 228(3)(*d*)]

11. Power of the Central Government to grant exemption from branch audit

Section 228(4) vests overriding powers in the Central Government to make rules providing for the exemption of any branch office from the provisions of section 228 to the extent specified in the rules. (Appendix 2 & 3) In making such rules, the Central Government shall have regard to all or any of the following matters, namely:—

(*a*) the arrangement made by the company for the audit of accounts of the branch office by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company;

(*b*) the nature and quantum of activity carried on at the branch office during a period of three years immediately preceding the date on which the branch office is exempted from the provisions of section 228;

(*c*) the availability at a reasonable cost of a branch auditor for the audit of accounts of the branch office;

(*d*) any other matter which in the opinion of the Central Government justifies the grant of exemption to the branch office from the provisions of section 228.

Appendix 1

Specimen of General meeting resolution for appointment of Company's Auditor or any other qualified person as branch auditor

RESOLVED THAT the Board of Directors be and is hereby authorized to appoint the Company's Auditors and/or in consultation with Company's Auditors any person or persons qualified for appointment as auditor or auditors of the Company under section 226 of the Companies Act, 1956, so far as branch offices of the Company situated in countries outside India, in accordance with the law of the country in which the branch offices of the Company are situated, to audit the accounts for the year ending of such Company's Branch offices in India and abroad respectively and to fix the remuneration (which in the case of the Company's Auditors shall be in addition to their remuneration as the Company's Auditor) and the terms and conditions on which they shall carry out the audits.

Explanatory Statement

The Company has branch (sales) offices at different places in India, namely, Cochin, Mumbai, Delhi and it is proposed to authorize the Board of Directors to appoint the Company's Auditor and/or, in consultation with the Company's Auditors, persons other than the Company's Auditors qualified for appointment as Auditors of the Company under section 226 of the Companies Act, 1956, to audit the accounts of all branch (sales) offices in India at such remuneration and upon such terms and conditions as the Board of Directors deem fit, pursuant to the provisions contained in sub-section (3) of section 228 of the Act.

The Company has a branch office in Belgium and depending upon the development of business the Company may open branches in some other countries. For the branches of the Company situated outside India, it is proposed to authorize the Board of Directors to appoint persons qualified for appointment as auditors or duly qualified accountants as envisaged under the provisions of section 228 of the Act to audit the accounts of such branches upon such terms and conditions as the Board of Directors may deem fit.

The resolution is proposed to give the necessary authority to the Board of Directors in this behalf. No director is interested or concerned in the resolution.

Appendix 2

Specimen of General meeting resolution for approval for exemption from audit of accounts by Company's auditors

RESOLVED THAT the Board of Directors be and is hereby authorized to apply to Central Government under the Companies (Branch Audit Exemption) Rules, 1961, for exemption from Audit of the accounts for the year ending 31st Match, 2005 of all branch offices now existing and which may be opened hereafter during the said year ending 31st March, 2005 (other than resolved to be audited respectively by the Company's Auditors and/or by other persons qualified to act as auditors in term of the provisions of section 228 of the Companies Act, 1956) and to accept to such terms and conditions as the Central Government may prescribed in this behalf, and in the event of such exemption being not granted in respect of any of such branch offices, then and in such event the Board of Directors be and is hereby authorized to have the accounts of all or some of such branch offices audited by the Company's Auditors and in respect of the remaining offices, if any, for which exemption is not granted, appoint such persons as are qualified to act as Auditors of the Company, in consultation with the Company's Auditors and on such terms and conditions as the Board of Director's may decide upon from time to time for audit of accounts of such last mentioned branch offices.

Explanatory Statement

As it is felt that it will not be possible for the accounts of all remaining branch offices of the Company for the year ending 31st March, 2005 to be audited by the Company's auditor and other person qualified to act as auditors, it is proposed to make an application to the Central Government under the Companies (Branch Audit Exemption) Rules, 1961, for exemption of such branch offices as are not to be audited by the Company's auditors and other persons qualified to act as auditors from the provision of section 228 of the Companies Act, 1956, and for making the said application, approval of the shareholders is sought as required under the provision to rule 5 of the said Exemption Rules.

Directors commend shareholders to give their approval. None of the Director of the Company is interested in the resolution.

Appendix 3

The Companies (Branch Audit Exemption) Rules, 1961

[*Notification No. GSR 72, dated 13-1-1961*]

In exercise of the powers conferred by sub-section (4) of section 228 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, namely:—

1. **Short title**.—These Rules may be called the Companies (Branch Audit Exemption) Rules, 1961.

