

Matter for 'Know Your Ethics' – January, 2014 issue of the CA Journal

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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 Chartered Accountants Act, 1949, 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 Chartered Accountants Act, 1949, 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."

Q. Whether a Chartered Accountant in practice can engage in any business or occupation other than the profession of Chartered Accountancy?

A. No, in terms of Clause (11) of Part I of First Schedule to the Chartered Accountants Act, 1949, in general a Chartered Accountant in practice is not permitted to engage himself in any business or occupation other than the profession of Chartered Accountants.

However, there are following exceptions to it :-

(i) A Chartered Accountant can be a Director of a Company (not being a Managing Director or Whole-Time Director), unless he or any of his partners is interested in such company as an auditor. [Proviso to Clause (11)]

(ii) A Chartered Accountant in practice may engage in any business or occupation with the permission granted in accordance with a Resolution of the Council. (Regulation 190A) Appendix-9 of the CA Regulations contains the above resolutions under two heads (A) permission granted generally and (B) permission to be granted specifically.

Q. Whether a member in practice is allowed to become whole-time director of a company?

A. No, Members are not allowed to become whole-time Director of a company generally. However, a member in practice may become a Managing Director or a whole-time Director of a body corporate within the meaning of the Companies Act, 1956 subject to the Council Guidelines of Corporate Form of practice.

Q. Whether a member in practice can be a director of a company?

A. Yes. a member in practice is permitted generally to be a Director Simplictor in a company provided he is not a Managing Director or Wholetime Director and is required only in the Board Meetings of the company and not paid any remuneration except for attending such meetings.

Q. Whether a Chartered Accountant in practice is entitled to accept teaching assignment?

A. Yes, a Chartered Accountant in practice is allowed to accept teaching assignment in university, affiliated colleges, educational institution, coaching organization, private tutorship, provided the direct teaching hours devoted to such activities taken together do not exceed 25 hours a week with effect from 1.4.2005.

Q. Can a Chartered Accountant working in a CA firm hold CoP?

A. Yes, a Chartered Accountant working in a C.A. firm can hold CoP. However, w.e.f.1.4.2005, he is not entitled to do any attest function.

Q. Can a practicing Chartered Accountant accept a position as auditor previously held by some other Chartered Accountant in such conditions as to constitute undercutting?

A. Yes, a Chartered Accountant in practice can accepts a position as auditor previously held by some other Chartered Accountant in such conditions as to constitute undercutting.

Q. Can a Chartered Accountant in Service accepts or agrees to accept any part of fees, profits or gains from a lawyer, a Chartered Accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification?

A. No, Clause (b) of Part II of First Schedule to the Chartered Accountants Act, 1949, prohibits a member in service from accepting or agreeing to accept any part of fees, profits or gains from a lawyer, a Chartered Accountant or broker engaged by such company, firm or person or agent or customer of such company, firm or person by way of commission or gratification.

Q. Whether a Member of the Institute shall be deemed to be guilty of professional misconduct, if he includes in any statement, return or form to be submitted to the Council any particulars knowing to be false?

A. Yes, as per Clause (3) of Part III of the First Schedule to the Chartered Accountants Act, 1949, a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct if he includes in any statement, return or form to be submitted to the Council any particulars knowing them to be false.
