

Bill No. XXVI of 2010

THE COST AND WORKS ACCOUNTANTS
(AMENDMENT) BILL, 2010

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BILL

further to amend the Cost and Works Accountants Act, 1959.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Cost and Works Accountants (Amendment) Act, 2010. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

23 of 1959.

2. In the Cost and Works Accountants Act, 1959 (hereinafter referred to as the principal Act), throughout the Act and in the First Schedule and the Second Schedule to the said Act, for the words "cost accountant", "cost accountants" and "cost accountancy" with their grammatical variations and cognate expressions, wherever they occur, the words "cost and management accountant", "cost and management accountants" and "cost and management accountancy" shall respectively be substituted; Substitution of references to certain expressions by certain other expressions.

Amendment of
section 2.

3. In section 2 of the principal Act,—

(i) in sub-section (1),—

(I) after clause (e), the following clause shall be inserted, namely:—

'(ea) "firm" shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932, and includes,— 9 of 1932.

(i) the limited liability partnership as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008; or 6 of 2009.

(ii) the sole proprietorship,

registered with the Institute;'

(II) in clause (f), for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost and Management Accountants of India" shall be substituted;

(III) after clause (fa), the following clauses, shall be inserted, namely:—

'(fb) "partner" shall have the meaning assigned to it in section 4 of the Indian Partnership Act, 1932 or in clause (q) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008, as the case may be; 9 of 1932. 6 of 2009.

(fc) "partnership" means—

(A) a partnership as defined in section 4 of the Indian Partnership Act, 1932; or 9 of 1932.

(B) a limited liability partnership which has no company as its Partner;'

(IV) after clause (ia), the following clause shall be inserted, namely:—

'(iaa) "sole proprietorship" means an individual who engages himself in the practice of cost and management accountancy or offers to perform services referred to in clauses (ii) to (iv) of sub-section (2);'

(ii) in sub-section (2),—

(a) after the words "in partnership with one or more members of the Institute in practice", the words "or in partnership with members of such other recognised professions as may be prescribed" shall be inserted;

(b) in clause (i), for the words "cost and works accountancy", the words "cost and management accountancy" shall be substituted;

(c) in clause (ii), for the words "certification of cost accounting and related statements or holds himself out to the public as a cost accountant in practice", the words "certification or auditing of cost and management accounting and related statements or holds himself out to the public as a cost and management accountant in practice" shall be substituted;

(d) in clause (iii), for the words "cost accounting", the words "cost and management accounting" shall be substituted.

Amendment of
section 3.

4. In section 3 of the principal Act, in sub-section (1), for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost and Management Accountants of India" shall be substituted.

- 5.** In section 5 of the principal Act,—
- Amendment of section 5.
- (a) in sub-section (2),—
- (i) for the letters "AICWA", the letters "ACMA" shall be substituted;
- (ii) for the words "Institute of Cost and Works Accountants", the words "Institute of Cost and Management Accountants of India" shall be substituted;
- (b) in sub-section (5),—
- (i) for the letters "FICWA", the letters "FCMA" shall be substituted;
- (ii) for the words "Institute of Cost and Works Accountants", the words "Institute of Cost and Management Accountants of India" shall be substituted.
- 6.** In section 22A of the principal Act, for the words "Institute of Cost and Works Accountants of India", the words "Institute of Cost and Management Accountants of India" shall be substituted.
- Amendment of section 22A.
- 7.** In section 25 of the principal Act, in sub-section (1), in clause (iii), for the words "cost and works accountants", the words "cost and management accountants" shall be substituted.
- Amendment of section 25.
- 8.** In section 26 of the principal Act, in sub-section (1), the following *Explanation* shall be inserted, namely:—
- Explanation.*—For the removal of doubts, it is hereby declared that the "company" shall include any limited liability partnership which has company as its partner for the purposes of this section.’
- Amendment of section 26.
- 9.** In the First Schedule to the principal Act, in Part I, in item (7), for the words "Institute of Cost Accountants of India", the words "Institute of Cost and Management Accountants of India" shall be substituted.
- Amendment of First Schedule.
- 10.** In the Second Schedule to the principal Act, in Part I, in item (2), for the words "cost accounting", the words "cost and management accounting" shall be substituted.
- Amendment of Second Schedule.

STATEMENT OF OBJECTS AND REASONS

The Cost and Works Accountants Act, 1959 has been enacted to make provision for the regulation of the profession of the cost and works accountants. The said Act was amended in 2006 by the Cost and Works Accountants (Amendment) Act, 2006, *inter alia*, to enable the members of the Institute of Cost and Works Accountants of India to form multi-disciplinary firms and offer multi-professional services in a competitive and commercial manner.

2. Subsequently, the Limited Liability Partnership Act, 2008 has been enacted to make provisions for the formation and regulation of limited liability partnerships and for matters connected therewith or incidental thereto. The limited liability partnership will be a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the limited liability partnership which may be of tangible or intangible nature or both tangible and intangible in nature.

3. It is proposed to extend the benefits of the Limited Liability Partnership Act, 2008 to the firms of cost and works accountants under the Cost and Works Accountants Act, 1959 and to amend the provisions of that Act.