2. **Definitions**.—In these Rules, unless the context otherwise requires,—

(*a*) "quantum of activity" means—

(*i*) the aggregate value of the goods or articles produced, manufactured or processed, or

(*ii*) the aggregate value of the goods or articles sold and of services rendered, or

(*iii*) the amount of the expenditure, whether of a revenue or capital nature, incurred by a branch office of a company during a financial year, whichever is higher;

(*b*) "relevant financial year" means the financial year of a company in respect of which exemption from branch audit is to be determined;

(*c*) "section" means a section of the Companies Act, 1956 (1 of 1956).

3. **Exemption based on quantum of activity**.—Where a company carrying on any manufacturing, processing or trading activity has a branch office whose average of the quantum of activity during the relevant financial year does not exceed rupees two lakhs or two per cent of the average of the total turnover of the company including all its branches and other offices and the earnings from services rendered and from any other source during the same period whichever is higher, the branch office shall be exempt from the provisions of section 228:

Provided that in any such case, the auditor of the company shall have the rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

Explanation.—For the purposes of this rule, the average quantum of activity shall be taken to be—

(*a*) the average of the quantum of activity during the three financial years immediately preceding the relevant financial year, or

(*b*) if three financial years have not been completed since the establishment of the branch office, the average of the quantum of activity during the two financial years, or, as the case may be, the quantum of activity during the year, immediately preceding the relevant financial year, or

(*c*) in other cases, the quantum of activity during the relevant financial year.

4. **Grant of exemption in other cases**.—(1) The Central Government on application made to it in this behalf may, after making such inquiry as it may think fit, by order in writing, exempt the branch office of a company from the provisions of section 228 on any of the following grounds, namely—

(*a*) that a company carrying on activities other than those of manufacturing or processing or trading has made satisfactory arrangements for the scrutiny and check at regular intervals, of the accounts of the branch office by a responsible person who is competent to scrutinize and check accounts;

(*b*) that a company has made arrangements for the audit of the accounts of the branch office by a person otherwise qualified for appointment as branch auditor, even though such person is an employee of the company;

(*c*) that, having regard to the nature and the quantum of activity carried on at the branch office or for any other reason, a branch auditor is not likely to be available at a reasonable cost; and

(*d*) that, for any other reason, the Central Government is satisfied that exemption may be granted.

(2) An order made under sub-rule (1) shall be in force to such extent, for such period and subject to such conditions, if any, as may be specified in the order.

(3) A copy of every order of exemption shall be communicated to the company which shall forthwith transmit a copy thereof to the auditor of the company and shall also cause it to be read before the next general meeting.

(4) Where, under this rule, an exemption has been granted to a branch office of a company, the auditor of the company shall have the rights referred to in sub-section (2) of section 228 in relation to the accounts of the branch office.

5. **Application for exemption**.—(1) Every application for exemption under rule 4 shall be made by the company in the form set out in the Annexure to these Rules and shall be accompanied by a treasury challan in token of payment of the fee prescribed thereof under section 637A of the Act; the fee shall be credited to the Head "XXI—Miscellaneous Departments—Miscellaneous—Registration of Joint Stock Companies":

Provided that, except in cases where the relevant financial year for which exemption is sought closes on or before the 31st of March, 1961, no application for exemption shall be made unless the company has by ordinary resolution passed at a general meeting approved the proposal to apply for such exemption.

(2) An application for exemption on the ground mentioned in clause (*b*) of sub-rule (1) of rule 4 shall be accompanied by—

(*a*) a certificate signed by the managing director or manager of the company, as the case may be, to the effect that arrangements have been made for the audit of the accounts of the branch office as specified in clause (*b*) of sub-rule (1) of rule 4; and

(*b*) a written statement from the auditor of the company that, in his opinion, arrangements made for the audit of the accounts of the branch office are adequate and that the arrangements made for the keeping of the accounts of the branch office are such as would enable the person auditing the accounts to certify that they show a true and fair view of the working of the branch office.

6. **Conditions of exemption in certain cases**.—In every case in which an exemption is granted on the ground mentioned in clause (*b*) of sub-rule (1) of rule 4,—

(*a*) the company shall give the person employed for the purpose of audit of the accounts of the branch office access at all times to the books, accounts and vouchers maintained at the branch office and also furnish such information and explanation as such person may require;

(*b*) the person so employed shall, during the period the exemption is in force, prepare in respect of each financial year a report on the accounts of the branch office examined by him and forward the same to the company's auditor; and

(*c*) there shall be attached to the balance sheet for each financial year a certificate to the effect that no material change has taken place in the arrangements made for the audit of the accounts of the branch office, such certificate being signed by a director and by the manager or secretary of the company or where there is no manager or secretary, by two directors of the company, one of whom shall be the managing director where there is one.

