

CERTIFIED AUDITORS' RULES, 1961

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CERTIFIED AUDITORS' RULES, 1961

G.S.R. 1302, dated the 20th October, 1961. 1 -In exercise of the powers conferred by Cl. (b) of sub-section (2) of Sec. 226 of the Companies Act, 1956 (1 of 1956) and in supersession of the Restricted Auditors' Certificates Rules, 1956, the Central Government hereby makes the following rules, namely :-

1. Short title, extent and commencement :-

- (1) These rules may be called the Certified Auditors' Rules, 1961.
- (2) They extend to the whole of India except the State of Jammu and Kashmir.
- (3) They shall come into force at once.

2. Definitions :-

In these rules, unless the context otherwise requires,-

- (a) "Council" means the Council of the Institute;
- (b) "Form" means a form appended to these rules;
- (c) "Holder" means the holder of a Certificate;
- (d) "Institute" means the Institute of Chartered Accountants of

India;

(e) "Register" means the Register maintained in pursuance of Rule 4;

(f) "Secretary" means the Secretary to the Council.

3. Certified Auditors :-

Every person who, at the commencement of these rules, holds a certificate which has been renewed to him under the Restricted Auditors' Certificates Rules, 1956 and which is in force at such commencement shall, notwithstanding anything contained in such certificates, continue to be entitled to act as an auditor of companies until the 30th June, 1962 and thereafter, if the certificate is renewed under these rules, may continue to act as an auditor of companies for the period for which the certificate has been so renewed.

4. Register of Certified Auditors :-

(1) The Council shall maintain in Form A a Register of Certified Auditors in which shall be entered the name of every person who under Rule 3 is entitled for the time being to act as an auditor of companies.

(2) The name of a Certified Auditor who has failed to renew his certificate under Rule 5 or whose certificate has been suspended or cancelled under Rule 8 shall be removed from the register, and the name of a Certified Auditor whose certificate is renewed by the Council under Rule 6 or under Rule 9 shall be restricted to the register.

(3) Every removal of a name from the register and every restoration of a name thereto shall be notified in the Gazette of India.

5. Renewal of certificate :-

(1) A Certified Auditor who intends to continue to act as an auditor of companies may apply to the Secretary for renewal of his certificate.

(2) Every application for renewal shall be in Form B and be made in the month of April immediately preceding the date of expiry of the certificate.

(3) On receipt of such application, the Secretary shall renew the

certificate in Form C till the 30th June, of the following year.

6. Renewal of certificate after expiry :-

(1) Where a Certified Auditor fails to apply for renewal of the certificate under Rule 5, he may apply to the Council for condoning the omission and for renewing the certificate. Every such application shall be sent so as to reach the Secretary on or before the 31st March immediately following the date of expiry of the certificate.

(2) The Council may, if it is satisfied that there was sufficient justification for the failure to apply for renewal in time, condone the omission and renew the certificate up to the 30th June of the following year; such renewal shall be in Form C.

7. Styling as Certified Auditor :-

Every person entitled to act as an auditor of companies under these rules shall be a Certified Auditor, and shall style himself as such or if he practises under a firm name the firm shall be styled as Certified Auditors : Provided that the firm shall not be entitled to style itself Certified Auditors unless all the partners are entitled to act as auditors of companies under these rules.

8. Suspension or Cancellation of Certificate :-

(1) The Council may, at any time, suspend or cancel a certificate if the holder thereof-

(a) has been adjudged by a competent court to be of unsound mind;

(b) is an undischarged insolvent;

(c) being a discharged insolvent, has not obtained a certificate from the Court that his insolvency was caused by misfortune without any misconduct on his part;

(d) has been convicted by a competent court, whether within or outside India, of an offence involving moral turpitude and punishable with imprisonment, or of an offence not of a technical nature, committed by him in his professional capacity unless, in respect of the offence committed, he has either been granted a pardon, or on an application made by him in this behalf, the Central Government has, by an order in writing, removed the disability; or

(e) has been declared by the Central Government to have been guilty of any act of commission or omission specified in the Appendix or of other conduct which renders him unfit to hold a certificate.

(2) The Council may also on the application of the holder, suspend or cancel his certificate.

9. Renewal of suspended or cancelled certificate :-

Where a certificate has been suspended or cancelled under sub-rule (2) of rule 8, the Council may on an application in that behalf by the person who held the certificate, presented so as to reach the Secretary before the expiry of one year from the date of the suspension or cancellation, rescind the same and grant him a certificate of renewal which shall be in Form D.

