

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

Q. Can a practicing Chartered Accountant secure any professional business through the services of a person who is not his employee or partner?

A. No, Clause (5) of Part-I of First Schedule to the Chartered Accountants Act, 1949 prohibits a `practicing Chartered Accountant from securing any professional business, either through the services of a person who is not an employee of such Chartered Accountants or who is not his partner.

Q. Whether a member in practice is permitted to have his name published in Telephone Directory?

A. Yes, a member in practice is permitted to have his name published in the telephone directory subject to certain conditions. Para (c) under Clause (6) of Part I of the First Schedule to the Chartered Accountants Act, 1949, appearing in the Code of Ethics, 2009 provides for publication of Name or Firm Name by Chartered Accountants in the Telephone or other Directories published by Telephone Authorities or Private Bodies.

The Council has held that it would not be proper for a Chartered Accountant to have entries made in a Telephone Directory either by making a special request or by means of an additional payment. The Council has also considered the question of permitting entries in respect of chartered accountants and their firms under specified groups in telephone/trade directories brought out by Government and non-Government agencies. It has decided to permit such entries subject to the following restrictions:

1. The entry should appear in the section/category of "Chartered Accountants".
2. The member/firm should belong to the town/city in respect of which the directory is being published.
3. The entry should be in normal type of letters. Entry in bolder type or abnormal type of letters or in a box is not permissible.
4. The order of the entries should be alphabetical and logical.
5. The entry should not appear in a manner giving the impression of publicity/advertisement. Entry should not be given in a manner which gives prominence to it as compared to other entries.
6. The payment, if any, for the entry should not be unreasonable.
7. The entries should not be restricted and should be open to all the chartered accountants/firms of chartered accountants in the particular city/town in respect whereof the directory is published.

8. Subject to the above conditions, the members can also include their names in trade directories which are published and/or otherwise available such as electronic media e.g. Internet, telephone services like "Ask Me Services" etc.

Q. Can goodwill of a Chartered Accountant firm be purchased?

A. Yes. The Council of the Institute considered the issue whether the goodwill of a proprietary firm of a Chartered Accountant can be sold/transferred to another eligible member of the Institute, after the death of the proprietor concerned and came to the view that the same is permissible. Accordingly, the Council passed the Resolution that the sale/transfer of goodwill in the case of a proprietary firm of Chartered Accountants to another eligible member of the Institute, shall be permitted.

Q. What is the procedure to be followed for transfer of goodwill of firm of chartered accountants?

A. The following procedure is to be followed for transfer of goodwill of firm of chartered accountants:-

1. An application in writing should be forwarded by a member, holding Certificate of Practice, intimating his intention to purchase goodwill.
2. The application should be made within 1 year from the date of death of the member.
3. The application should be sent along with the following details:-
 - a. "Death Certificate" of the deceased member; and
 - b. (i) A draft sale deed for sale/transfer of goodwill entered into between the legal heir/s of the deceased and the member intending to purchase goodwill.
(ii) The sale of goodwill deed must be very clear as to the amount of consideration and payment thereof in one or more installment(s) to be paid within a specified period. The consideration should not be contingent upon future profits.
4. Documents, such as, succession certificate or will, Legal Heir Certificate or an affidavit sworn by all legal heir/s stating that there is/are no other legal heir to the deceased member.
5. Legal heir, in this context, means spouse, child/children and parents.
6. If the agreement is entered into by one of the legal heirs, 'No Objection' from the other legal heirs, except those minor, are also required to be submitted. In case of minor, 'No Objection' is to be obtained from the guardian.
7. The member intending to purchase the goodwill should give an advertisement about his intention to purchase such goodwill, and the advertisement should spell out that anyone having objection thereto should send the objection directly to the respective Regional Office/Decentralised office

(address of which shall be indicated in the advertisement). A copy of the advertisement so published should be sent by the intending purchaser to the concerned Regional Office/Decentralised office.

8. Within 30 days of the receipt of the approval, for transfer of goodwill, Form '18' is required to be filed by the member purchasing the goodwill.

Q. Can a Chartered Accountant in practice enter into partnership with a practising Chartered Accountant of a recognized foreign professional body for sharing fee of their partnership within India?

A. Yes, Clause (4) of Part-I of First Schedule to the Chartered Accountants Act, 1949 permits partnership between members of the Institute and the members of the foreign professional bodies recognized either by the Central Government or the Council of the Institute by virtue of provisions of Section 29(2) of the Chartered Accountants Act, 1949 read with Regulation 53B(2) of the Chartered Accountants Regulations, 1988, provided they share fees of the partnership business both within India and outside India.

Q. Can a practicing Chartered Accountant solicit clients or professional work by, advertisement?

A. No, Clause (6) of Part-I of the First Schedule to the Chartered Accountants Act, 1949 prohibits a practicing Chartered Accountant from soliciting clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

However, there are following exceptions to it :-

(i) A member can respond to tenders or enquiries issued by various users of professional services or organizations from time to time and securing professional work as a consequence.

(ii) A member may advertise changes in partnerships or dissolution of a firm, or of any change in the address of practice and telephone numbers, the advertisement being limited to a bare statement of facts and consideration given to the appropriateness of the area of distribution of newspaper or magazine and number of insertions.

(iii) A member is permitted to issue a classified advertisement in the Journal/Newspaper of the Institute intended to give information for sharing professional work on assignment basis or for seeking professional work on partnership basis or salaried employment in the field of accounting profession provided it only contains the accountant's name, address, telephone, fax number and e-mail address.

Q. Can a Chartered Accountant in practice share his fees with the Government in respect of Government Audit?

A. The Institute came across certain Circulars/Orders issued by the Registrar of various State Co-operative Societies wherein it has been mentioned that certain amount of audit fee is payable to the concerned State Govt. and the auditor has

to deposit a percentage of his audit fee in the State Treasury by a prescribed challan within a prescribed time of the receipt of Audit fee.

In view of the above, the Council considered the issue and while noting that the Government is asking auditors to deposit such percentage of their audit fee for recovering the administrative and other expenses incurred in the process, the Council decided that as such there is no bar in the Code of Ethics to accept such assignment wherein a percentage of professional fees is deducted by the Government to meet the administrative and other expenditure.