7. **Audit report to refer exemption**.—Where, in any financial year, the accounts of the branch office of a company have not been audited by an auditor mentioned in sub-section (1) of section 228, the auditor of the company shall expressly state in the audit report that the branch office is exempt from the requirements of section 228 by virtue of rule 3 or that an exemption has been granted under rule 4.

8. **Revocation of exemption**.—The Central Government may, after giving the company reasonable opportunity to make its objections, revoke an exemption granted under these Rules, if—

(*a*) there has been a contravention of any of the terms and conditions subject to which the exemption was granted;

(*b*) there has been a material alteration in the circumstances relating to the scrutiny, check or audit of the accounts of the branch office on the basis of which the exemption was granted; and

(*c*) for any other reason, the Central Government is satisfied that the exemption is no longer necessary or justified.

ANNEXURE

(*See* rule 5)

Form of application for exemption of a branch office from audit

1. (*a*) Name of the company.........................

(*b*) Registration No. of Company...............

(*c*) Nominal capital Rs.............................

2. Full description of the activities in which engaged (*e.g.*, goods produced, articles manufactured or processed, services rendered, as the case may be).

3. Situation of all the branch offices of the company and the nature of activities carried on at each of them, indicating separately the branch office(s) in respect of which exemption from audit is desired.

Note.—Where the applicant company is a banking company, it shall also furnish the following particulars—

(*a*) the situation of those branch offices which are to be compulsorily audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year(s) to which the application relates;

(*b*) the situation of the branch offices, other than those included under (*a*) above, which were audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year immediately preceding the financial year(s) to which the application relates; and

(*c*) the situation of the branch offices, other than those included at (*a*) above, which are proposed to be audited by the company's statutory auditor(s) appointed under section 224 or by the branch auditor(s) appointed under section 228(3) during the financial year(s) to which the application relates.

4. Financial year or years in respect of which exemption is desired.

5. Date of the general meeting at which the proposal to apply for exemption was approved [copy of the Resolution and the Explanatory Note under section 173(2) of the Act to be attached]

6. Reasons for/Grounds on which exemption is asked for.

7. (*a*) Where the applicant-company is not a banking company, the value of the total turnover of the company including earnings from services rendered and/or from any other sources for each of the last three financial years (copy of the latest audited balance sheet and profit and loss account of the company to be attached).

(*b*) Where the applicant company is a banking company, the total amount of outstanding deposits (including time deposits) of the company as at the last date of each of the last three financial years (a copy each of the audited balance sheet and profit and loss account of the company for the last three financial years to be attached).

Note.—No copy or copies of the audited balance sheet(s) and profit and loss account(s) need be attached, if a copy thereof has already been submitted to the Department of Company Law Administration,[1] New Delhi, in any other connection; but the number and date of the communication with which it has been so submitted should be quoted.

8. (*a*) Where the applicant-company is not a banking company, a statement showing separately the following particulars in respect of each of the branch offices for which exemption from audit is desired for each of the last three financial years—

(*i*) the value of the goods or articles produced, manufactured or processed at each branch office;

(*ii*) the value of the goods or articles sold and of services rendered at each branch office;

(*iii*) the amount of expenditure of a revenue nature incurred by each branch office; and

(*iv*) the amount of expenditure of a capital nature incurred by each branch office.

(*b*) Where the applicant-company is a banking company, a statement showing separately the total amount of outstanding advances (including bills purchased and discounted) of each of the branch offices as at the last date of each of the last three financial years.

9. If the application is for exemption under clause (*b*) of sub-rule (1) of rule 4, the details of the arrangements made for the regular and periodical scrutiny of the accounts of branch office(s) and the name, qualification and experience of the person appointed to conduct such scrutiny.

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1 Now Department of Company Affairs.

10. Whether audit of the accounts of the branch offices is at present carried out by the auditor of the company; if not, the existing arrangements, if any, for the audit of each of the branch offices should be fully explained.

11. Amount paid as remuneration to each of the auditors including auditors of branch offices during the last financial year.

12. Whether the company has made or proposes to make arrangements for the audit of branch office or offices for which exemption is asked for by a person otherwise qualified for appointment as branch auditor even though such person may be an officer or employee of the company.