4. The Cost and Works Accountants (Amendment) Bill, 2010, *inter alia*, proposes to amend the Cost and Works Accountants Act, 1959 to,—

(i) apply certain provisions of the Limited Liability Partnership Act, 2008 to the Cost and Works Accountants Act, 1959 in order to allow the members of the professional institute governed by the Cost and Works Accountants Act, 1959 to form the limited liability partnership and insert new definitions of "firm", "partner", "partnership" and "sole proprietorship" for the said purpose;

(ii) amend the Cost and Works Accountants Act, 1959 on lines similar with the provisions of the Company Secretaries Act, 1980 so as to allow the professionals of the Institute of Cost and Works Accountants of India to form partnership with members of such other recognised professions;

(iii) change the name of the "Institute of Cost and Works Accountants of India" to the "Institute of Cost and Management Accountants of India" and change the "cost accountants" to "cost and management accountants".

5. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 15th April, 2010.

SALMAN KHURSHID.

FINANCIAL MEMORANDUM

Clause 3 and clause 8 of the Bill seeks to extend the benefits of the Limited Liability Partnership Act, 2008 to the firms of Cost and Works Accountants under the Cost and Works Accountants Act, 1959 and clauses 4, 5, 6 and 9 of the Bill seek to change the name of the "Institute of Cost and Works Accountants of India" to "Institute of Cost and Management Accountants of India". The provisions of the Bill will not involve any expenditure of recurring or non-recurring nature from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend sub-section (2) of section 2 of the Cost and Works Accountants Act, 1959 to empower the Council of the Institute of Cost and Works Accountants of India to make regulations for recognition of other professions with whom members of the Institute can enter into partnership.

2. The matters in respect of which the said regulations may be made are matters of procedure and administrative detail, and it is not practicable to provide for them in the proposed Bill itself.

3. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE COST AND WORKS ACCOUNTANTS ACT, 1959

(23 OF 1959)

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2. (1) In this Act, unless the context otherwise requires,—

Definitions and interpretation.

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(f) "Institute" means the Institute of Cost and Works Accountants of India constituted under this Act;

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(2) Save as otherwise provided in this Act, a member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice, he, in consideration of remuneration received or to be received,—

(i) engages himself in the practice of cost and works accountancy; or

(ii) offers to perform or performs services involving the costing or pricing of goods or services or the preparation, verification or certification of cost accounting and related statements or holds himself out to the public as a cost accountant in practice; or

(iii) renders professional services or assistance in or about matters of principle or detail relating to cost accounting procedure or the recording, presentation or certification of costing facts or data; or

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CHAPTER II

THE INSTITUTE OF COST AND WORKS ACCOUNTANTS

3. (1) All persons whose names are entered in the Register at the commencement of this Act, and all persons who may hereafter have their names entered in the Register under the provisions of this Act, so long as they continue to have their names borne on the said Register, are hereby constituted a body corporate by the name of the Institute of Cost and Works Accountants of India, and all such persons shall be known as members of the Institute.

Incorporation of the Institute.

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5. (1) * * * * *

Fellows and Associates.

(2) Any person other than a person to whom the provisions of sub-section (3) apply shall, on his name being entered in the Register, be deemed to have become an associate member of the Institute and so long as his name remains so entered, shall be entitled to use the letters AICWA after his name to indicate that he is an associate member of the Institute of Cost and Works Accountants.

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(5) Any person whose name is entered in the Register as fellow of the institute and so long as his name remains so entered, shall be entitled to use the letters FICWA after his name to indicate that he is a fellow of the Institute of Cost and Works Accountants.

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Constitution
of Appellate
Authority.

22A. The Appellate Authority constituted under sub-section (1) of section 22A of the Chartered Accountants Act, 1949, shall be deemed to be the Appellate Authority for the purposes of this Act subject to the modification that for clause (b) of said sub-section (1), the following clause had been substituted, namely:— 38 of 1949.

(b) The Central Government shall, by notification appoint two part-time members from amongst the persons who have been members of the Council of the Institute of Cost and Works Accountants of India for at least one full term and who is not a sitting member of the Council;

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Penalty for
using name of
the Council,
awarding
degrees of
cost
accountancy,
etc.

25. (1) Save as otherwise provided in this Act, no person shall—

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(iii) seek to regulate in any manner whatsoever the profession of cost and works accountants.

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Companies
not to engage
in cost
accountancy.

26. (1) No company, whether incorporated in India or elsewhere, shall practise as cost accountants.

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THE FIRST SCHEDULE

[See sections 21(3), 21A (3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

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(7) advertises his professional attainments or services, or uses any designation or expressions other than cost accountant or professional documents, visiting cards, letter heads or sign boards, unless it be a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Cost Accountants of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council:

Provided that a member in practice may advertise through a write up, setting out the services provided by him or his firm and particulars of his firm subject to such guidelines as may be issued by the Council;

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THE SECOND SCHEDULE

[See sections 21(3), 21B (3) and 22]

PART I

Professional misconduct in relation to cost accountants in practice

A cost accountant in practice shall be deemed to be guilty of professional misconduct, if he—

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(2) certifies or submits in his name, or in the name of his firm, a report of an examination of cost accounting and related statements unless the examination of such statement has been made by him or by a partner or an employee in his firm or by another cost accountant in practice;

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RAJYA SABHA

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further to amend the Cost and Works Accountants Act, 1959.

(Shri Salman Khurshid, Minister of Corporate Affairs)