



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 26

# Resignation of auditors

## Chapter 3 — Internal administration (Part 3.7)

*Issued 22/6/1992*

*From 5 July 2007, this document may be referred to as Regulatory Guide 26 (RG 26) or Policy Statement 26 (PS 26). Paragraphs in this document may be referred to by their regulatory guide number (e.g. RG 26.1) or their policy statement number (e.g. PS 26.1).*

### Headnotes

*Subsection 329(6); audit independence; appointment of auditor primarily matter for members; resignation to take effect at annual general meeting unless there are exceptional circumstances; audit tendering; opinion shopping; circumstances connected with auditor's ceasing to hold office to be brought to ASC's attention.*

---

### Contents

<b>Purpose</b> .....	<b>2</b>
<b>Background</b> .....	<b>2</b>
<b>Principal considerations</b> .....	<b>2</b>
<b>Policy</b> .....	<b>3</b>
<b>Applications</b> .....	<b>6</b>

## Purpose

---

RG 26.1 This guide, which supersedes NCSC Release 163, stipulates the policies and principles which will influence the ASC in the exercise of the power conferred on it by s329(6) to consent to the resignation of auditors.

## Background

---

### Audit independence

RG 26.2 An auditor must be able to report audit findings free of pressure or influence from others. The threat of removal from office by directors of a company who wish to coerce favourable responses from the auditor is an example of such pressure or influence. Section 329 is designed to protect the auditor from manipulation by directors and to protect members of the company from an auditor who wishes to resign rather than conclude an audit which is proving difficult or controversial.

### Members' responsibility

RG 26.3 The appointment of an auditor is primarily a matter for the members. However, while there are dangers in allowing an audit appointment to be terminated by arrangement with the directors, it would be unreasonable to insist that an auditor who is unable to continue in office, for example because of failing health, should not be able to resign without the consent of the company in general meeting. Subsection 329(6) confers on the ASC the responsibility of assessing the appropriateness of the reasons for resignation.

## Principal considerations

---

RG 26.4 In exercising its power under s329(6), the ASC's overriding concern is to ensure that the independence and integrity of the audit function is preserved.

RG 26.5 The appointment of an auditor is primarily a matter for the members. If the auditor last appointed by the members resigns, s327(3) requires the members to appoint a replacement auditor at the next annual general meeting (AGM). Although directors can appoint a replacement auditor to hold office until the AGM, the ASC considers that in the absence of exceptional circumstances this should not occur.

Consequently, the ASC will not consent to a resignation which does not take effect at the AGM unless there are exceptional circumstances.

RG 26.6 Where the company wishes to change its auditor at a time other than the AGM, and there are no exceptional circumstances, the removal mechanism provided in s329(1) is available. Removals require the approval of members and are monitored by the ASC to determine whether the independence of the audit function is preserved.

## **Tendering**

RG 26.7 In the context of this guide, a tender is not considered to constitute exceptional circumstances. However, a company is entitled to change its auditor based on the outcome of a tender. Balancing the freedom of choice is the need for the auditor to be independent in the expression of his or her audit opinion. Independence should not be undermined by insecurity of tenure.

RG 26.8 Where an application is made as a result of a tender the ASC will not consent to the application if the resignation does not take effect at the AGM.

## **Opinion shopping**

RG 26.9 “Opinion shopping” is the practice of searching for an auditor willing to support a proposed accounting treatment. Normally the ASC will not consent to an application which it considers to be connected in any way to opinion shopping.

## **Policy**

---

RG 26.10 An auditor seeking the ASC’s consent to resign should apply for the resignation to take effect at the next AGM, unless he or she can demonstrate that there are exceptional circumstances and that an alternative day is appropriate.

## **Resignations which take effect at the AGM**

RG 26.11 The ASC will consent to a resignation which takes effect at the next AGM only if:

- (a) the ASC considers that the auditor’s reasons for resignation are acceptable;
- (b) the auditor states that all s332(9) and 332(10) matters have been reported to the ASC at the date of the application and that any

further s332(9) or 332(10) matters which come to his or her attention before resignation will be reported;

- (c) the auditor states that there are no disputes with company management connected with his or her ceasing to hold office; and
- (d) the auditor states that there are no other circumstances connected with his or her ceasing to hold office which should be brought to the ASC's attention (refer to para 17 for examples of such circumstances).

RG 26.12 Members do not vote on an auditor's resignation. However, this guide aims to ensure that the outgoing auditor completes the current audit and that he or she retains the s332(8) right to attend and be heard at the AGM.

RG 26.13 Since a vacancy in the office of auditor occurs at the AGM, the s327(3)(b) obligation for the company to appoint a replacement auditor arises at that time. Accordingly, the provisions of s328 regarding the nomination of auditor should be addressed before the AGM.

## **Resignations which do not take effect at the AGM**

RG 26.14 The ASC will consent to a resignation which does not take effect at the next AGM only if:

- (a) the ASC considers that there are exceptional circumstances and that a day other than the next AGM is appropriate (refer to para 16 for examples of situations which may be considered as exceptional circumstances);
- (b) the auditor states that all s332(9) and 332(10) matters have been reported to the ASC at the date of the application and that any further s332(9) and 332(10) matters which come to his or her attention before resignation will be reported. For the purposes of determining whether a matter should be reported pursuant to s332(10), the auditor should assume that the matter will not be dealt with adequately by comment in the audit report on the financial statements as he or she is unlikely to have any control over the content of the audit report;
- (c) the application includes a copy of a directors' resolution appointing a replacement auditor and a confirmation from the proposed replacement auditor stating that he or she is prepared to accept the appointment, both subject to the ASC's approval of the resignation;

- (d) the auditor states that there are no disputes with company management connected with his or her ceasing to hold office; and
- (e) the auditor states that there are no other circumstances connected with his or her ceasing to hold office which should be brought to the ASC's attention (refer to para 17 for examples of such circumstances).

### **Problem applications**

RG 26.15 When the ASC considers that there are or may be problems connected with a resignation, whether brought to its attention in the auditor's application or otherwise, it will assess the nature of the problems before determining whether to consent to or reject the application. Further procedures may be initiated by the ASC and these may include one or more of the following:

- (a) requesting the auditor or company to provide additional information;
- (b) convening a hearing pursuant to s51 of the ASC Law; or
- (c) requiring, as a condition to the ASC's consent to the application, that the company make disclosures regarding the reasons for the change in audit appointment to the members and, if appropriate, to the market.

### **Exceptional circumstances**

RG 26.16 In the context of this guide, examples of situations which may be considered as exceptional circumstances include:

- (a) the failing health of the auditor;
- (b) loss of independence of the auditor;
- (c) the company is not audited by the auditor of its parent entity; or
- (d) a relocation of the company's or auditor's principal place of business resulting in circumstances where it would be impractical for the auditor to perform the audit.

### **Circumstances to be brought to the ASC's attention**

RG 26.17 Examples of circumstances connected with the auditor's ceasing to hold office which should be brought to the ASC's attention are:

- (a) the independence of the audit function is not being preserved; or
- (b) the outgoing auditor is aware that the resignation may be connected with opinion shopping.

## Applications

---

RG 26.18 Subsection 329(5) applications which do not sufficiently address the matters referred to in the preceding paragraphs will not be determined by the ASC until all relevant information is provided.

RG 26.19 Applications should be:

- (a) made on a Form 342;
- (b) lodged at an ASC Regional Office; and
- (c) accompanied by the prescribed fee.