

November, 2012

Q. Whether a Chartered Accountant in practice can accept a position as auditor previously held by another Chartered Accountant without first communicating with him in writing?

A. No, a Chartered Accountant in practice cannot accept a position as auditor previously held by another Chartered Accountant without first communicating with him in writing. It will be in violation of Clause (8) of Part I of First Schedule to the Act.

Q. Whether a Chartered Accountant in practice can accept audit in case the audit fee of the previous auditor remains unpaid.

A. No, in case the undisputed audit fees for carrying out the statutory audit under the Companies Act, 1956 or various other statutes have not been paid, the incoming auditor should not accept the appointment unless such fees are paid. In respect of other dues, the incoming auditor should in appropriate circumstances use his influence in favour of his predecessor to have the dispute as regards the fees settled.

The Council has taken the view that the provisions of audit fee made in accounts signed by both the auditor and the auditee shall be considered as 'undisputed' audit fees. In this connection, attention of members is invited to the Council General Guidelines, 2008 dated 08.08.2008, as appearing at pages 313 – 323 of the Code of Ethics, 2009 edition.

Q. Whether posting of a letter under "Certificate of Posting" is sufficient to establish communication with retiring auditor?

A. No, a mere posting of a letter "Under Certificate of Posting" is not sufficient to establish effective communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. Members should therefore communicate with a retiring auditor in such a

manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. Communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence.

Q. Whether a Chartered Accountant who is appointed as tax auditor for conducting special audit under the Income-tax Act by the IT Authorities is required to communicate with statutory auditor?

A. Yes, Council direction under Clause (8) of Part I of First Schedule to the Act, prescribes that it would be a healthy practice if a tax auditor appointed for conducting special audit under the Income-tax Act, communicates with the members who has conducted the statutory/tax audit.

Q. Whether it is obligatory for the auditor appointed to conduct a special Audit under Section 233A of the Companies Act, 1956 to communicate with the previous auditor who has conducted the regular audit for the period covered by the Special Audit.

A. No, Council direction under Clause (8) of Part I of the First Schedule to the Act prescribes that it is not obligatory for the auditor appointed to conduct a special Audit under Section 233A of Companies Act, 1956 to communicate with the previous auditor who has conducted the regular audit for the period covered by the Special Audit.

Q. Whether communication with previous auditor is necessary in case of appointment as statutory auditor by nationalized and other Banks?

A. Yes, Clause (8) of Part I of the First Schedule to the Act is equally applicable in case of nationalized and other Banks and also to Government agencies.

Q. Whether communication by the Incoming auditor is mandatory with the previous auditor in respect of various audit assignments, like the concurrent audit, revenue audit, tax audit and special audits etc.?

A. Yes, the requirement for communicating with the previous auditor would apply to all types of audits viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit. The Council has laid down detailed guidelines in this

regard and the same are appearing at pages 166 – 168 in the Code of Ethics, 2009 edition.

Q. Whether a Chartered Accountant will be deemed to be guilty of professional misconduct if he accepts his appointment as an auditor immediately after intimating his appointment over the phone to the previous auditor?

A. Yes, the member would be held guilty of professional misconduct for the following reasons:

(a) That he had failed to communicate with the retiring auditor in writing; and

(b) That he did not wait for a reasonable length of time for a reply to be received from him.

Q. Whether a Chartered Accountant can accept an appointment as auditor of a company without first ascertaining from it whether the requirement of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with?

A. No, as per Clause (9) of Part I of the First Schedule to the Act, a Chartered Accountant in practice shall be deemed to be guilty of professional misconduct if he accepts an appointment as auditor of a company without first ascertaining from it whether the requirements of Section 225 of the Companies Act, 1956 in respect of such appointment have been duly complied with. In this regard, the Council has laid down detailed guidelines that are appearing in the Code of Ethics, 2009 Edition.

Q. Whether a statutory auditor can be appointed in the adjourned meeting in place of existing statutory auditor where no special notice for removal or replacement of the retiring auditor is received at the time of the original meeting?

A. No, if any annual general meeting is adjourned without appointing an auditor, no special notice for removal or replacement of the retiring auditor received after the adjournment can be taken note of and acted upon by the company, since in terms of Section 190(1) of the Companies Act, 1956, special notice should be given to the Company at least fourteen clear days before the meeting in which

the subject matter of the notice is to be considered, the meeting contemplated in Section 190(1) undoubtedly is the original meeting.

Q. Whether a Chartered Accountant or a firm of Chartered Accountants can charge or offer to charge professional fees based on a percentage of turnovers?

A. No, in terms of Clause (10) of Part I of First Schedule to the Act, it is not permitted to a Chartered Accountant or a firm of Chartered Accountant to charge fees on a percentage of turnover, except in the circumstances provided under Regulation 192 of the CA Regulations, 1988.

"192. Restriction on fees

No Chartered Accountant in practice shall charge or offer to charge, accept or offer to accept, in respect of any professional work, fees which are based on a percentage of profits, or which are contingent upon the findings, or results of such work:

Provided that:

(a) in the case of a receiver or a liquidator, the fees may be based on a percentage of the realization or disbursement of the assets;

(b) in the case of an auditor or a co-operative society, the fees may be based on a percentage of the paid up capital or the working capital or the gross or net income or profits; and

(c) in the case of a valuer for the purposes of direct taxes and duties, the fees may be based on a percentage of the value of the property valued."

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