10. Communication to holder :-

The suspension or cancellation of certificate in pursuance of rule 8, or the grant of a certificate of renewal in pursuance of rule 9 shall be communicated to the holder of the suspended or cancelled certificate or of the certificate of renewal, as the case may be, at his usual address.

11. Procedure for declaration by Government :-

Before the Central Government makes a declaration in pursuance of Cl. (e) of rule 8(1), the provisions and procedure laid down in rule 12 shall apply and be followed.

12. Enquiry into complaints :-

(1) Subject to the provisions of this rule, all complaints against any holders shall be investigated and all other enquiries relating to misconduct of any holder shall be held by the Disciplinary Committee of the Council.

(2) Every complaint shall be in Form E and shall contain the following particulars; namely, (a) acts and omissions which, if proved, would render the person complained against unfit to hold a certificate, (b) the oral or documentary evidence relied upon in support of the allegations made in the complaint.

(3) The Secretary shall return a complaint which is not in the proper form or which does not contain the aforesaid particulars, to the complainant for representation after compliance with such objections and within such time as the Secretary may specify :

Provided that if the subject matter of a complaint is, in the opinion of the President of the Council, substantially the same as or covered by any previous complaint or information received and if no additional ground is alleged, the Secretary shall file the said complaint without any further action and inform the complainant accordingly.

(4) Within sixty days ordinarily of the receipt of a complaint the Secretary shall,-

(a) if the complaint is against an individual holder, send a copy thereof to him at his address entered in the Register;

(b) if the complaint is against a firm, send a copy of the complaint to the firm at the address of its head office as communicated by the complainant, calling upon the firm to disclose the name of the holder concerned and to send a copy of the complaint to such holder.

Explanation.-A notice to the firm shall be a notice to all the holders who are partners or employees of that firm.

(5) The holder against whom the complaint is made may within fourteen days of the service of a copy of the complaint under sub-rule (4) or within such time as may be extended by the Secretary, forward to the Secretary a written statement of his defence verified in the same manner as a pleading in a Civil Court.

(6) If after perusal of the complaint and the written statement, if any, of the holder concerned, the President of the Council considers it necessary to do so, he may call for any additional papers or documents connected with the case either from the complainant or from the holder concerned or from both.

(7) If on a perusal of the complaint and the written statement, if any, of the holder concerned and other relevant documents and papers, the Council is of the opinion that there is a prima-facie case against such a holder the Council shall cause an enquiry to be made in the matter by the Disciplinary Committee of the Council. If the Council is of the opinion that there is no prima-facie case against the holder concerned the complaint shall be filed and the complainant, the holder concerned and the Central Government shall be informed accordingly: Provided that if a complaint by or on behalf of the Central or a State Government is so filed by the Council and the Central Government is of the opinion that the

complaint should be further inquired into, the Central Government may direct the Council to cause an enquiry to be made in the matter by the Disciplinary Committee of the Council and the Council shall act accordingly.

(8) Every notice issued by the Secretary or by the Disciplinary Committee under this rule shall be sent to the holder or the firm concerned by registered post with acknowledgement due. If such notice is returned unserved with an endorsement indicating that the addressee has refused to accept the notice, the notice shall be deemed to have been served. If the notice is returned unserved with an endorsement that the addressee cannot be found at the address given, the Secretary shall ask the complainant to supply to him the correct address of the holder or the firm concerned. A fresh notice shall be served upon the holder or the firm at the address so supplied.

(9) It shall be the duty of the Secretary to place before the Disciplinary Committee all facts brought to his knowledge which are relevant for the purpose of an enquiry by the Disciplinary Committee.

(10) A holder against whom the complaint is made shall have the right to defend himself before the Disciplinary Committee of the Council either in person or through a legal representative or any other Certified Auditor or a Member of the Institute.

(11) Except as otherwise provided in these rules, the Disciplinary Committee of the Council shall have the power to regulate its procedure in such manner as it considers necessary and during the course of enquiry may examine witnesses on oath, receive affidavits and any other oral or documentary evidence.

(12) The Disciplinary Committee of the Council shall submit its report to the Council and the Council shall consider the report of the Disciplinary Committee and after making such further enquiry, if any, as it may deem necessary, forward the same together with its findings to the Central Government.

(13) On receipt of the findings of the Council, the Central Government shall pass such orders as it may consider fit or may refer the case back for further enquiry by the Council and upon receipt of the finding after such enquiry pass final order thereon.

13. Information received against holders :-

The procedure prescribed by Rule 12 shall, so far as may be, apply to any information received regarding any act of negligence, misconduct or dishonesty or any breach of professional propriety referred to in Cl. (e) of rule 8(1) of these rules.