13. If the reply to item 12 above is in the affirmative, the following details to be stated—

(*a*) Name of the qualified accountant concerned

(*b*) Designation

(*c*) Emoluments

(*d*) Year of qualification

(*e*) Previous experience, whether as a practising accountant or an employee (along with the name of the employer and the period served)

14. A certificate from the company as required under clause (*a*) of sub-rule (2) of rule 5 together with a written statement from the auditor of the company as required under clause (*b*) of sub-rule (2) of that rule.

15. If the application is made on the ground that no auditor is available at a reasonable cost for the audit of the accounts of any branch or branches, a statement showing the names of the auditors who had been requested to undertake the audit of the branch or branches and the fees quoted by them, to be attached.

16. Any other relevant details.

....

Managing Director or any other Officer
duly authorised by the Board

Chapter 5

Special Audit

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*Form Nos.*
1.	233A	Special audit of a company on direction of the Central Government.	

The Central Government has been vested with power under section 233A to direct by order, that a special audit of the company's accounts for such period or periods as may be specified shall be conducted.

The Central Government may, by the same or different order, appoint either a Chartered Accountant as defined under section 2(1)(*b*) of the Chartered Accountants Act, 1949 or the company's auditor himself to conduct such special audit.

1. Central Government's order for a special audit

The Central Government may order for a special audit, if it is of the opinion:—

(*a*) that the affairs of any company are not being managed in accordance with sound business principles or prudent commercial practices; or

(*b*) that any company is being managed in a manner likely to cause serious injury or damage to the interests of the trade or business to which it pertains;

(*c*) that the financial position of any company is such as to endanger its solvency;

2. Who may conduct special audit

The Central Government may, by the same or different order, appoint either a chartered accountant or the company's auditor himself to conduct such special audit under section 233A. Further, the aforesaid chartered accountant may or may not be a chartered accountant in practice within the meaning of the Chartered Accountants Act, 1949.

Vide Letter No. 8/16(1)/61, dated 9-5-1961, power conferred by section 233A will be exercised not as a matter of routine but in special circumstances and after making such enquiry as the Central Government might consider necessary on the facts and circumstances of each case. As regards the appointment of a person not in practice, this might be required by the special circumstances of the case. It may also be mentioned that Government will themselves consider as to who should be appointed as special auditor. The Central Government has been empowered to appoint a Chartered Accountant who is not in practice for the special audit of a company. Even though the auditor appointed by a company is required to audit its books of account in accordance with law, in fact, however, cases may occasionally arise when the said auditor may not be considered suitable for the purpose of special audit, the Government has to exercise its discretion in such cases.

3. Powers and duties of special auditors

The special auditor shall have the same powers and duties in relation to the special audit as an auditor of a company has under section 227. [Section 233A(3)]

4. Contents of report by the special auditor

The report of the special auditor shall, as far as may be, include all the matters required to be included in an auditor's report under section 227 and, if the Central Government so directs, shall also include a statement on any other matter which may be referred to him by that Government. [Section 233A(4)]

5. Report by the special auditors to the Central Government

The special auditor shall, instead of making his report to the members of the company, make the same to the Central Government. [Proviso to section 233A(3)]

6. Action by the Central Government on report of special auditor

On receipt of the report of the special auditor, the Central Government may take such action on the report as it considers necessary in accordance with the provisions of this Act "or any other law for the time being in force": [Section 233A(6)]

Provided that if the Central Government does not take any action on the report within four months from the date of its receipt, that Government shall send to the company either a copy of, or relevant extract from the report with its comments thereon and require the company either to circulate that copy or those extracts to the members or to have such copy or extracts read before the company at its next general meeting. [Proviso to section 233A(6)]

7. Central Government's powers to direct for furnishing information to the special auditor

The Central Government may, by order, direct any person specified in the order to furnish to the special auditor within such time as may be specified therein such information or additional information as may be required by the special auditor in connection with the special audit and on failure to comply with such order such person shall be punishable with fine which may extend to five thousand rupees. [Section 233A(5)]

8. Expenses in connection with special audit shall be determined by the Central Government

The expenses of, and incidental to, any special audit under section 233A (including the remuneration of the special auditor) shall be determined by the Central Government (which determination shall be final) and paid by the and in default of such payment shall be recoverable from the company as arrears of land revenue.

Appendix 1

Specimen of Board resolution for taking on record the appointment of special auditor

RESOLVED THAT appointment of special auditor and fixation of his remuneration by the Central Government *vide* its Order No. XXXX dated XXXX in accordance with the provisions of section 233A, a copy of which has been placed before the meeting and initialed by the Chairman for the purpose of identification, be and is hereby noted.

RESOLVED FURTHER THAT all expenses of special audit pursuant to the order of the Central Government be borne by the Company.